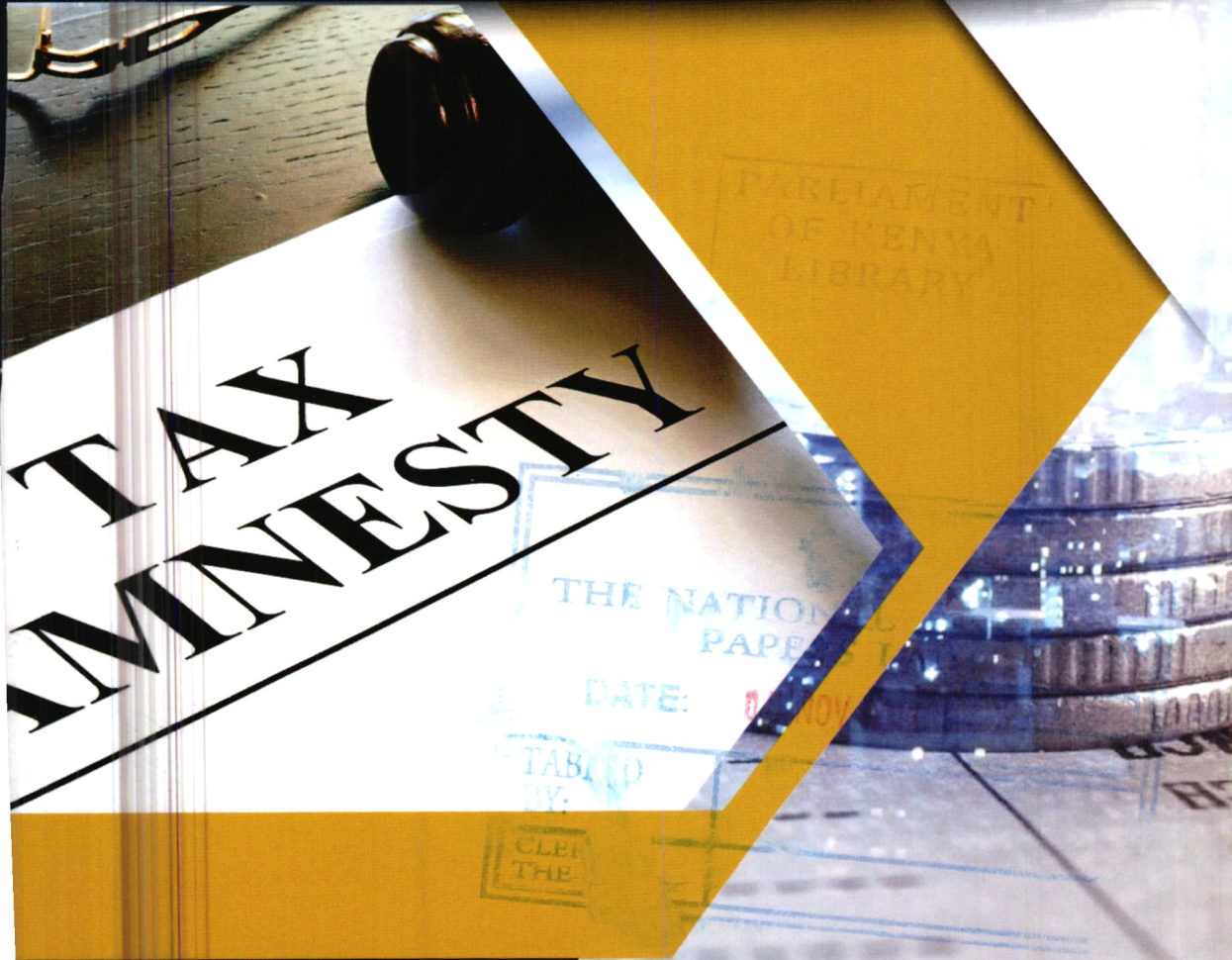


ASSESSMENT OF UPTAKE AND IMPACT OF TAX AMNESTY IN KENYA



SEPTEMBER 2019



Published by:

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA

CPA CENTRE, THIKA ROAD
P. O. BOX 59963 - 00200 NAIROBI KENYA
TELEPHONE: +254 (020) 2304226, 2304227
FAX : +254 (020) 8562206
MOBILE : +254 727 531006 / 733 856262 /
721 469796 / 721 469169
EMAIL: ICPAK@ICPAK.COM
WEBSITE: WWW.ICPAK.COM

Copyright © 2019

ISBN 13- 978 -9966-1808-4-1

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form, or by any means, electronic, mechanical, photocopying, recording, scanning or otherwise, without prior permission in writing of the Institute.

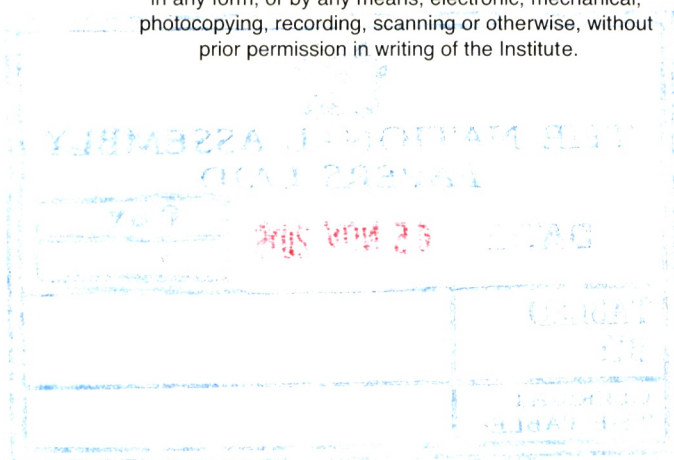



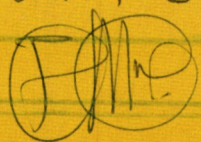
Table of Contents

Acknowledgment	6
1. Executive Summary	7
2. Introduction	8
3. Objectives of the Study	9
4. Approach, Scope and Limitations	10
5. Study Findings	12
5.1. Tax Amnesty Implementing Institutions	12
5.2. Uptake of the Tax Amnesty in Kenya	21
5.3. Comparative Analysis from other Jurisdictions	24
5.4. Effects of the Tax Amnesty on Accountability	24
6. Challenges Faced in the Implementation of Tax Amnesty	26
7. Policy Recommendations	27
8. Demonetization and Issuance of New Currencies in Kenya	30
9. Areas for Further Study	32
10. Conclusion	33
11. References	34

PARLIAMENT
OF KENYA
LIBRARY

**A study of the impact of tax amnesty on
assets and incomes held abroad to tax
revenues and illicit financial flows**

September 2019

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 NOV 2019	DAY: TUESDAY
TABLED BY:	MAJORITY LEADER
CLERK AT THE TABLE:	

Abbreviations

ICPAK	-	Institute of Certified Public Accountants of Kenya
CBK	-	Central Bank of Kenya
KRA	-	Kenya Revenue Authority
FRC	-	Financial Reporting Centre
GIZ	-	German Corporation for International Corporation
POTA	-	Prevention of Terrorism Act
PFM	-	Public Financial Management
POCAMLA	-	Proceeds of Crime and Anti-Money Laundering Act
FIU	-	Financial Intelligence Unit
KYC	-	Know Your Customer
STR	-	Suspicious Transaction Report
OECD	-	Organisation for Economic Cooperation and Development
PEP	-	Politically Exposed Persons
Rp	-	Indonesian Rupee
AML	-	Anti-Money Laundering

Acknowledgment

The Institute acknowledges the selfless commitment of numerous individuals and institutions who dedicated time, expertise and diverse resources to see the completion of this study. The Institute appreciates the technical support of CPA Samuel Kiautha and CPA Ayub Mwangi of Sam & Associates, Certified Public Accountants of Kenya in conducting this study.

A special appreciation to the Public Policy and Research team comprising of Hillary Onami, Elias Wakhisi, Daisy Webala, Evance Juma and Nancy Moraa for conceptualizing and actualizing this study. We appreciate and value the continued partnership, encouragement and support from the Kenya Revenue Authority, Central Bank of Kenya and the National Treasury. We sincerely appreciate the many other contributors and Institutions who in many ways facilitated the development of this Report.

Thank you.

CPA Edwin Makori

Chief Executive Officer

1. Executive summary

Tax amnesty in Kenya was introduced vide the Finance Act 2016 to provide an opportunity for Kenyans to declare their assets and incomes held abroad and to encourage repatriation of assets for the sake of the development of the country. The study seeks to establish the uptake and impact of tax amnesty on tax revenues and how the legal and policy frameworks in place can be effectively used to spur economic growth.

As at the time of the study and end of the amnesty period, there were 3,523 applications processed by KRA amounting to KShs 118.8 billion. However, KRA has not issued the final certificates to the applicants as it is yet to confirm with the commercial banks on the actual receipt of the funds.

The main objective of the amnesty was to ensure repatriation of funds held abroad to the country so as to spur economic growth. However there was no mechanism to monitor investments of the funds in the country and therefore not possible to determine whether this objective of spurring economic growth was met. The economic effects of the amnesty repatriations should be studied in the medium to short term.

The amnesty was largely successful bringing in cash flows equivalent to 3.9% of the financial years 2019/2020 Kenyan annual budget. However, the cash flows could have been higher had all the principles of a successful amnesty been included such as a clear communication strategy, mechanisms to deter non-compliance and a plan to use the disclosures to improve compliance in the longer-term.

The amnesty policy did not provide for any enquiry or investigation on the source of funds being repatriated. The amnesty therefore did not assist in the identification of any illicit financial flows in the country since this was not its main objective.

The Study proposes adopting a clear communication strategy for publicity of the amnesty, ensuring money repatriated is invested in Kenya, extending the amnesty to include immovable assets as well as cautious implementation to deter abuse through money laundering.

2. Introduction

Tax amnesty in Kenya was introduced vide the Finance Act 2016 to provide an opportunity for Kenyans to declare their assets and incomes held abroad and to encourage repatriation of assets for the sake of the development of the country. To qualify for the amnesty, the taxpayers were required to apply for amnesty under provisions of Section 37 (B) of the Tax Procedures Act 2015 and to repatriate their foreign held assets within the amnesty period.

A tax amnesty is a program where a government offers its taxpayers opportunities to pay back unpaid taxes and in the case of Kenya to bring back assets and incomes without paying any taxes. This has been implemented by jurisdictions across the world.

The Tax amnesty in Kenya covered the periods ending on or before 31st December 2016 and runs up to 30th June 2018. This period was further extended to 30th June 2019 vide the finance Act 2018. In cases where funds have not been remitted within the amnesty period, the law provides for a five-year period of remittances but with a penalty of ten percent (10%) on the remittance.

Amendments to the Tax Procedures Act 2015 through the Finance Act 2018 provides that funds transferred under the amnesty is exempted from the provisions of Proceeds of Crime and Anti-Money Laundering Act 2009 or any other Act relating to reporting and investigation of financial transactions, to the extent of the source of the funds excluding funds derived from the proceeds of terrorism, poaching and drug trafficking.

This study thus, seeks to establish the uptake and impact of tax amnesty on tax revenues and how the legal and policy frameworks in place can be effectively used to spur economic growth through tax amnesty whilst abating illicit financial flows.

4. Scope , Approach and Limitations

Scope

The study focused on the impact of tax amnesty on assets and incomes held abroad to tax revenue and illicit financial flows. The study covered the amnesty periods starting on 31st December 2016 up to 30th June 2019 as stipulated under the Finance Act 2016 and Finance Act 2018.

Approach

The study involved developing of research tools for the study, reviewing various reports, gathering materials and conducting interviews with key stakeholders.

- Developing research tools: We developed and despatched data and information collection tools. Information from these templates, questionnaires and discussion notes was analysed to obtain appropriate deductions and conclusions.
- Conducting literature review: We reviewed various reports, published journals, public and private sector reports, and multinational corporation reports, reports from the NGO and academia on tax amnesty. The literature review helps build the case for tax amnesty and how other jurisdictions have undertaken this key fiscal tool.
- Conducting key informant interviews: We conducted interviews with selected Government officials in key institutions involved in the management of the amnesty programme and other identified programmes.

Limitations during the study

Some of the challenges encountered during the study process include:

- Lack of readily available information from the relevant amnesty implementation agencies namely, Central Bank of Kenya, Kenya Revenue Authority, Financial Reporting Centre and The National Treasury. This was due to the fact that the study was executed just around the closure of the amnesty period i.e. 30th June 2019.

- Delays in provision of information and or approvals for engagement with the stakeholders. A significant amount of time was spent on engaging the relevant stakeholders so as to agree on the interview meetings.
- The release of the information requested in our data collection tools was very sensitive and therefore required approval at higher levels.
- Some of the stakeholders were not available to take part in the study.
- The implementing institutions are in the process of verifying whether the application amounts were actually repatriated and received by the local banks before issuing the final certificates. We cannot therefore ascertain that the amounts disclosed in the report have actually been received at the commercial banks.



5. Study Findings

5.1 Tax Amnesty Implementation Institutions

In order to gain an understanding of the tax amnesty and the general tax administration in Kenya it is critical to understand key institutions involved in tax administration. The tax administration, management and reporting is mainly administered by Kenya Revenue Authority (KRA). The policy direction including the fiscal and monetary policies are issued by the National Treasury whilst the monetary system including the regulation of Banks and Deposit taking Microfinance Institutions is done by the Central Bank of Kenya (CBK). Further, the Financial Reporting Center created by the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) 2009, assists in the identification of the proceeds of crime and combating money laundering.

These are elaborated as follows;

a) Kenya Revenue Authority

The Kenya Revenue Authority was established by an Act of Parliament – the Kenya Revenue Authority Act, Chapter 469 of the Laws of Kenya – which became effective on July 1, 1995. The Kenya Revenue Authority is the body mandated with the responsibility of revenue collection in the country. The body is also responsible for management of the tax amnesty introduced in the country.

The core functions of the Authority are: -

- To assess, collect and account for all revenues in accordance with the written laws and the specified provisions of the written laws.
- To advise on matters relating to the administration of, and collection of revenue under the written laws or the specified provisions of the written laws.
- To perform such other functions in relation to revenue as the Cabinet Secretary, National Treasury may direct.

KRA's performance in terms of revenue collection has improved over the years due to improved efficiency and netting of more tax payers.

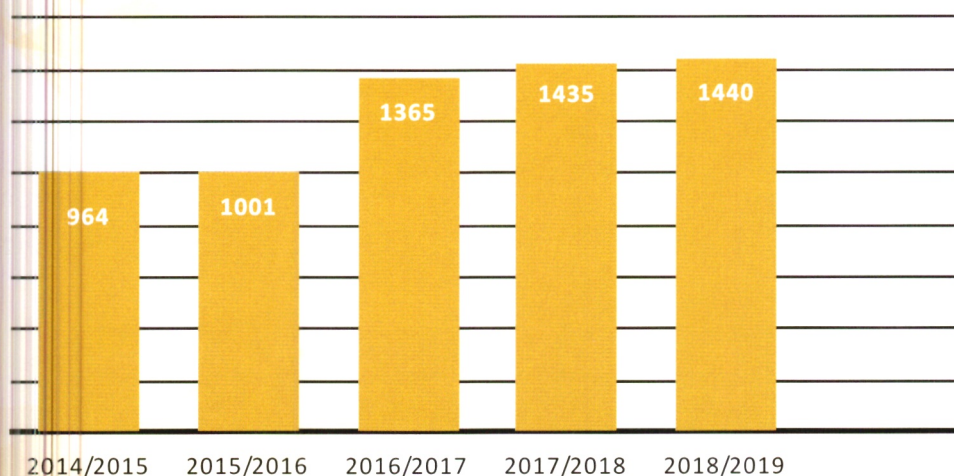
For the financial year ended 30th June 2019, KRA collected KShs 1.440 trillion reflecting an increase from KShs 1.435 trillion collected during the 2017/18 financial year. The achieved target also reflected 89.44% of the KShs 1.61 trillion which KRA had targeted to achieve by June 2019.

The table below and graphical representation shows the tax revenues growth over the past five years. There has been a continuous improvement in tax collection over the years mainly due to improved tax collection efficiencies, netting of more tax payers and leveraging on modern technology such as implementation of itax system.

Table 1. Tax Revenues for the Financials Years Ended 30 June 2019

Financial Year	Tax Revenue (Kshs. Billions)
2018/2019	1,440
2017/2018	1,435
2016/2017	1,365
2015/2016	1,001
2014/2015	964

Figure 1. Graphical Representation of Tax Revenues for the financial years 2015-2019 (Amounts in Kshs. Billions)



As seen above, tax revenues have gradually grown from year 2014-2019 with a stagnation between 2017/2018 and 2019 which was the amnesty period.

This increase in revenue growth has been attributed to measures by KRA including;

- Expansion of the tax base
- Data driven compliance
- Robust intelligence collection, utilization and investigation.
- Ensuring greater effectiveness of the Alternative Dispute Resolution programme.
- Strengthening debt and accounts management.

Despite the growth, there was no direct correlation between the uptake of the tax amnesty and the increase in revenue collection for the years in which the amnesty has been in place.

b) National Treasury

The National Treasury derives its mandate from the Constitution of Kenya 2010, the Public Management Act 2012 section 11 and the Executive order No. 2/2013.

The National Treasury is responsible for managing Kenya's National and County Levels of Government Finances. Some of the key mandates relevant to the study are to formulate, implement and monitor macro-economic policies involving expenditure and revenue and also mobilize domestic and external resources for financing national and county government budgetary requirements. The mobilisation of resources mandate of National Treasury is undertaken by the Kenya Revenue Authority.

c) Central Bank of Kenya

The Central Bank of Kenya is responsible for formulating monetary policy to achieve and maintain price stability. The Central Bank also promotes financial stability; effective and efficient payment, clearing and settlement system; formulation and implementation of foreign exchange policies; holding and managing foreign exchange reserves; issuing of currency; and is the banker for, adviser to and fiscal agent of the Government.



The Central Bank also acts as the regulator and supervisor of the banking sector in the country. CBK therefore plays a significant role in setting up anti-money laundering laws and regulations and setting guidelines on anti-money laundering and illicit financial flows.

Even though the Tax Amnesty policy did not provide for any inquiry or any investigation on the source of the funds repatriated, the United States government has already put Kenya on a list of global hotspots for money laundering, citing insufficient controls on the circulation of dirty cash and the lack of laws against terrorism financing. A report published by the United States Department of State Bureau for International Narcotics and Law Enforcement Affairs, Volume II on Money laundering dated March 2019, said money laundering in Kenya occurs in the formal and informal sectors, fuelled by domestic and foreign criminal operations.

The report says Kenya's proximity to Somalia makes it an attractive location for laundering piracy-related proceeds. Further, the same report states that while Kenyan banks are subject to Know Your Customer (KYC) and STR (Suspicious Transaction Reports) rules and have enhanced due diligence procedures in place for PEPs (Politically Exposed Persons), more needs to be done.

Kenya has made progress in implementing anti-money laundering framework, challenges remain to achieving comprehensive, effective implementation of AML laws and regulations. In February 2019, the Central Bank Governor fought off a bid by parliament seeking to soften anti-money laundering laws, warning that the proposed amendments would frustrate the war on corruption and cut off Kenya's banking sector from the global financial system.

In its regulatory role, the CBK has put in place measures to curb money laundering including requirement for licensing and regulation of money remittance providers through which some of these illicit funds are transmitted. The bank has also strengthened its supervisory roles on financial institutions through development and implementation of various regulations to curb money laundering and issued

a guidance note on the same. The guidance note is designed to assist financial institutions conduct a money laundering/ terrorism finance risk assessment in compliance with the CBK Prudential Guidelines on Anti-Money Laundering and Combating the Financing of Terrorism (CBK/PG/08 clause 5.5 and Regulation 6 of the Proceeds of Crime and Anti-Money Laundering (POCAML) Regulations. The CBK also requires banks to develop reporting and monitoring systems by third parties of their anti-money launderings procedures and processes compliance.

Diaspora Remittances

The Central Bank of Kenya is also responsible for monitoring foreign currencies inflows in the country. The table below shows a summary of diaspora inflows for the financial years ended 30 June 2019. There has been a steep increase in the diaspora inflows up to 30 June 2019, although this may not be directly attributable to the foreign incomes repatriations as a result of the amnesty.

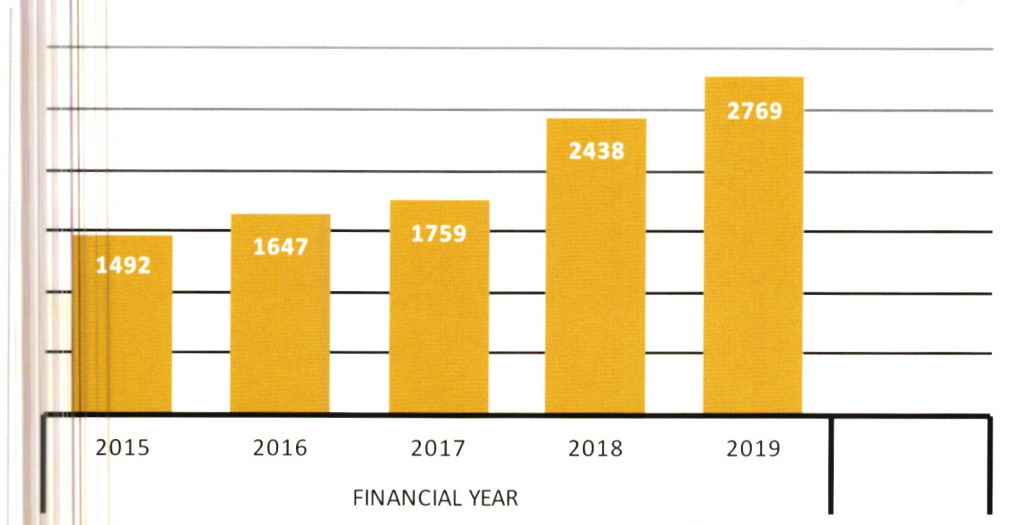
Table 2. Diaspora Remittances for the Financials Years Ended 30 June 2019 (From CBK Website)

Year	Month	North America	Europe	Rest of World	Total Remittances (USD '000)
2019	01	108,377.16	83,015.09	53,440.81	244,833.06
2019	02	96,743.53	62,333.08	39,997.04	199,073.65
2019	03	116,998.61	43,704.82	61,222.54	221,925.97
2019	04	115,725.09	58,308.35	71,326.08	245,359.52
2019	05	118,251.50	51,739.99	73,201.84	243,193.33
2019	06	113,060.09	93,600.29	88,656.60	295,316.98
2018	07	119,099.59	69,110.37	27,058.52	215,268.48
2018	08	111,239.62	71,530.24	32,786.46	215,556.38
2018	09	112,150.02	62,364.95	30,619.83	205,134.80
2018	10	109,489.10	70,122.59	39,596.29	219,207.98
2018	11	104,804.21	72,280.08	43,131.05	220,215.34
2018	12	109,662.95	77,410.41	56,478.27	243,551.63
Total		1,335,601.47	815,520.26	617,515.33	2,768,637.12

Year	Month	North America	Europe	Rest of World	Total Remittances (USD '000)
2018	01	116,399.30	64,936.08	27,586.18	208,921.56
2018	02	115,971.11	63,816.12	30,574.35	210,361.58
2018	03	122,824.05	68,961.31	30,437.19	222,222.55
2018	04	114,023.03	72,617.29	30,461.15	217,101.47
2018	05	122,804.32	85,158.35	45,771.38	253,734.04
2018	06	130,069.51	84,284.93	51,832.14	266,186.58
2017	07	73,485.90	54,511.54	24,311.83	152,309.27
2017	08	86,261.06	55,640.74	24,509.92	166,411.72
2017	09	101,047.32	53,706.19	21,344.66	176,098.17
2017	10	104,480.91	55,296.43	25,726.53	185,503.87
2017	11	97,826.67	53,770.60	23,583.92	175,181.19
2017	12	114,388.29	61,244.18	28,187.36	203,819.83
Total		1,299,581.47	773,943.76	364,326.61	2,437,851.83
2017	01	66,391.21	44,119.35	31,892.54	142,403.10
2017	02	65,326.37	46,686.26	30,653.19	142,665.82
2017	03	69,975.64	48,958.00	28,596.10	147,529.74
2017	04	70,821.58	44,765.29	23,017.34	138,604.21
2017	05	77,297.81	55,441.04	28,761.94	161,500.79
2017	06	76,199.74	54,972.83	23,703.49	154,876.06
2016	07	65,506.33	40,494.70	28,660.36	134,661.39
2016	08	70,877.31	43,276.03	32,590.94	146,744.28
2016	09	72,598.20	42,151.73	28,438.39	143,188.32
2016	10	74,182.45	42,035.32	26,336.75	142,554.52
2016	11	75,534.79	42,486.12	25,669.73	143,690.64
2016	12	82,154.35	46,782.18	32,004.12	160,940.65
Total		866,865.78	552,168.85	340,324.89	1,759,359.52
2016	01	63,516.78	40,630.03	33,346.85	137,493.66
2016	02	62,011.30	41,798.22	33,169.46	136,978.98

Year	Month	North America	Europe	Rest of World	Total Remittances (USD '000)
2016	03	68,851.76	43,807.06	28,448.09	141,106.91
2016	04	72,073.42	40,622.10	30,829.98	143,525.50
2016	05	68,708.94	46,615.85	31,435.13	146,759.92
2016	06	69,922.45	41,988.44	34,747.47	146,658.36
2015	07	61,608.52	36,336.41	33,109.82	131,054.75
2015	08	64,163.08	36,733.37	32,052.89	132,949.34
2015	09	61,922.01	37,356.90	29,204.93	128,483.84
2015	10	69,670.34	39,256.58	28,218.68	137,145.60
2015	11	60,339.72	37,388.03	32,990.50	130,718.25
2015	12	66,428.81	43,215.22	24,360.80	134,004.83
Total		789,217.13	485,748.21	371,914.60	1,646,879.94
2014	07	52,618.44	31,374.31	33,108.22	117,100.97
2014	08	64,008.99	31,522.78	33,294.08	128,825.85
2014	09	60,032.06	34,524.98	32,842.02	127,399.06
2014	10	57,089.61	34,350.68	29,467.08	120,907.37
2014	11	51,988.55	32,769.97	29,213.46	113,971.98
2014	12	57,405.85	36,057.64	36,708.50	130,172.00
2015	01	53,228.85	30,656.74	30,756.77	114,642.36
2015	02	60,834.47	31,819.87	30,581.86	123,236.20
2015	03	62,735.60	32,284.24	31,239.55	126,259.39
2015	04	60,482.54	32,908.33	31,082.36	124,473.23
2015	05	57,296.77	39,796.60	32,008.06	129,101.43
2015	06	67,053.80	37,298.66	31,610.51	135,962.97
Total		704,775.53	405,364.80	381,912.47	1,492,052.81

Figure 2. Graphical Representation of diaspora remittances for the financial years 2015-2019 (Amounts in USD Billions)



From the graph above, diaspora remittances have steadily increased from 2015-2019. However, the study could not establish any visible relationship between this growth and the tax amnesty. For instance, there is noted a steep increase in diaspora remittances between 2017 and 2018, from USD 1759 to USD 2438. Several factors have been attributed to this growth including favourable investment climate in Kenya, stable currency exchange rates and increase in skilled Kenyan human resources in foreign lands.

d. Financial Reporting Centre

The Financial Reporting Centre (FRC) is a Government institution created by the Proceeds of Crime and Anti-Money Laundering Act 2009, with the principle objective being to assist in the identification of the proceeds of crime and the combating of money laundering. The Prevention of Terrorism Act (POTA) 2012 also mandates the Centre with the fight against financing of terrorism.

The Centre started operations in April 2012. In pursuit of its mandate, the Centre registers and maintains a register of reporting institutions, receives reports on suspicious activities or transactions from reporting institutions, receives cash

transaction reports that meet a given threshold from reporting institutions, and receives reports on cross-border conveyancing of monetary instruments. The Centre analyses the reports and disseminates intelligence to law enforcement agencies.

The Centre also receives annual compliance reports from the registered institutions and works with respective industry regulators to ensure compliance by reporting institutions with the provisions of the Proceeds of Crime and Anti-Money Laundering Act. The Centre collaborates with and exchanges intelligence relating to money laundering or terrorist financing with Financial Intelligence Units (FIUs) in other jurisdictions.

Under the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) and other banking regulations, Kenyan financial institutions and entities are mandated to report to the Financial Reporting Centre (FRC). The banks and other financial institutions were not under obligation to report to the FRC on any funds repatriated under the amnesty and therefore the amnesty may not have had a significant impact on the FRC reporting.

Figure 3. Money Laundering Cycle



Source: United Nations Office on Drugs and Crime

5.2 Uptake of the Tax Amnesty in Kenya

The Tax amnesty initially covered the periods starting on 31st December 2016 to 30th June 2018. This was further extended by the Finance Act 2018 to 30th June 2019. The extension of the amnesty was necessary to ensure that:

- More applicants are given time since the uptake of the amnesty was low in the first year of implementation.
- The extension also gave an assurance to would be takers of the amnesty that they are immune from any investigation and prosecution.

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

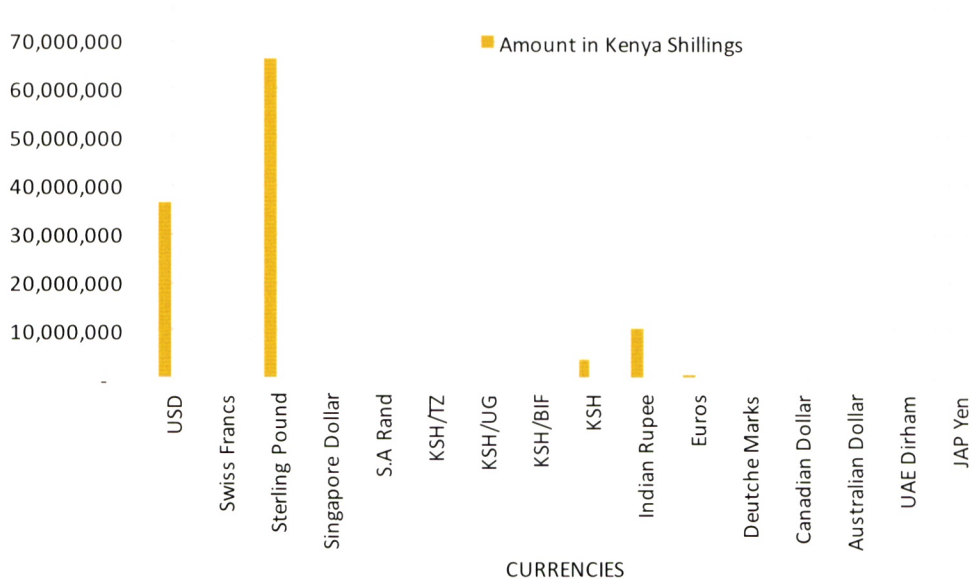
The table below shows a summary of tax amnesty applications which were received and approved by KRA for the period of the amnesty to 30 June 2019, summarised into different foreign and local currencies.

Table 3. Summary of Amount Declared Under the Amnesty

Currency	Number of Applications	Amount in foreign currency	Exchange Rate	Amount in Kenya Shillings
USD (\$)	691	353,277,043.44	103.0278	36,397,356,576.13
Swiss Francs(F)	4	6,675.00	104.7829	699,425.86
Sterling Pounds (£)	1,530	510,692,596.64	129.2911	66,028,007,581.44
Singapore Dollars	2	92,865.47	75.9876	7,056,624.19
S.A Rand (R)	12	1,384,658.95	7.4231	10,278,461.85
KSH/TZ	4	73,098,590.00	22.3241	3,274,424.95

Currency	Number of Applications	Amount in foreign currency	Exchange Rate	Amount in Kenya Shillings
KSH/UG	7	119,889,589.00	35.8157	3,347,403.21
KSH/BIF	2	360,000.00	17.8480	20,170.33
KSH	163	3,904,997,627.23	1.0000	3,904,997,627.23
Indian Rupee(₹)	910	7,039,130,455.57	1.5037	10,584,740,466.04
Euros(€)	42	7,001,110.86	116.1347	813,071,909.39
Deutsche Marks(DM)	1	50,000.00	58.82353	2,941,176.50
Canadian Dollars(C\$)	24	1,324,992.53	79.1000	104,806,909.12
Australian Dollars(A\$)	34	2,834,529.49	72.4749	205,432,241.33
UAE Dirham	104	12,347,503.43	28.0497	346,343,766.96
JAP Yen(¥)	2	3,688,231.00	95.5066	352,250,402.82
TOTAL	3,532			118,764,625,167.36

Figure 4. Graphical Representation of Amnesty Uptake for the two years to 30 June 2019



From the table above we note that most amnesty applications originated from the United Kingdom since they are denominated based on sterling pound. This serves to illustrate the widely known fact that Kenyan diaspora and investment is significantly large in UK due to historical ties. Stakeholders interviewed indicated that with a clear communication strategy, flows from UK could be higher. The next large number of applicants denominated their requests in USD. While this would indicate large investments by Kenyans in the United States, it would also include requests from other jurisdictions because the USD is the most widely used currency in the world for transactions.

The table below shows the number of applications received and approved by KRA during the period of the amnesty to 30 June 2019. All the applications were individual applications. There was no target set on the number of applicants expected and therefore the study could not ascertain the level of uptake against the target or whether the amnesty achieved its intended purpose. Furthermore, it cannot be established from the information available as to the number of people still holding incomes and assets abroad.

Table 4. Number of Applications per Year

No of Applications	Period of Application
1889	2017/2018
1643	2018/2019

This table confirms that there was a need to extend the amnesty period since an additional 1643 applications were received in year 2018/19 with the amnesty period ending 30th June 2019.

5.3 Comparative Analysis from Other Jurisdictions Across the World

Tax amnesty program is not uniquely Kenyan. Such initiatives have been implemented by numerous other nations such as Italy, Spain USA, Australia and India in the past with varied results.

In 2009, the Italian government offered a tax amnesty which subjected repatriated assets to a flat tax of 5%. In total around €80 billion in assets were declared, which resulted in tax revenues of €4 billion. The Bank of Italy estimated that Italian citizens held around €500bn in undeclared funds outside the country giving an estimated success rate of 16%.

In 2014, in the first amnesty ever offered in Australia, thousands of rich Australian came forward to declare billions of dollars in untaxed assets and income stashed in bank accounts in Switzerland and in other countries.

After several tax amnesties program launched in 1964, 1984 and 2008, Indonesia applied another tax amnesty in 2016. The asset declaration was Rp 4,855 trillion from 956,000 tax payers and tax realization of Rp 128.3 Trillion (\$9.61 billion) the result was termed as very successful.

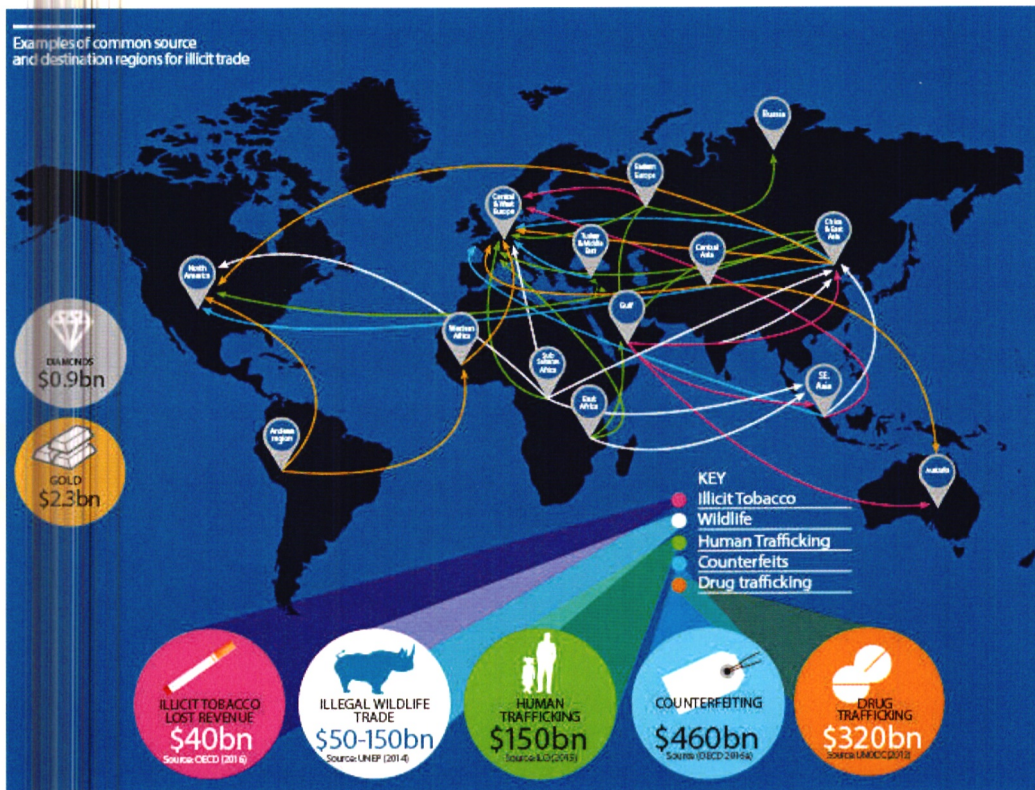
5.4. The Effect of the Tax Amnesty on Accountability, Fight against Corruption and Anti-money Laundering Initiatives in Kenya/Illicit Flows

The Finance Act 2018 section 37 B (4) provides that the funds transferred under the amnesty shall be exempt from the provisions of Proceeds of Crime and Anti-Money Laundering Act, 2009 or any other Act relating to reporting and investigation of financial transactions, to the extent of the source of the funds excluding funds derived from proceeds of terrorism, poaching and drug trafficking. In addition, section 37 (B) of the Tax Procedures Act 2015 provided that, ***“Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering taxes, penalties or interest in respect of any year of income ending on or before the 31st December 2016, and from following up on the sources of income under the amnesty.”***

These provisions imply that the amnesty was not aimed at providing for identification of illicit financial flows as the amnesty did not provide for enquiries/ investigations on the source of the funds. Exceptions were however provided for

proceeds from drugs, terrorism and other illicit financial flows. However, with no investigations to be done, it was not possible to identify the illicit flows. The banks and other financial institutions were also not under any obligation to report to Financial Reporting Centre on any suspected illicit funds repatriated under the amnesty.

The hypothesis to be derived is that the amnesty may have reduced the illicit flows through repatriation and also had the effect of legitimizing any illicit funds repatriated as no investigations were required on the source of the funds.



Source: OECD mapping illicit trade

6. Challenges faced in the Implementation of the Tax Amnesty

The study identified the following challenges:

- i. **System downtime and application challenges** - The applications were done through itax IT platform and required multiple approvals thus causing delays in applications. Some of the applications were almost locked out due to these system approval protocols and system downtime. Manual amendments were allowed to ensure all applications as at the end of the period were effected.
- ii. **Lack of clear communication strategy** - There was no form of publicity done to inform and educate the public on the tax amnesty. No advertisements or publicity campaigns to create awareness of the amnesty were done during the amnesty period.
- iii. **Fear of uptake** - Though the amnesty provided that the source of funds would not be investigated, some would be takers of the amnesty may have feared future tax investigations based on obtained data.
- iv. **Weak monitoring and evaluation mechanisms** - it's impossible to measure achievement of this amnesty since there was no target; Impossible to know how many Kenyans/entities still hold assets/incomes abroad
- v. **Data management** - There was no clear framework for collection vital information by implementing agencies on uptake and impact of tax amnesty.



7. Policy Recommendations of Effective Implementation of Future Tax Amnesty Programmes

According to Organisation for Economic Co-operation and Development (OECD), voluntary disclosure programmes can generally be grouped into two categories – permanent programmes and temporary initiatives. The Kenyan tax amnesty on overseas voluntary repatriations, was a temporary initiative.

OECD provides a decision tree that elaborates on the factors that tax administrations need to take into account when designing and administering a voluntary disclosure programme. In particular, decision makers should:

- i) Establish a reason for the programme,
- ii) Determine the scope,
- iii) Establish the terms,
- iv) Establish the reporting requirements,
- v) Consider the opportunity for intelligence gathering, and
- vi) Develop a communication strategy.

Further, the OECD report identifies principles on which a successful voluntary disclosure programme should be based. A successful programme should:

- a. Be clear about its aims and terms,
- b. Deliver demonstrable and cost-effective increases in current revenues,
- c. Be consistent with the generally applicable compliance and enforcement regimes,
- d. Help to deter non-compliance,
- e. Improve levels of compliance among the population eligible for the programme,
- f. Complement the immediate yield from disclosures with measures that improve compliance in the longer-term.

From our engagement with various stakeholders, whilst the Kenyan tax amnesty programme met most of the above criteria, it lacked a clear communication strategy and did not deter non-compliance, in fact, it encouraged non-compliance as those who never complied were rewarded to commence on a

clean slate on their tax arrears. Further, it did not enhance tax revenues in the short-term.

From the above, ICPAK recommends the following policy and administrative improvements:

1. There should be a clear communication strategy for publicity through the use of press releases and advertising on both print and electronic media for public awareness. This communication strategy should be driven by KRA and the National Treasury.
2. The National treasury in developing a similar strategy in future should have inbuilt guidelines to ensure that the money repatriated to the country is not returned back but invested in the country for a specified period of time. The current amnesty policy did not have such a restriction and therefore could be misused.
3. The National Treasury and KRA should enhance the policy to include declaration of real assets including movable and immovable assets. The policy hence, should provide for the retention of the assets abroad and declaration of the income in Kenya for tax purposes.
4. KRA who have the amnesty enforcement and implementation role should ensure that the main tax management system (itax) has adequate capacity and global access to enable applicants to file their request from all corners of the world. In the absence of a robust IT program, a manual system to assist in compliance should be instituted.
5. Future Tax Amnesty Programmes should have clear policy measures geared towards increased tax revenues for the country in the medium to long term. For improved tax revenues, the tax amnesty should be extended to non-filers and delinquents.
6. The data and intelligence gathered should enhance future compliance and improve the tax regime in the country.
7. KRA should offer guidance for the repatriation of funds from other jurisdictions where legal restriction due to exchange controls exist.

8. The amnesty should be undertaken with precaution as there is the potential for abuse with respect to money laundering under the pretence of repatriating assets through the amnesty program.
9. There should be established in future amnesties a guidance on ensuring identification of illicit financial flows into the country. This can be effected by requiring disclosures especially for the prohibited categories of source of the foreign assets for example funds from drugs, terrorism and poaching.
10. The policy should provide a clear post-amnesty period plan. For instance the amnesty provided that where funds are not remitted within the amnesty period, the Finance Act provides for a five-year period of remittances but a penalty of 10% shall be levied on the remittance. It is not clear for instance what would happen to those who did not take advantage of the amnesty to regularise their tax compliance.
11. The Government should consider extending the amnesty, without the 10% penalty, by five more years to bring on board more residents who hold incomes and assets abroad. This is based on the fact that they were additional 1643 applications after extension of the tax amnesty in the financial year 2018/19.
12. For adequate monitoring of the amnesty there should be requirements for regular reporting on the amnesty to finance and investment committee of parliament by KRA. This report should be published and publicised to general public so as to have a well-informed public that can take advantage future fiscal and monetary policies in the country.
13. Collaborative efforts from implementing agencies and professionals at large will need to be harnessed for such programmes to succeed in future.
14. An overarching tax policy should be formulated to guide voluntary disclosure programmes and other tax incentives, exemptions and proposals

8. Demonitisation and Issuance of New Currencies in Kenya

The rolling out of the new currency in Kenya is per the requirement of the 2010 constitution of Kenya, chapter 12 article 231 (4), which stipulates that notes and coins issued by the Central Bank of Kenya may bear images that symbolize Kenya or an aspect of Kenya but shall not bear the portrait of an individual.

Demonetization as a policy strategy has taken different formats across the globe as part of measures to curb corruption, terrorism financing, fraud, money laundering and counterfeits. It has been defined as a process of removing a currency from general usage as a legal tender or circulation of money in a country. It can also be viewed as an act where the old unit of currency gets retired and replaced with a new currency unit.

Kenya is not the first country to demonetize. Other countries including India in 2016, Myanmar in 2015, and European Union member states in 2002, Australia in 1996, Ghana, Nigeria in 1984, Fiji in 1969 and Singapore in 1945 have demonetized.

In 2016, India demonetized its 500 and 1000 rupee notes to curb the rise of fake currencies of the same notes, and high occurrence of black money in its economy. It being a cash-based economy, the circulation of fake currency was considered a threat. Twelve EU countries in 2002, adopted the Euro phasing out their respective national notes and coins. In 1996, the Australian government demonetized to increase the security features of its currency. Whilst the move didn't have any side-effects on the economy, it made Australia a business-friendly country.

It has been observed that the older one thousand shillings notes are being used for illicit financial flows in Kenya and in the region. To curb the emergence of counterfeits and illicit flows, all persons in possession of the one thousand notes have until October 1 2019, to exchange those notes, after which the older one will cease to be a legal tender.

Experiences from other jurisdictions indicate that the intensity of demonetization effects have mixed results. At the initial stage, it might lead to a shortfall in cash in circulation which will impact small businesses and households that mainly depend on cash transactions as cash assets will be returned to the banks for

exchange. But as the economy is remonetised and conditions normalise, the uncertainty should dissipate.

On the positive note, the government and the economy at large stand to gain an increased tax base and revenue. This is due to the fact that as many people who in the heat of the moment will deposit large sums of money in their account which cannot be explained, would then come under income tax inspection increasing taxes. It will definitely increase the tax-payer number as tax evaders may not be able to continue further and because of fear of penalty and other strict regulations they would more be interested now to move with tax compliance.

However, the overall effect the demonetisation policy on the Kenyan economy can only be assessed after the effective date of 1st October 2019.



9. Areas for Further Study

Given the limitations experienced in the conduct of the study, the Institute recommends a deeper undertaking on the following areas:

1. The main objective of the study was to encourage repatriation of the foreign incomes so as to spur economic growth in the country. In the medium to long term it will be necessary to carry out a study to establish whether the funds were actually invested in the country, which sectors and whether indeed they contributed to the economic growth of the country.
2. The Act provides that “Where no funds have been transferred within the period of the amnesty, there shall be a five year period for remittance but a penalty of ten percent shall be levied on the remittance”. A study on whether the amnesty effects are one-off or will encourage regular repatriation of funds to the county to spur economic growth and tax compliance after the expiry of the amnesty period is necessary.
3. In the short term to the medium term there is need for a study to establish the effect of the tax amnesty on those who ordinarily comply and pay taxes on incomes generated abroad. This study should demonstrate how the amnesty policy can be improved to ensure that the process is able to curb illicit inflows and also encourage compliance with tax laws. The current policy has no effect on the tax compliance nor identification of the illicit financial flows and future increase in tax revenues.
4. Coming just before demonetisation, the economic effects of these two significant monetary policies should be studied in the medium to long term



10. Conclusion

Did the tax amnesty achieve its overall objective of encouraging repatriation of foreign assets to spur economic growth in Kenya?

This question is difficult to answer with the data currently available and the existing policy framework. The amnesty's main objective was to ensure repatriation of funds to Kenya for the development of the economy. Current statistics indicate that amounts held abroad could be much more than what was repatriated through the amnesty programme. This notwithstanding, Kenya shillings 118.8 billion raised is a significant amount. This amount is approximately equal to 3.9 % of the current year (2019/20) annual budget. The amnesty policy did not provide guidance on how and where the funds repatriated should be invested. It is therefore difficult to assess the effect of the repatriated funds in spurring economic growth since this cannot be attributed to any particular sector. In addition, it is not possible to establish whether the funds were actually invested in the country or were repatriated back to the foreign countries.

The amnesty could have had a better success rate if all the principles of good amnesty programmes were incorporated. For such programmes to succeed in future, collaborative efforts from implementing agencies and professionals at large will need to be harnessed. Importantly, an overarching tax policy should be formulated to guide voluntary disclosure programmes and other tax incentives, exemptions and proposals.



TAX
AMNESTY

9. References

Central Bank of Kenya, *Remittances from diaspora for the five years*

Kenya Revenue Authority, *KRA 7th corporate plan*

Kenya Revenue Authority, *Amnesty implementation guidelines*

Republic of Kenya, (2019) Budget Policy Statement *Summary of revenue collections by Kenya Revenue Authority for the past five years*

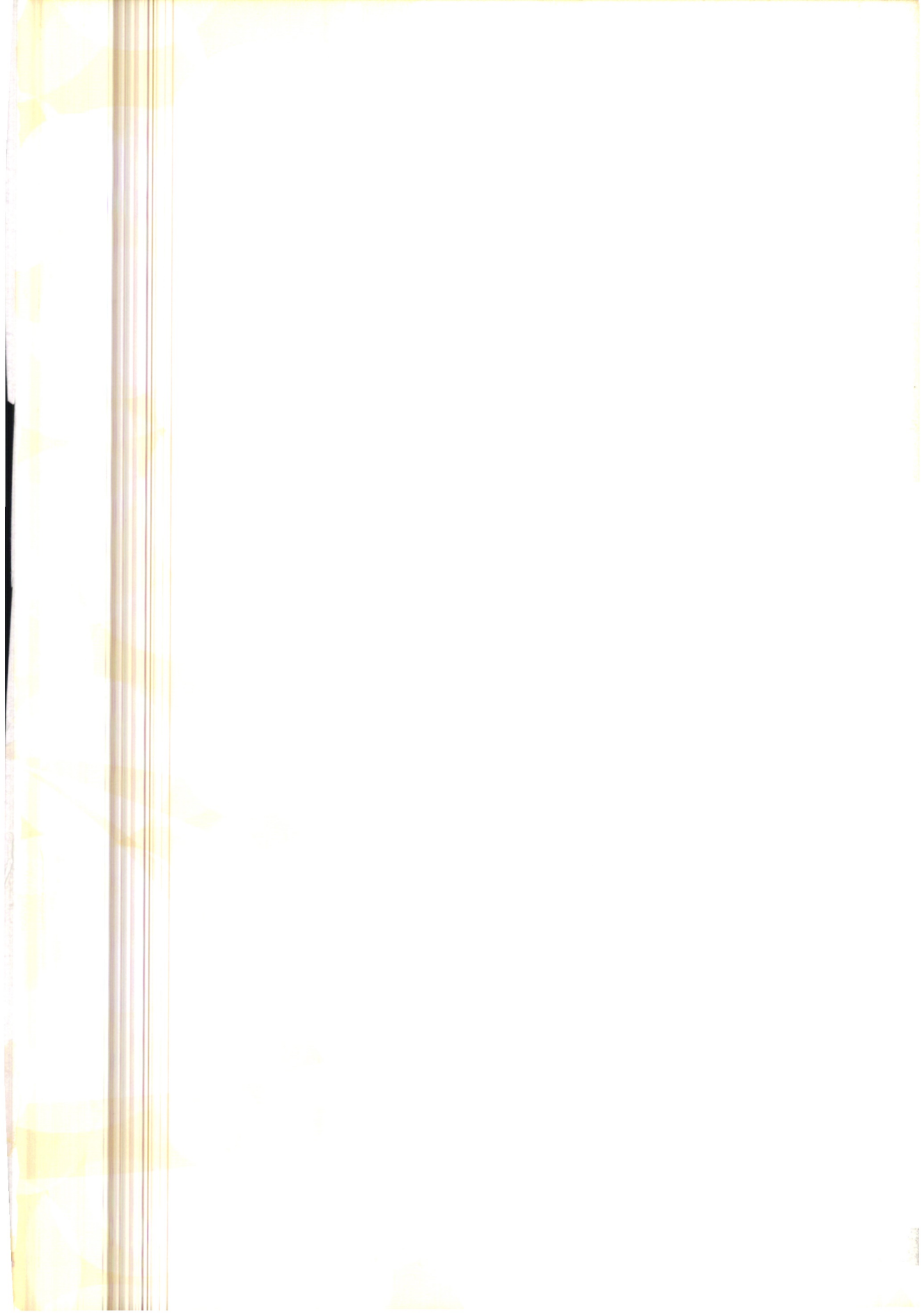
Republic of Kenya, (2016), *Finance Act 2016*

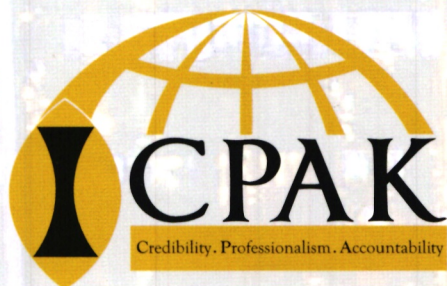
Republic of Kenya, (2018), *Finance Act 2018*

Republic of Kenya, (2015), *Tax Procedures Act 2015*

UNODC, Money-laundering and countering the financing of terrorism

<https://www.unodc.org/unodc/en/money-laundering/laundrycycle.html>





Institute of Certified Public Accountants of Kenya

CPA Centre, Thika Road

P. O. Box 59963 - 00200 Nairobi Kenya

Telephone: +254 (020) 2304226, 2304227

Fax: +254 (020) 8562206

Mobile: +254 727 531006 / 733 856262 /

721 469796 / 721 469169

Email: icpak@icpak.com

www.icpak.com