

**REPORT OF THE 3<sup>RD</sup> TAX ROUND TABLE HELD ON 2<sup>ND</sup> MAY, 2018 AT  
INTERCONTINENTAL HOTEL NAIROBI**

**1.0 PREAMBLE**

The Kenya Revenue Authority hosted its third Tax Round Table on 2<sup>nd</sup> May, 2018 at the Intercontinental Hotel, Nairobi from 7.30 am – 11.30 am. The forum was organized by the Kenya Revenue Authority (KRA) jointly with the Kenya Private Sector Alliance (KEPSA), under the theme '*Achieving the Big Four Agenda through partnership-driven solutions*'.

**2.0 RATIONALE**

The realization of Kenya's development framework, Vision 2030, is dependent on a functioning and optimized taxation system. Not only will well-planned and effective tax administration help fast-track the implementation of key development projects in the country, but it will also enhance service delivery to the citizens as well as reduce the need for expensive borrowing. Taking cognizance of its role as the country's development KRA envisions 'Kenya's transformation through innovative, professional and customer-focused tax administration'.

Customer-orientation efforts have seen KRA engage with its stakeholders both in the public and private sectors, through its structured stakeholder engagement program. This engagement has been centered on the need to forge strategic partnerships with a diverse range of stakeholders, and also on the need to develop market oriented solutions to tax administration.

The May 2018 forum was a culmination of several stakeholder engagements held at the technical and Commissioner Levels. These engagement fora have yielded positive outcomes and several taxation interventions have been taken which have improved the level of understanding between KRA and its stakeholders on tax matters.

**3.0 OBJECTIVES OF THE TAX ROUND TABLE**

The Tax Round Table provided a platform to dialogue on taxation challenges stakeholders face and that may impede smooth flow of business and hinder revenue collection. The end goal of the forum was to achieve a taxation environment that is friendly and facilitative for taxpayers, providing for increased compliance, reduced tax leakages and revenue growth.

Specifically the round table sought to meet the following objectives:

1. To gather stakeholder insights useful for tax administration

2. To provide a platform for KRA to provide feedback to stakeholders on challenges facing the Authority in tax collection
3. To deliberate on areas of mutual interest towards building a competitive tax environment in Kenya.

#### **4.0 THEMATIC AREAS**

##### **(i) Improving the Business Climate (Paying Taxes)**

Kenya is committed to continue improving its ranking in the Doing Business reports to top 50 and in this regard, KRA's role in improving the 'Paying Taxes' rank will be critical. At the beginning of the KRA's 6<sup>th</sup> Corporate Plan in 2015, the doing business ranking showed that Kenya had been able to improve its 'Paying Taxes' ranking from 146 to 102 in a single year and by 2016, the improvement had increased to position 122, indicating that comprehensive reform can substantially improve the business climate.

However, in 2017 the ranking dropped to 125 implying the need for a consultative effort in improving the ranking to top 50 as projected in the 6<sup>th</sup> Corporate Plan. The improvement in this ranking is critical for providing a tax environment that is competitive and conducive for business to thrive and hence increase tax revenue.

The 3<sup>rd</sup> Tax Round Table sought to dialogue with critical stakeholders and develop solutions for the improvement in the ranking.

##### **(ii) Enhancing trade efficiency and competitiveness**

One of the Key priority areas for KRA is enhancing trade facilitation. As such, KRA is a signatory to and key implementer of the Port Community Charter to enhance the smooth flow of goods through the Port. KRA is also an implementer in various initiatives to enhance regional trade by removing bureaucratic bottlenecks to trade. Further, KRA's role in implementation of the Single Customs Entry is instrumental in the promotion of Regional integration.

KRA has adopted ICT Developments in tax administration through integrated systems and technological interventions to improve trade efficiency and close loopholes to ensure high integrity and ease in business operations.

Some of the programmes in place to support trade facilitation include Pre Arrival clearance (PAC) and AEO programmes, as well as the recently launched Regional Electronic Cargo Tracking System.

Discussions under this thematic area focused on the interventions and developments KRA undertook to enhance trade efficiency, and deliberate on further solutions needed for greater improvement in trade efficiency through collaboration with stakeholders.

## **5.0 FORUM PROCEEDINGS**

### **5.1 Opening Remarks by Mr. John Njiraini, Commissioner General, KRA**

While opening the forum, Mr. John Njiraini applauded the private sector for their active interest and participation in the KRA structured engagement process noting that KRA values their feedback. He singled out various initiatives put in place by KRA that have created efficiency in taxation, some of which include the following:

- Installation of key technology platforms:
  - iTax has facilitated data utilization for tax transaction analysis enabling KRA curb tax evasion.
  - iCMS is being piloted and will be launched in the course of 2018.
  - A Customer Relationship Management system to create a one-stop shop for all customer queries and to ensure that all queries are tracked scheduled to be fully rolled out in September 2018. KRA has received a global recognition by Oracle on implementation of CRM.
- Legal and Administrative Reforms
  - Establishment of a focused and structured Alternative Dispute Resolution process, which is envisaged to handle 90% of tax disputes
  - Establishment of an intelligence function to ensure structured engagement with business for information sharing and utilization
  - Overhaul of Income Tax Act , with a draft Bill scheduled for publication in May
  - Implementation of a Tax Base Expansion programme
  - Ongoing policy considerations on introduction of presumptive tax for taxation of MSMEs
  - Ongoing policy considerations on streamlining of Withholding VAT

In closing, the Commissioner General noted that there is need to ensure zero-rating of VAT is restricted to exports to manage the accumulation of VAT refunds.

### **5.2 Remarks by Chairman KEPSA Mr. Nicholas Nesbitt**

Mr. Nicholas Nesbitt said KRA is increasingly becoming a very collaborative institution an indication that it appreciates the importance of the private sector in revenue collection and nation building.

The Chairman commended KRA for scaling tax reforms through digitization, allowing business to conveniently pay tax and file returns. He said Kenya is emerging as one of the most attractive business destination in Africa currently standing at position 8 in the Africa Investment Index up from position 15 in 2017. He lauded KRA's transformation in tax administration noting that a conducive business environment is critical to the successful implementation of the government's Big Four Agenda. There is need for sustained reforms for Kenya to achieve the goal of ranking above 50 in the World Bank Ease of doing business rankings up from the current ranking of 80. Specific tax reforms include the reduction of tax payment and reduction in the cost of payment.

He called for actionable interventions by both parties for mutual collaboration towards improving ease of doing business in the country.

### **5.3 Remarks by Deputy Chief Executive Officer, KEPSA, Ms. Rachel Muthoga**

KEPSA Deputy CEO Ms. Rachel Muthoga noted that KEPSA is committed in supporting the government initiatives towards achieving its Big Four Agenda (manufacturing, food security, universal health care and affordable housing). She highlighted areas requiring intervention for the Big Four Agenda to be achieved including the need to implement the following:

1. Facilitation of pre-arrival clearance of cargo for enhanced efficiency in cargo clearance
2. Interagency collaboration to fight illicit trade particularly fuel dumping and illicit tobacco trade.
3. Elimination of inefficiency relating to multiplicity and duplication of government systems through integration and the need to register all Government agencies on iTax to ensure process harmonization
4. Enhance tax environment predictability through development of a clear policy that creates consistent policy parameters and harmonizes national Vis a Vis county taxes, development of a tax legislation that has a longer duration in line with most businesses strategic plans, and partnership in policy making and joint submissions to the National Treasury.
5. Removal of the VAT Refunds formula to facilitate exports
6. Streamlining of VAT refunds process to minimize business cash flow challenges related to accumulation of VAT refunds.
7. Review of the Withholding VAT rate and exemption to minimize VAT credits
8. Streamline the oil and gas taxation to promote investments in the sector
9. Expansion of the tax base to tap into the informal sector
10. Enhance efficiency in tax disputes resolution through adequate resource allocation and streamlining the Tax Appeals Tribunal appointment process.

## 6.0 PRESENTATIONS

The KRA commissioners responded to issues raised and appraised the meeting on the progress made so far in addressing them. A matrix detailing KRA responses is provided as **Annex 1**.

## 7.0 PLENARY

Stakeholders reacted to issues discussed in the opening remarks and presentations. A summary of the key issues and proposed solutions arising from the plenary discussion is detailed here below.

1. **Reclassification of LPG to VAT exempt:** Petroleum Institute of East Africa (PIEA) noted that the proposed reclassification of LPG will increase LPG cost against the government's policy on clean energy. PIEA further noted that lack of access to affordable LPG leads to an estimated loss of 4,300 lives annually and Ksh. 20 Million loss in government revenue. Further, it was noted that the reclassification will increase the cost of LPG leading to closure of gas cylinder manufacturing plants which will translate to 1 Million job losses.
2. **Tackling illicit trade:** BAT Kenya called upon KRA to urgently allocate resources to the fight against illicit trade, noting that the tobacco industry is losing five billion annually to illicit. Further it was noted that there is need to ensure predictability of tax policy pointing out the adverse impact the 87% increase in excise stamp costs on tobacco products has had on the industry's operational costs. BAT for example recorded a 350 Million increase on operational costs. BAT further called on KRA to implement the law on inflationary adjustment as provided for in the Excise Duty Act to enhance predictability. There is also a critical need to look into bilateral trade issues such as the NTBs imposed by Tanzania on Kenyan cigarettes, to promote regional trade.
3. **VAT rate:** Kenya Association of Manufacturers called for a reduction in the VAT rate, noting that this would increase the country's trade competitiveness. Further emphasis was given on the need to review the WVAT rates and exempt specific compliant manufacturers
4. **Taxation of partnerships in the iTax system-**ICPAK, noted that for three years partnerships are unable to file their returns using the system.
5. **Audit Processes:** ICPAK expressed concern that audits are not being completed upon the transfer of staff, and that request for waivers take more than a year to be responded to.
6. **HS codes-** General Electric noted that codes between manufactures and KRA customs often differ. KRA responded by clarifying that HS codes are governed internationally and KRA respects the tariff declared unless it's a case of mis-declaration of mis-classification.
7. **Exemptions of medical equipment-** as part of the governments big four agenda, it was proposed that tax exemptions on medical equipment should be prioritized to facilitate universal healthcare.

8. **Transit Bond** – It was proposed that KRA should integrate proposals by the World Customs Organization to ease movement of cargo in regard to zero bonds, token bond and comprehensive bond among other.
9. **Integrated Customs Management System (ICMS)** – KRA was urged to ensure that the new system ICMS effectively interfaces with the Freight forwarders systems for enhanced efficiency.
10. **Stamp duty and Capital Gains Tax Twinning** – Kenya Bankers Association noted that there is need for KRA to adjust its iTax system to allow payment of stamp duty until the appeal is heard.
11. **Missing Trader** – KRA Director sought to understand KEPSA's position on KRA's recent actions on fictitious VAT invoices – missing trader.

In response to the above issues KRA noted the following:

1. KRA would further review the industry proposals on review of WVAT rate and VAT refunds formula and make the necessary proposals to the National Treasury for consideration in the budget process for the FY 2018/19. A meeting would be held with KAM to review the issues further.
2. With respect to reduction of VAT rate, KRA noted that this would need to be part of the greater East African Community (EAC) regional tax harmonization plan
3. KAM was requested to provide further proposals on the export formula to the National Treasury
4. Credit offsetting is provided for in law on the already determined refunds. KRA committed to streamline the process on iTax to enhance refunds efficiency
5. To provide for predictability the Excise Regulations are currently undergoing review. Stakeholder engagements would be conducted once the draft is ready.
6. The proposal for equalizing IK and AGO was forwarded to the National Treasury
7. With regard to zero-rating LPG, it was noted that the government focus is on providing incentives through an expenditure framework and restrict zero rates to exports as intended by the VAT Act 2013.
8. KRA is moving away from audits to data driven compliance, for enhanced efficiency
9. The ongoing iTax system enhancement will address the challenges of partnership businesses filing.

## **8.0 WAY FORWARD**

KRA called for closer collaboration with KEPSA on various tax issues and urged the Government agencies to continue providing a conducive business environment by lowering the cost of doing business and enacting laws that encourage the business sector to expand.

It was observed that there was need to work jointly to enhance tax base enlargement. KEPSA recognized the attitude change by KRA and said it was now important to have pending issues resolved faster.

There was a unanimous spirit of working together through collaboration and consultation to achieve a common aim of growing Kenya's economy.

### Matrix of action points

| Agreed Action                                                                                                                    | Timeline        | Responsibility                                     |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------|----------------------------------------------------|
| Meeting between DTD Commissioner and KAM on VAT issues                                                                           | May 2018        | Domestic Taxes                                     |
| BAT to have a meeting with KRA                                                                                                   | May 2018        | Domestic Taxes                                     |
| Stakeholder engagements to be conducted on the Income Tax Bill                                                                   | June 2018       | Strategy, Innovation & Risk Management             |
| KRA to forward proposals to the National Treasury on review of the VAT refunds formula and reduction of WVAT rate from 6% to 2%. | May 2018        | Domestic Taxes                                     |
| Partnership in policy making and joint submissions to the National Treasury.                                                     | <b>On going</b> | Strategy, Innovation & Risk Management             |
| Establishment of a dedicated help desk for the MSME                                                                              |                 | Strategy, Innovation & Risk Management<br>&<br>M&C |
| Stakeholder consultations on the policies under drafting : DTA policy , excise regulations and Income Tax Bill                   |                 | Strategy, Innovation & Risk Management<br>&<br>M&C |
| C&BC to discuss with freight forwarders on the interface of their systems with the iCMS                                          |                 | Customs & Border Control                           |
| Amendments to the excise duty act and new excise regulations.                                                                    |                 | Domestic Taxes                                     |
| Harmonization of the current conflicting legislative framework with the regional laws on refunds on inputs.                      |                 | Domestic Taxes                                     |
| Stakeholder Engagement on the review                                                                                             |                 | Legal Services & Board Services                    |

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| of the ADR framework to be conducted                                                        | ISO 9001:2015 CERTIFIED |                |
| Streamline iTax to allow for automatic off-setting of VAT credit                            |                         | Domestic Taxes |
| Proposal to review the VAT refunds formula                                                  |                         | Domestic Taxes |
| Tax incentives for MSMEs to allow them to formalize and unlock their potential to scale up. |                         | Domestic Taxes |

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**Annex 1. MATRIX OF KRA RESPONSES TO ISSUES RAISED DURING THE THIRD TAX ROUNDTABLE**

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| Issue                                                                                                      | KRA Responses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <b>1. Improving Tax Policy and Legislative environment (Predictability and Practicability of Tax laws)</b> | <ul style="list-style-type: none"> <li>Currently, Tax Policy on income tax and draft Income Tax Bill is being prepared at National Treasury. To be shared with public in May 2018.</li> <li>A model DTA &amp; DTA policy is also being prepared at National Treasury.</li> <li>KRA is working with National Treasury on Tax Policy framework that should guide change in policy on taxes so as to enhance predictability for businesses and taxpayers.</li> <li>KRA seeks to adopt a continuous strategic partnership, with its stakeholders, National Treasury and the National Assembly to enhance the tax legislative framework and have Finance Bills with tax provisions for longer duration, with a greater emphasis on empirical data and benchmarks in guiding policy formulation.</li> <li>Legislation process is now incorporated public participation as a mandatory requirement before any law is passed.</li> <li>Development of a DTD tax harmonization policy in the EAC partner states currently ongoing.</li> </ul> |
| <b>2. Tax base expansion</b>                                                                               | <ul style="list-style-type: none"> <li>Proposal to have a special tax regime for SME's and Micro-enterprises was forwarded by KRA to the National Treasury (NT) as part of the Income Tax Act Overhaul.</li> <li>KRA is already working in collaboration with Ajira, MSEA, Juakali Association, YEDEF, Fashion Agenda Africa etc on tax awareness to promote voluntary compliance and expand the tax base. The collaborations will allow for sharing of sector concerns and providing solution.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>3. Implementation of the VAT Act</b>                                                                    | <ul style="list-style-type: none"> <li>The Authority has also observed that any taxpayer, who consistently exports, will continue carrying forward credits and</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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| <p>(i) VAT Refunds<br/>formula</p> <p>(ii) 6% Withholding<br/>VAT (WHVAT)</p>                        | <p><b>ISO 9001:2015 CERTIFIED</b></p> <p>would need to stop exporting to utilise the extra credits built up.</p> <ul style="list-style-type: none"> <li>KRA is therefore reviewing this matter with a view to making necessary proposals for legislative changes.</li> <li>KRA appreciates the concerns raised on this matter, and has proposed in this year's budget a review of the withholding VAT rate .This is expected to address the issue of excess non-refundable credits.</li> <li>Guidelines for both appointment of WHVAT Agents and exemptions have been developed and hosted in the KRA website.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                       |
| <p><b>4. Taxation of Oil and Gas sector</b></p>                                                      | <ul style="list-style-type: none"> <li>This matter is under consideration in the Income Tax Act overhaul, which will be subjected to public participation where additional views will be taken up.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p><b>5. Proliferation of illicit Tobacco trade</b></p>                                              | <ul style="list-style-type: none"> <li>Kenya Revenue Authority (KRA) through the inter-agency taskforce has carried out countrywide crackdown on illicit trade targeting alcoholic drinks and tobacco products. This is a continuing excise that is geared towards weeding out illicit trade.</li> <li>KRA has also put in place controls in form of technological installations at production sites and data driven surveillance by excise officers which facilitates in monitoring of the products released for the local market and those meant for exports.</li> <li>Risk based scanning of goods which facilitates identification of any illicit importations.</li> <li>All excisable goods including cigarettes are put under ECTS.</li> <li>There are proposals to enhance controls through amendments to the excise duty act and new excise regulations, stakeholders will be consulted in the process of development of excise regulations.</li> </ul>                                 |
| <p><b>6. Systems Efficiency and Integration</b></p>                                                  | <ul style="list-style-type: none"> <li>KRA has been working together with other government agencies to ensure that its business systems are integrated with other government agencies to improve service delivery and customer experience. Notable examples include:</li> <li>IFMIS/CBK/KRA iTax – currently withholding VAT transactions from December 2016 by Government Agencies and Counties are supported through the integration where suppliers are now able to obtain withholding VAT certificates.</li> <li>Further work is on-going to bring on board withholding income taxes (WIT and Withholding on rental Income).</li> <li>E-Citizen/iTax – to harmonize the registration process of Taxpayers (non-individuals) once new companies are registered where application's for PIN for new companies can now be done through the e-citizen platform.</li> <li>In addition, further enhancement of the integration is being done to bring on board the other KRA services.</li> </ul> |
| <p><b>7. Lengthy VAT refunds and process delays impacting negatively on business cash-flows.</b></p> | <ul style="list-style-type: none"> <li>As at June 2017, pending pre-December 2013 refunds stood at 3.4B. Of this, 2.649 B has been settled, and the outstanding balance of 751M is at varying stages of clearance.</li> <li>The VAT refunds process is undergoing streamlining to ensure efficiency</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>8. Enhancing Efficiency in Cargo</b></p>                                                       | <ul style="list-style-type: none"> <li>The current performance of the pre-arrival clearance program is 35%, with roll out of ICMS and partial manifest lodgement, the</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

| clearance                                                                                               | ISO 9001:2015 CERTIFIED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <b>9. Tax Evasion and Fuel Dumping /Adulteration and Reclaiming the East Africa Fuel Export Market.</b> | <ul style="list-style-type: none"> <li>• uptake of PAC will go up.</li> <li>• Amendment of Sec 24 of EACCMA will enable lodgement of Manifest immediately after departure of vessel from last port of loading.</li> <li>• The commencement of ICDE/SGR operations has facilitated a significant improvement in clearance time.</li> <li>• Compliant clients (blue channel) get direct release upon arrival of the cargo at ICDE</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>10. Reviving Lubricants Manufacturing/Exports and Creating Employment Opportunities</b>              | <ul style="list-style-type: none"> <li>• KRA/ERC&amp;KEBS have increased joint surveillance to three teams with one of the teams testing trucks deliveries to stations</li> <li>• The industry through the Ministry of Petroleum and Mining have done a proposal to treasury for tax increase on Domestic Kerosene.</li> <li>• KRA has also been implementing Regional Electronic Cargo Tracking System (RECTS), a web-based integrated system used to monitor transit cargo under Customs control in Kenya, Rwanda and Uganda, geared towards eradicating dumping</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>11. Tax disputes resolution and litigation</b>                                                       | <ul style="list-style-type: none"> <li>• The Tax Appeals Tribunal is a creature of statute, The Tax Appeals Tribunal Act, to hear appeals filed against any decision made by the commissioner (KRA). Under section 4 (1) of the TAT Act, the Chairman and the members are appointees of the Cabinet Secretary in charge of the Treasury.</li> <li>• The KRA only appears before it as a party. The KRA doesn't manage or direct the Tax Appeals Tribunal.</li> <li>• Once KRA wins a case, the tax becomes due and payable irrespective of the taxpayer appealing, unless there is a stay of execution of the Tax Tribunals decision. Such a stay may only be obtained from the High Court.</li> <li>• KRA respects Court Orders and as regards the cited case relating to Stamp Duty and CGT, KRA has: Sought from the Court of Appeal for a stay of the implementation of the High Court decision. Appealed the decision to the Court of Appeal.</li> <li>• KRA has put in place an ADR mechanism to fast-track dispute resolution. The ADR process is currently being streamlined to enhance its efficiency</li> </ul> |