

TAX AND GOVERNANCE

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TAX AND MODERN STATE

- ❖ From the *Magna Carta* (13th Century), to the *English Bill of Rights* (17th Century), to the *Boston Tea Party* (18th Century), tax has been central to the manner in which power and authority is exercised (def. of governance).
- ❖ ‘No taxation without representation’ is a constitutive principle of the modern democratic state.
- ❖ Yet, in Kenya, the link between taxation/public purse and democracy/statecraft is rarely made:(sometimes expressed in that mythical distinction between development and democracy)



TAX AND MODERN STATE

❖ Tax is a *Democratising Agent*: How?

- Tax gives *voice* (enables citizen claims: including ‘commercial free speech’)
- Tax provides basis for *legitimacy* (exercise of state power; which is why in parliamentary democracies, governments resign if they lose parliamentary vote on the budget: similar to constitution)
- Tax provides basis for *accountability* (mandate renewal dependent on performance: which is why extractive resource-based countries are generally less accountable)



TAX & GOVERNANCE CONTEXT IN KENYA

- ❖ **POVERTY** (46% below poverty line: the political dilemma of direct versus indirect taxation: politics vs. economics)
- ❖ **INEQUALITY** (approx. 0.57 Gini coefficient): VERTICAL (narrow tax base; tax burden by a few – minimum wage almost at 8th decile) & HORIZONTAL (discriminatory tax as affirmative action; distortionary)
- ❖ **DEMOGRAPHIC STRUCTURE:** *Youth Bulge and Tax Type*
- ❖ **DUAL ECONOMY: FORMAL AND INFORMAL:** *Wealth and Property Tax Challenges = land rents, capital gains, inheritance tax etc.*
- ❖ **DEFICIT FINANCING AS TAX:** *The Governance and Distributional Question Here*
- ❖ **STATE-CREATED, AS OPPOSED TO, MARKET-CREATED ECONOMIC ELITE:** *fused economic and political elite: THEREFORE: Who makes the rules? Enforces? Arbitrates*

NEW CONSTITUTION & IMPLICATIONS FOR TAX AND GOVERNANCE

- ❖ Principles of Public Finance(Art. 201): focus entirely on 'sharing' not 'raising'
- ❖ Presidential System of Government: Role of Treasury diminished; and splintered into other institutions; may be rescued by legislation, Art 225 (1).
- ❖ Expanded Legislature Mandates : *Money Bills* (Art 114; contrast with Art 48 of Old Const.); *Budget Making; Approval; Oversight*: Parliamentary Budget Office Capacity Constraints
- ❖ Potential Revenue Advisory Mandate Conflicts between CRA and KRA (Art 216 (3)(b)).
- Devolution: Revenue Raising Powers Shared
- ❖ Art 210. No exemptions for public office holder: record of each waiver and reasons to be maintained ; each waiver reported to Auditor General



CONSTITUTION: RISKS

- ❖ Parliament's Capacity Constraints (PBO)
- ❖ Threat to Fiscal Stability: How is agreement on fiscal target arrived at
- ❖ Executive-Parliamentary Fiscal Deals: not necessarily efficient fiscal policy choices: pork barrel politics.
- ❖ Gridlock



CONSTITUTION: DEVOLUTION

- ❖ Definition of 'Revenue': is A-in-A included for the > 15% in Art. 203 (2)?
- ❖ Design of System of Inter- Governmental Transfers to deal with Vertical and Horizontal Imbalances
- ❖ Collection Agency Question for Counties: KRA?

CONCLUSION: TAX AND GOVERNANCE

- ❖ Kenya's 'Tax Modernisation Programme' has done well on the administrative front. Public engagement still weak
- ❖ Major structural and managerial governance challenges continue
- ❖ But the new Constitution is revolutionary: Managing new Parliamentary Mandate on fiscal affairs ; and the exercise of revenue raising powers of the County Governments ,the biggest challenges.