PRINCIPLES
OF
PUBLIC FINANCE AND TAXATION

ATD
DCM

LEVEL III

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STUDY TEXT

KASNEB JULY 2018 SYLLABUS

Revised on: January 2019

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TOPIC 1

INTRODUCTIONS TO PUBLIC FINANCIAL MANAGEMENT

NATURE AND SCOPE OF PUBLIC FINANCE

Meaning of Public Finance

Public finance is related to the financing of the state activities and a narrow definition of the public finance would try to say that public finance is a subject which discusses the financial operation of the fiscal or of the public treasury.

Nature of Public Finance

Public finance has been held as a science which deals with the income and expenditure of the government's finance. It has been held as a study of principles underlying the spending and raising of funds by the public authorities. The various theories which form the basis of the collection; maintenance and expenditure of the public income constitute the subject and matter of finance.

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Scope of Public Finance

The scope of public finance is not just to study the composition of public revenue and public expenditure. It covers a full discussion of the influence of government fiscal operations on the level of overall activity, employment, prices and growth process of the economic system as a whole.

According to Musgrave, the scope of public finance embraces the following three functions of the government's budgetary policy confined to the fiscal department the:

- allocation branch,
- distribution branch, and
- stabilization branch.

These refer to three objectives of budget policy, i.e., the use of fiscal instruments to secure:

- Adjustments in the allocation of resources
- Adjustments in the distribution of income and wealth, and
- Economic stabilization.

Public finance is composed of the following constituents public:

- Expenditure
- Revenue
- Debt
- (Financial) administration

Private finance is the study of the income, debt and expenditure of the individual or a private company or business venture or an association. It includes the study of their own view regarding earning expenditure and borrowing.

Similarities and Differences between Public Finance and Private Finance

Despite the differences in scope and nature of the public finance and private finance, following are similarities.

Similarities

I. Based on Similar Theories

The basis of public as well as private finance is the same. Both seek the help of various principles of economics in determining various interrelated problems. For example, a person wants to secure maximum utility on count of minimum expenditure and government too wants to secure public utility by spending the least possible amount of public money.

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II. Both Face the Problem of Scarcity

Limitation of the resources is the problem before private as well as public finance. Individuals' resources are limited up to this earnings; past savings and ancestral property similar governments' resources also depend on taxable capacity of the individuals earnings of the various corporations etc. None of the two is capable of extending its expenditure beyond a certain limit; hence non can afford to go to the infinity in the use of finance.

III. Both Require Efficient Administration

Private as well as public finance require efficient administration to look after the various acts of extravagance. In the event of the failure of an efficient administration both might be compelled to face 'dire-consequence' in their financial field, individual never wants any kind of wastage or misuse of his income, so the government if it is alive to the sense of duty.

IV. Both Borrow and Must Repay

To run the administration of finance sometimes money in hand fails to fulfill the requirements especially in the times of emergency, governments borrow money from individuals and also

borrow from different sources like relatives, banks, at the same it is obligatory for both the public finance as well as the private finance to repay the debt. The point here is that none can live without repaying the amount.

V.S Both are Based on Rationality of Thought

When an individual spends some money he makes it certain in his mind that money is spent in the best way. He applies his rational faculties. In the same way any irrational step taken by the government may bring wastage and misuse of finance. This irrationality lead them to damages while rationality to prosperity and achievement of goals.

Differences between Public Finance and Private Finance

i.S Individual determines his expenditure on the basis of his income but government determines its income on the basis of its expenditure. As far as an individual is concerned he determines his expenditure on the basis of the income, in the sense that he cannot think of spending more than his income. He distributes the amount of income to be spent on various subjects with income at his finger tips. The position is quite contrary in the case of government. The government first decides the amount of expenditures to be done during a period of time, and then frames scheme to secure money to meet the expenditure. Government has the power to increase its income be internal borrowings but this is not possible for an individual.

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ii.S Government's source of income is more flexible in comparison to private source. Government has legal power to extend the sources of its income according to the needs of the time. Government has the control over the whole national property but individual has to rely upon his own individual standing. Moreover, government can take the help of the foreignment and this is not possible for a person to secure such supports. The last resort available to the government is the printing of new currency notes to increase its income. But an individual will be definitely but behind the bars for such an office.

iii.S It is easy for an individual to base his expenditure on the law of equal marginal utility, but far difficult for governments. Individual is free to measure his expenditure in the sense of utility and spends his money on the certain weighted subjects. These subjects may not be of social need or may not add anything to social advantage. Such expenditures are very prominent in the democratic countries for example building of hospitals, roads, parks.

iv.S Private finance is narrow and short lived in comparison to public finance. Private finance faces suspension with the end of the individual's life or with the closure of the particular business enterprise. But governments are more tenable. It is well said in this context is that 'king may come and king may go but government is eternal.' Governments keep on moving form generation to generation interlinking past from present with an eye on future.

v.S Public finance is subject to public censor but not the private finance. A complete secrecy may be maintained by an individual regarding his income and savings. But the government records are furnished to let the people see through the desirability of the expenditure. Public is entitled to know, criticize and the press is free to comment on the public finance outlays, its drawbacks and failures.

vi.S There are pre-determined policies behind public expenditure but not so in the case of private expenditure. Public expenditure is done to achieve the goals which are predetermined in their nature.

vii.S There is difference in the budgeting process of the public finance and the private finance. The budget of the government is subject to the approval of the parliament of the concerned country. It is now a well established principal no taxation without representation and no tax shall be without the due/process of law. Unless the demand gets approval of the parliament of the executive cannot spend even a single penny. But individual is his own master and he need not ask for parliamentary approval for spending his bricks.

viii.S Governments' accounts are audited by constitutional authorities but private finance has its own arrangement. An individual can audit his accounts without performing formalities about it. But there is procedural necessity in the case of public finance. The budget is to be prepared in the prescribed manner and to be presented according to the settled norms.

ix.S A private individual can face the crises of being bankrupt but no government can be bankrupt. An individual may 'run-riot' his money and thus may become an insolvent, but the question of the government being bankrupt is impracticable. It is funny to talk of the bankruptcy of the government; since all the currencies are printed and circulated by it.

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Functions of Modern Government

We should know the role of the government to enable us to appreciate the importance of government sector. Government of a modern state generally undertakes the following functions:

1. Security - Both external and internal involving outlay for military, police and other protective services.
2. Justice or settlement of disputes
3. The regulation and control of economy – including the services such as coinage,
    a. weights and measures, the business practices , operation of public sector
    b. undertakings
4. Of social and cultural welfare through education, social relief, social insurance, health and other activities.
5. Conservation of natural resources.
6. Promotion of the unity of the state by control of transportation and communication.
7. Administration and financial system, government revenue expenditure and fiscal control.
8. Education and employment.

9. Housing.
10. Public health.
11. Upliftment of weaver sections of the society.
12. Restore social justice in the society.

Functions of modern governments are broadening due to socio-political reasons. Therefore, to discharge these increasing functions, the government has to increase its expenditure. To meet out the enormous amount of expenditure it has to mobilize funds with the help of public finance policy. Hence public finance has developed into an important branch of economics.

Scope of Public Finance

Public finance deals with the income and expenditure pattern of the Government. Hence the substances concerned with these activities become its subject matter. The subject matter of the public finance is classified under five broad categories of which the first two are discussed. They are,

1. Public Revenue
2. Public Expenditure
3. Public Debt
4. Financial Administration
5. Economic Stabilization

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Public Revenue

Under this category, the sources of the public revenue, principles of taxation, effects of taxes on the economy, methods of raising revenue and the like are dealt with. Public revenue is the means for public expenditure. Various sources of public revenue are:

A. Tax Revenue, and
B. Non-tax Revenue

A. Tax Revenue

Taxes are compulsory payments to government without expectation of direct return or benefit to tax payers. It imposes a personal obligation on the taxpayer. Taxes received from the taxpayers, may not be incurred for their benefit alone. Tax revenue is one of the most important sources of revenue.

Taxation is the powerful instrument in the hands of the government for transferring purchasing power from individuals to government. The objectives of taxation are to reduce inequalities of

income and wealth; to provide incentives for capital formation in the private sector, and to restrain consumption so as to keep in check domestic inflationary pressures.

From the above discussion we can conclude that the elements of taxation are as follows:

a. it is a compulsory contribution
b. government only imposes taxes
c. in payment of tax an element of sacrifice is involved
d. taxation is aimed at welfare of the community
e. the benefit may not be proportional to tax paid
f. tax is a legal collection.

The various types of taxes can be listed under three heads. First type can be titled taxes on income and expenditure which include income tax, corporate tax etc. The second is taxes on property and capital transactions and includes estate duty, tax on wealth, gift tax etc. The third head, called taxes on commodities and services, covers excise duties, customs duties, sales tax, service tax etc. These three types can be reclassified into direct and indirect taxes. The first two types belong to the category of direct taxes and the third type comes under indirect taxes.

B. Non-tax Revenue

This includes the revenue from government or public undertakings, revenue from social services like education and hospitals, and revenue from loans or debt service. To sum up, non-tax revenue consists of:

i) interest receipts
ii) dividends and profits
iii) Fiscal services and others.

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Public Expenditure

Recently, there has been both quantitative and qualitative change in government's expenditure. This category deals with the principles of public expenditure and its effect on the economy etc.

Government of a country has to use its expenditure and revenue programs to produce desirable effects on national income, production, and employment. The role of public expenditure in the determination and distribution of national income was emphasized by Keynes.

The term "Public Expenditure" is used to designate the expenditure of government-central, state and local bodies. It differs from private expenditure in that governments need not pay for themselves or yield a pecuniary profit. Public expenditure plays the dual role of administration and economic achievement of a nation. Wise spending is essential for stability of government and

proper earnings are a prerequisite for wise spending. Hence planned expenditure and accurate foresight of earnings are the important aspects of sound government finance

Public expenditure is done under two broad heads viz., developmental expenditure and non-developmental expenditure. The former includes social and community services, economic services, and grants in aid. The latter mainly consists of interest payments, administrative services, and defense expenses. Expenditure can also be classified into revenue and capital expenditure.

A. Plan and Non-plan Expenditure

Expenditure is classified under the following heads:

I. Non-plan Expenditure

Non-plan expenditure of central government is divided into revenue and capital expenditure. Under non-plan revenue expenditure we include interest payment, defense expenditure, major subsidies, interest and other subsidies, debt relief to farmers, postal deficit, police, pensions, other general services, social services, grants to states and union territories. Non-plan capital expenses include defense expenses, loan to PSUs, loans to states and union territories, foreign governments etc.

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II. Plan Expenditure

The second major expenditure of central government is plan expenditure. This is to finance the following:

i) Central plans such as agriculture, rural development, irrigation and flood control, energy, industry, and minerals, communication service and technology, environment, social service and others.

ii) Central assistance for plans of the states and union territories.

Expenditure can also be categorized into revenue and capital expenditure. Revenue expenditure relates to those, which do not create any addition to assets, and covers activities of government departments' services, subsidiaries and interest charges. Capital expenditure involves that expenditure, which results in creation of assets. Finance ministry is responsible for plan expenditure. This includes grants to the state.

Hence the expenditures are classified as capital and revenue. Alternatively, these expenses can be re-classified into plan and non-plan expenditure.

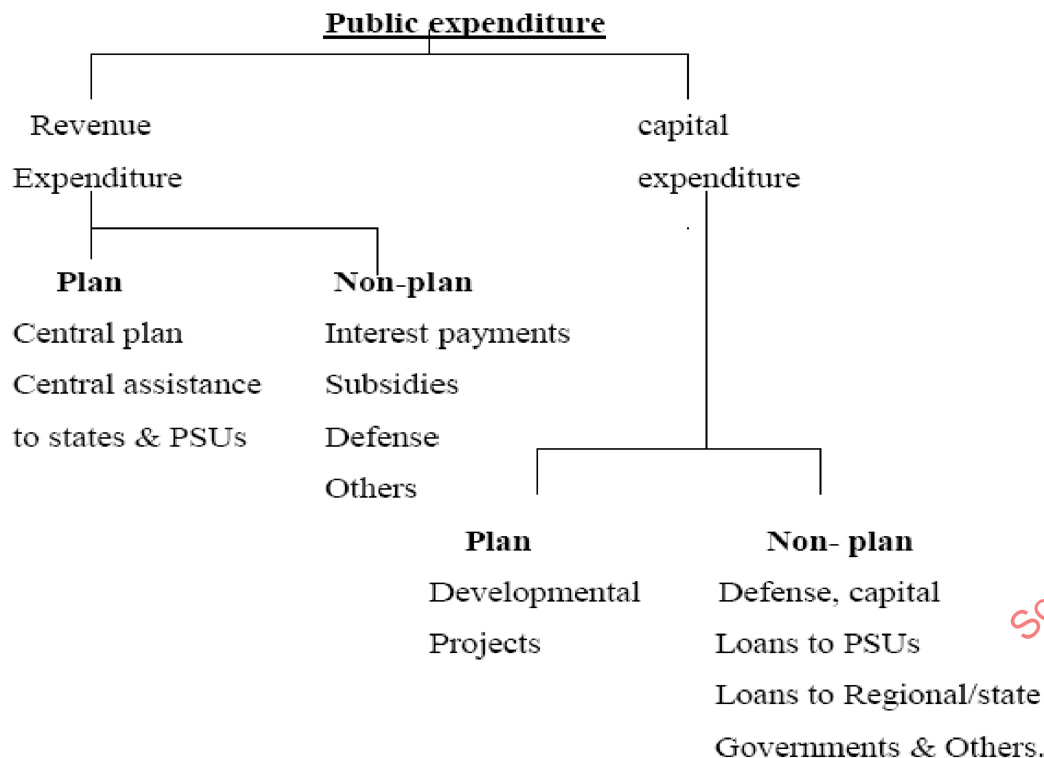
B. Social Expenditure

Government takes the responsibility of protecting the interests of the community as a whole and promotes the implementation of welfare programs. Government spends huge amounts for

providing benefits such as old age pensions, accident benefits free education and medical services. This expenditure on human resources comes under social expenditure.

Governments are moving towards the objective of achieving maximum social welfare. Expenditure on education, public health, welfare schemes for workers, relief and rehabilitation of displaced persons and such other services may not yield direct benefit in the short run. But in the long run they contribute to improvement in the quality at human resources.

The main classifications of Government expenditure can be seen in the following diagram.



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Role of Fiscal Policy- Its Significance to Business Economy in Developing Countries

The main goal of the fiscal policy in developing countries is the promotion of the highest possible rate of capital formation. Underdeveloped economies are in the constant deficit of the capital in the economy and thus, in order to have balanced growth accelerated rate of capital formation is required. For this purpose the fiscal policy has to be designed in a way to raise the level of aggregate savings and to reduce the actual and potential consumption of people.

- To divert existing resources from unproductive to productive and socially more desirable uses. Hence, fiscal policy must be blended with planning for development.
- To create an equitable distribution of income and wealth in the society.

- To protect the economy from the ills of inflation and unhealthy competition from foreign countries
- To maintain relative price stability through fiscal measures.
- The approach to fiscal policy must be aggregate as well as segmental. The sectoral imbalances can be curbed by appropriate segmental fiscal measures.
- The government expenditure on developmental planning projects must be increased. For this deficit financing can be used. It refers to creation of additional money supply either by creation of new money by printing by government or by borrowing from the central bank.
- Public borrowing, loans from foreign nations etc can be used in the development of the resources for public sector.
- Fiscal policy in the developing economy has to operate within the framework of social, cultural and political conditions which inhibit formation and implementation of good economic policies.
- In order to reduce inequalities of wealth and distribution, taxation must be progressive and government spending must be welfare-oriented.
- The hindrances in the effective implementation of fiscal policy in the developing countries are loopholes in taxation laws, corrupt tax administration, a high population growth, extravagant governmental spending on non-developmental items, an orthodox society etc.

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OVERVIEW OF PUBLIC FINANCIAL MANAGEMENT ACT

Definition of terms

"Appropriation" means authority granted by parliament out of the consolidated fund or out of any other public fund; or

"Appropriation Act" means an Act of parliament or of a county assembly that provides for the provision of money to pay for the supply of services.

"Budget Policy Statement (BPS)" is a statement prepared by the National Treasury that sets out the broad strategic priorities and policy goals that will guide the national and county governments in preparing their budgets both for the following financial year and over the medium term.

"County Fiscal Strategy Paper" is a statement prepared by the County Treasury and submitted to the County Executive Committee that specifies the broad strategic priorities and policy goals that will guide the county government in preparing its budget for the coming financial year and over the medium term.

"Medium term" means a period of not less than three years but not more than five years.

"Budget Review and Outlook Paper (BROP)" is an assessment of the current state of the economy and financial outlook over the medium term including macro-economic forecasts. Treasury circulars provide guidance and instructional information to government Ministries, Departments and Agencies and request financial information from those entities.

The Public Financial Management (PFM) Act is an Act of Parliament meant to provide for effective management of public finances by the national and county governments. In developing the PFM Act, Parliament was keenly aware of the importance of having a good PFM system in determining the success or failure of devolution. To ensure a good PFM system, two objectives were taken into account:

i. That the PFM was consistent with the Constitution and in particular provide for safe-guarding autonomy in financial management at both levels of government but within a unitary system of devolution. This autonomy is supported by articles 6 and 189 of the Constitution. Article 6(2): The governments at the national and County levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation; article 189(1)(a): Government at either level shall per-form its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the Constitu-tional status and institutions of government at the other level.

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The spirit of these articles is that both levels of government should not interfere in the day-to-day management of finances and other affairs in the other level of government. Specifically, each level of government should be able to formulate, plan, implement and report on their budgets and plans without the interference of the other government. To operationalize this concept and to avoid favouring one level of government over the other, the Act has mirrored many of the institutional structures for financial management of the national government at the county government level as shown below:

NATIONAL ASSEMBLY	COUNTY ASSEMBLY
– Reviews the Budget Policy Statement and makes recommendations to National Treasury – Approves the Budget Estimates for National Government, Parliament and Judiciary – Provides overall oversight at National Government level – Approves the establishment of other National Government public funds – Monitors budgets and public finances and related matters – Approves the Budget Policy Statement (BPS) and the Budget Review and Outlook Paper (BROP) – Reviews the Annual Budget Estimates for National Government	– Reviews the Fiscal Strategy Paper and makes recommendations to County Executive Committee – Approves the budget estimates for County Government, Urban areas and Cities – Provides overall oversight over public finances at the County Government level – Approves the establishment of other County public funds – Monitors budgets and public finances and related matters – Approves the Fiscal Strategy Paper (FSP) and the County Budget Review and Outlook paper (C- BROP; – Reviews and approves the Annual Budget Estimates for the County Government – Has powers to establish a County Emergency Fund but with approval of County Assembly

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NATIONAL TRESURY	COUNTY TRESURY
– Has overall responsibility for macroeconomic formulation and management – Prepares annual budget estimates of revenues and expenditure of National Government and coordinates the preparation and implementation of the National Government budget – Prepares the BPS for the National Government.	– Head of County Treasury and oversees formulation of economic policies – Manages the County Government budget process – May at the request of Cabinet Secretary stop transfers of funds to a County Government entity for serious material breach or persistent material breaches – Has power to raise loan on behalf of County Government in accordance with the law – Has overall responsibility for economic affairs at the County Government – Prepares annual budget estimates for County Government and coordinates the preparation and implementation of the CG budget – Prepares Fiscal Strategy Paper, as the integrated Development Plan for County Government – Enforces the Fiscal responsibility principles at the County Government

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PUBLIC BUDGET PROCESS FOR PUBLIC BODIES

GENERAL DEFINITION OF BUDGET TERMS

A **budget** is an estimation of **revenue** and **expenses** over a specified future period of time; it is compiled and re-evaluated on a periodic basis. Budgets can be made for a person, a family, a group of people, a business, a government, a country, a multinational organization or just about anything else that makes and spends money. At companies and organizations, a budget is an internal tool used by management and is often not required for reporting by external parties.

Government budget, forecast by a government of its expenditures and revenues for a specific period of time. In national finance, the period covered by a budget is usually a year, known as a financial or fiscal year, which may or may not correspond with the calendar year.

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Budget Circular - it means a written instruction issued by the Cabinet Secretary providing broad guidelines on the budget process of the national government.

Budget Policy Statement (BPS) its a statement prepared by the National Treasury that sets out the broad strategic priorities and policy goals that will guide the national and county governments in preparing their budgets both for the following financial year and over the medium term.

County Fiscal Strategy Paper - is a statement prepared by the County Treasury and submitted to the County Executive Committee that specifies the broad strategic priorities and policy goals that will guide the county government in preparing its budget for the coming financial year and over the medium term.

Budget Review and Outlook Paper (BROP) - its an assessment of the current state of the economy and financial outlook over the medium term including macro-economic forecasts. Treasury circulars provide guidance and instructional information to government Ministries, Departments and Agencies and request financial information from those entities.

ROLE OF BUDGET OFFICERS IN BUDGET PREPARATION AND EXECUTION

Responsibility of County Treasury with Respect to Public Funds

- The County Treasury for each county government shall ensure that all money raised or received by or on behalf of the county government is paid into the established County Revenue Fund.
- County Government Executive Committee may establish county government Emergency Fund.
- County Executive Committee member for finance is responsible for administering the Emergency Fund
- County Executive Committee member for finance has the responsibility to seek approval for payments from Emergency Fund from the county assembly.
- County Treasury is to submit a report to Auditor-General in respect to Emergency Fund
- County Treasury is responsible for preparing County Fiscal Strategy Paper.
- County Treasury responsible for preparing a County Budget Review and Outlook Paper.

THE ROLE OF THE COMMISSION ON REVENUE ON ALLOCATION (COR)

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There is an established commission of revenue allocation; the Commission consists of the following persons appointed by the President—

a) a chairperson, who shall be nominated by the President and approved by the National Assembly;
b) two persons nominated by the political parties represented in the National Assembly according to their proportion of members in the Assembly;
c) five persons nominated by the political parties represented in the Senate according to their proportion of members in the Senate; and
d) The Principal Secretary in the Ministry responsible for finance.

The persons nominated are not be members of Parliament.

To be qualified to be a member of the Commission a person shall have extensive professional experience in financial and economic matters.

The principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government—

a) between the national and county governments; and
b) Among the county governments.

The Commission also makes recommendations on other matters concerning the financing of, and

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TOPIC 3

OVERSIGHT FUNCTION IN PUBLIC FINANCE MANAGEMENT

ROLE OF NATIONAL ASSEMBLY

National assembly has established budget committee in public finance matters meant to oversee public finance management.

The committee is established to deal with budgetary matters and has responsibility for the following matters, in addition to the functions set out in the Standing Orders—

a) discuss and review the Budget Policy Statement and budget estimates and make recommendations to the National Assembly;
b) provide general direction on budgetary matters;
c) monitor all budgetary matters falling within the competence of the National Assembly under this Act and report on those matters to the National Assembly;
d) monitor adherence by Parliament, the Judiciary and the national government and its entities to the principles of public finance and others set out in the Constitution, and to the fiscal responsibility principles of this Act;
e) review the Division of Revenue Bill presented to Parliament and ensure that it reflects the principles of the Constitution;
f) examine financial statements and other documents submitted to the National Assembly and make recommendations to the National Assembly for improving the management of Kenya's public finances;
g) make recommendations to the National Assembly on "money Bills", after taking into account the views of the Cabinet Secretary; and
h) table in the National Assembly a report containing the views of the Cabinet Secretary
i) Introduce the Appropriations Bill in the National Assembly.

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ROLE OF SENATE

There is established Committee of the Senate set to deal with budgetary and financial matter's, it has responsibilities for the following matters, in addition to the functions set out in the Standing Orders present to the Senate, subject to the exceptions in the Constitution, the proposal for the basis of allocating revenue among the Counties and consider any bill dealing with county financial matters; review the County Allocation of Revenue Bill and the Division of Revenue Bill in accordance with the Constitution at least two months before the end of the financial year; examine financial statements and other documents submitted to the, and make recommendations to the Senate for improving the management of government's public finances; and

c) Monitor adherence by the Senate to the principles of public finance set out in the Constitution, and to the fiscal responsibility principles of this Act.
d) In carrying out its functions under the Committee shall consider recommendations from the Commission on Revenue Allocation, County Executive Committee member responsible for finance, the Intergovernmental Budget and Economic Council, the public and any other interested persons or groups.

THE ROLE OF COUNTY ASSEMBLY

Section 102(1) of PFM Act states that each county government will ensure adherence to:
- the principles of public finance set out in Chapter Twelve of the constitution;
- the fiscal responsibility principles provided in section 107 under the PFM Act
- national values set out in the constitution; and
- any other requirements of the PFM Act.

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The role of the county assembly in public finance involves:
- Reviews the Fiscal strategy paper and makes recommendations to the county executive committee;
- Approves the budget estimates for the county government, urban areas and cities;
- Provides overall oversight over public finances at the county government level
- Approves the establishment of other county public funds
- Monitors budgets and public finances and related matters
- Approves county fiscal strategy paper (CFSP) and county budget review and outlook paper (C-BROP)
- Reviews and approves the annual budget estimates for the county government.

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TOPIC 4

INRODUCTION TO TAXATION

HISTORY AND PURPOSE OF TAXATION

Before 1897, Kenya was made up of multifarious tribal-based societies each with its own geographical and sociological background. These societies were communist/socialist in the sense that property was communally owned by all the members of a particular social setup. Upon amassing wealth in form of harvests, part of it was required to be submitted to the community leaders in form of tithe. This "tithe" was to be used in future to assist those who didn't have enough property to sustain them or even to assist those who were hit by calamities. In a sense, this was a form of taxation because the percentage that was submitted to the community leaders was used to help others in future.

The principles and systems of taxation that existed in most African Kingdoms during this period were therefore informal. It was only upon the influx of foreigners that some form of formal taxation started. The Arabs who entered Kenya in the seventh century for example taxed the coastal region on the basis of Islamic Law. Islamic law upholds the right of leaders to tax their subjects within bearable limits and therefore taxation is not forbidden. Capitation of such tax was done by charging a fixed amount for each and every slave that was to be exported from the Sultanate of Oman. Custom duties were also charged on other exports like ivory, cloves and beads.

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The Portuguese arrived at the Kenyan coast and were now taking over from the Arabs. The first recorded treaty that involved a form of taxation in this period was in **1502**. The then Sultan Ibrahim of Malindi was held against his wishes and forced to accept defeat. While being held hostage during negotiations on **Vasco da Gamma's** boat, a treaty of surrender was signed with Portugal for an annual tribute of **1,500 meticals of gold.**

However, the Portuguese were violent and thus this led to a complete failure to use equity in the creation and levy of taxes there were riots (you thought riots started the other day?) were punctuated with civil disobedience and widespread cases of tax evasion and avoidance.

By the end of the rule of the Arabs and Portuguese along the East coast of Africa the existing balance of taxation that was inherited by the British included a capitation tax payable per head of slave exported and customs revenue shared equally between the Arabs and Portuguese. The tax base was, however, limited to traders only.

Exit Portuguese and Arabs, Enter The British

Next were the British who ruled what is presently Kenya and Uganda together to form British East Africa Protectorate. British colonial tax policy developed mostly on the grounds that Britain needed to support its own economy by creating foreign markets and sources of raw materials for its industries, thus obtain maximum gains with minimum input. This was done by initially through the Chartered company concept. However, later in order to encourage rule from within the territory to make it viable after the accidental discovery of arable land in Kenya.

British Taxes

Hut and Poll Tax: The 1901 Hut Tax Regulation imposed a tax of **one rupee**, payable in kind or through labour, upon every native hut in British East Africa. Hut tax or poll tax was **increased to 5 rupees** in 1915 and again in 1920 to **8 Rupees.**

Land Tax: The levying of a graduated land tax on individual holdings was introduced by the British as a sound basis for land policy in East Africa. The protectorate government in East Africa argued in early 1908 for preserving the means of obtaining some share of any future appreciation in the value of the land, particularly because much of the land acquired by settlers was not being developed.

Graduated Personal Tax: The Graduated Personal Tax was introduced in 1933. The Act was modeled on the Colonial Income Tax Ordinance which itself was a 'simplified synthesis' of the United Kingdom Income Tax Act of 1920. Now graduated taxes on global income would have been considered revolutionary because non-Africans were liable to a fl at poll rate and an Educational Tax. This tax was applied for the fi rst time in 1934 at rates graduated according to the taxpayer's income with certain amendments.

Income tax: It was first introduced in Kenya in **1921**, and in 1954, the rates of personal income tax were set at **20 shillings** for anyone earning less than **£60**, for earnings between £ 60- 120 charge of **40 shillings** and for earnings over £120 a charge of **60 Shillings.** In 1956, a Commission of Enquiry into the Administration of Income was established and was chaired by Sir Erick Coates.

Kenya's taxation system and policy after independence

The first post-independence strategy on matters taxation and policy was set out in Kenya's earliest planning document entitled Sessional Paper No. 10 of 1965 on African Socialism and its Application to planning in Kenya. The main purpose of the paper was to guarantee all citizens equal political and economic rights. The paper stated that the economic approach of the government was to ensure Africanisation of the economy and also the public service16. The

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government would concentrate investment in places where it was likely to maximize returns which would subsequently be distributed to the rest of the country.
The paper laid down the foundation for the country's fiscal policy framework. By the year 1972, the economy of the country expanded and this saw the introduction of Sales Tax in 1973 which, coupled with the first oil crisis of 1973, led to an economic shock and an increasing debt problem. The resultant fiscal reforms included 20% withholding tax on nonresident entrepreneurs, capital allowance restricted to rural investment, a new tax on the sale of property, taxes on shares, the sale of land and a custom tariff of 10% on a range of previously duty-free goods.
Kenya later came up with its own income tax department as a department of treasury and also came up with its own income tax legislation known as the Income tax Act which commenced on 1st January 1974 and it was codified as Chapter 470 of the laws of Kenya. The preamble to this Act reads as follows, "An Act of Parliament to make provision for the charge, assessment and collection of income tax: for the ascertainment of the income to be charged; for the administrative and general provisions relating thereto; and for matters incidental to and connected with the foregoing". The preamble gives us the scheme or the various components with which this law has dealt with.

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PURPOSE OF TAXATION

1. **Raising public revenue** to meet public expenditure for a common cause.
2. **Protection** of the **health of citizens**. Heavy taxes are imposed on goods that are considered to be harmful to the health of citizens if consumed in large quantities such as beer and cigarettes.
3. **Protection of local industries**. Heavy taxes are imposed on imported goods which are substandard or goods that are available locally in plenty.
4. **Encourage exportation** and hence the generation of foreign currency e.g. Exports are zero rated for VAT purposes, i.e. VAT paid on purchases used for processing exports is refundable.

- **Export processing zones (EPZ).** These are designated areas where the industries located are granted attractive tax incentives in exchange of exporting manufactured goods e.g.
  - Corporation tax is not payable during the first ten years of operation.
  - Corporation tax is payable at a rate of 25% from the 11th to 20th year of operation.
  - Capital expenditure or machinery and factory building is deductible at 100% cost known as investment deduction.
- **Manufacturers under bond (MUB).** These are manufacturers that are licensed by the customs department to manufacture for export purposes for at least three years. Such manufacturers are granted 100% investment deduction on capital expenditure incurred on machinery and factory buildings.

5. **To encourage savings for retirement**.

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TOPIC 5

TAXATION OF INCOME OF PERSONS

INTRODUCTION

Income tax is charged under the income tax Act (Cap 470) which contains rules and regulations relating to the following:

- Ascertainment of income
- Assessment of tax
- Collection of tax
- Entitlement of personal relief

S.3 (1) of the income tax act states that:
"Subject to, and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income upon all the income of a person, whether resident or non-resident, which accrued in or was derived from Kenya."

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S.3 (2) of the income tax act states
'Subject to this act, income upon which tax is chargeable is income in respect of

a. Gains or profits from
    i) A business for whatever period of time carried on
    ii) Employment or service rendered
    iii) A right granted to another person for use or occupation of property
b. Dividends or Interest
c. Pension income or withdrawal from a registered provident and provident fund.
d. Any withdrawal from a registered Home Ownership Saving Plan
e. Any deemed income
f. Gains from transfer of property

The income tax Act (Cap 470) was enacted in 1973, and its date of commencement was January 1974. It replaced the East Africa Income Tax Management Act, which had served the countries of the East Africa Community, and which became outdated following the break up of the community. Income tax is charged for each year of income on all income of a person, whether resident or non-resident, which accrues in or is derived from Kenya.

Year of income and accounting year

Year of Income is a period of 12 months commencing 1 January and ending on 31 December in each year. It is the same as calendar year.
Income tax is charged for each year of income.
The year of income should be distinguished from the accounting year. There is a date to which accounts of a business are prepared each year, and this date would indicate the accounting year end. The accounting year ending on 31 December would coincide with the year of income.
Other accounting year-ends would however fall in a given year of income and the profit or loss per the accounts would be for that year of income. For example, an accounting date ended 31 May 2015 would fall to be treated as the year of Income 2015

TAXABLE AND NON TAXABLE PERSONS

A person whose income is taxed is either:

a) An individual i.e. a natural person; or
b) A legal person e.g. a company. The company here includes a Trust, Co-operative Society, Estate, Club, Trade Association etc.

A taxable person does not include a partnership. A partnership is not taxed on its income, but the partners are taxed on their share of profit or loss from the partnership. However, under Turnover Tax ((TOT), a taxable person has been defined to include a partnership.

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Resident and non-resident persons
There are conditions for being a resident in case of an individual and also in case of a body of persons.

a) Resident in relation to an individual means that the individual:

i) Has a permanent home in Kenya and was present in Kenya for any period during the year of income under consideration; or
ii) Has no permanent home on Kenya but was present in Kenya for a period or periods amounting in total to 183 days or more during the year of income under consideration; or
iii) Has no permanent home in Kenya but was present in Kenya for any period during the year of income under consideration and in the two preceding years of income for periods averaging more than 122 days for the three years.

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TOPIC 6

CAPITAL DEDUCTIONS

INTRODUCTION

Key terms

Investment deduction: Is a capital deduction given on cost of buildings and machinery which are used for manufacture, on cost of a ship, and on cost of a hotel building.
The investment deduction on buildings and machinery is intended to encourage new investments in the manufacturing sector
The investment deduction is deducted in the income tax computation, or in arriving at the taxable income/loss

Industrial Building allowance: This is a capital deduction or allowance given in respect of capital expenditure on an industrial building
The amount of industrial building allowance is deducted in the income tax computation or in arriving at the taxable income/loss for year or period

Wear and Tear allowance: The wear and tear deduction is a capital deduction on machinery used for business. The deduction is made against income

Farm works deduction: This is a capital deduction granted only in respect of capital expenditure on agricultural land. The farm works deduction is deducted in the income tax computation

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The deductions or allowances are at standard rates for all taxpayers depending on the nature of the capital expenditure incurred.

Section 16 of the income tax expressly provides that in calculating the gains or profits of a person no deductions can be made for expenditure of a capital nature. The same principle is applied in disallowing capital losses, exhaustion of capital e.g. depreciation of fixed assets.

- Capital Allowances are allowable deductions granted on the capital expenditure incurred to acquire assets that are utilized in the business to generate taxable income.
- Capital allowances are granted for the following reasons:
  - To encourage new industrial enterprises;
  - To allow such deductions as may just and reasonable as representing the diminution in value of fixed assets during a particular year.
  - To encourage exportation

-S Capital allowances include the following:
(i) Investment deduction (ID)
(ii) Industrial building deduction (IBD)
(iii) Framework deductions (FWD)
(iv) Diminution in value of loose tools and implements

The capital deductions are important because:

a) Some offer incentives to business by allowing capital expenditure otherwise not claimable.
b) Some act as standard depreciation for income tax purpose. The depreciation and similar charges are not allowable expenses against taxable income.

These are referred to as deductions (allowances) under the Second Schedule to the Income Tax Act.

The manner of calculating and computing the various capital deductions or allowances is given below.

The wear and tear deduction is a capital deduction on machinery used for business. The deduction is made against income. As we shall see later, the deduction is made in the income tax computation (or in arriving at the taxable income or loss for the year) after disallowing any depreciation and similar charges against taxable income.

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As noted earlier any capital loss, diminution, exhaustion of capital, such as depreciation, amortisation, loss on sale of assets, obsolescence, provision for replacement, are not allowable expenditure against income.
But the Income Tax Act recognises the loss of value of assets used in business through usage, passage of time or obsolescence and so grants the wear tear allowance.
As per paragraph 7 of the Second Schedule to the Income Tax Act ... ―where during a year of income machinery owned by a person is used by the person for the purpose of his business, there shall be made in computing the person‘s gains or profits ... a deduction ... referred to as a _wear and tear deduction‘.‖

It should be noted that machinery qualifies for wear and tear deduction where:
i. Owned by a person, and
ii. Used by the person for business anytime during the year of income.

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TOPIC 7

ADMINISTRATION OF INCOME TAX

OVERVIEW OF INCOME TAX ACT

Income tax in Kenya is charged under the income tax Cap 470. The Act contains provisions relating to:

- Ascertainment of income.
- Assessment of tax.
- Collection of tax
- Entitlement to personal relief

The income tax Act Cap 470 was enacted on 20 December 1973 to replace the former East Africa income tax management Act. It contains:

- 14 parts
- 133 sections
- 13 schedules
- 8 subsidiary legislation

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IDENTIFICATION OF NEW TAX PAYERS

The finance Act 1992 introduced the thirteenth Schedule to the income tax Act which took effect from 1st January 1993. A **personal identification number** (PIN) shall be required for tax purposes for any of the following **transactions**:

Institution	Purpose of transaction
• Commissioner of lands	• Registration of title and stamping of instruments
• Local Authorities	• Approval of plans and payment of water deposits
• Registrar of motor vehicles	• Registration of motor vehicles and transfer of motor vehicles, licensing under traffic act
• Registrar of Business Names	• New registrations
• Registrar of Companies	• New registrations
• Insurance companies	• Underwriting of policies
• Ministry of Commerce	• Importing licenses or trade licensing
• Commissioner of VAT	• Applying for registration
• Kenya Power	• Payment of deposit for power connection

TAX ASSESSMENT: SELF-ASSESSMENT, ADDITIONAL ASSESSMENTS AND ESTIMATED ASSESSMENTS

ASSESSMENT

- Assessment means computation of tax liability on any income derived in a particular year.
- In case a person has submitted a self assessment return to the tax authority, the commissioner may:
  - Accept the assessment return and consider the amount declared in the return as the correct self assessment, in which case no further notification will be given.
  - If the commissioner has reasonable cause to believe that the self assessment return is not true or correct, he may determine according to the best of his judgment the amount of income of that person and prepare an assessment on that basis.
- In case a person has not submitted a self assessment return for any year and the commissioner considers that he has income chargeable to tax, he may determine the amount of income of that person to the best of his judgment and prepare an assessment on that basis.

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The time limits for making assessments.

- An assessment may be made at any time by the commissioner for any year of income before the expiry of 7 years. However, incase fraud or willful negligence has been committed, an assessment may be made at any time.
- In case of an assessment upon the executors or administrators of the estate of a deceased person, an assessment must be made before the expiry of 3 years after the year in which the person died.

REMITTANCE OF TAX: INSTALLMENT TAX, FINAL TAX

- Payment of installment tax serves as an assessment to installment tax. The tax is payable not later than the 20th day of the month of the current accounting year. The commissioner may issue an installment tax assessment in the event of failure to pay tax in time; tax assessed is payable within 30 days of service of the assessment.
- The amount of the installment tax payable is the lesser of:
  - The tax payable by the person on his total income for the year:
  - The tax assessed, or in the absence of an assessment, estimated as assessable for the proceeding year of income, multiplied by 110%.

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TOPIC 8

ADMINISTRATION OF VALUE ADDED TAX

INTRODUCTION AND DEVELOPMENT OF VAT

VAT is a tax on expenditure that is collected by suppliers of goods and services and passed on to the government.
VAT is charged on the supply of goods and services in Kenya by a taxable person in the cause of or in furtherance of any business carried on by that person and on the importation of goods and services into Kenya.
VAT was introduced in Kenya 1990 to replace sales tax. The decision to replace sales tax with VAT was as a result of the perceived deficiencies in the sales tax system which includes:

- The sales tax system was a single stage system- sales tax was levied only once at the manufacture level. However, in a country where tax evasion is widespread, a single stage tax system will result in a higher loss of revenue than would normally be the case if the system was multi stage.
- Where the inputs for manufacturing were subject to sales tax, the imposition of sales tax on the finished product will result in the imposition of tax on another tax i.e. cascading effect.
- The sales tax system had a limited scope - sales tax was levied only on certain specific manufactured Goods. Services were not within the scope of tax. Therefore sales tax had a narrow tax base as compared to VAT, with the result that the revenue yield was comparatively low.
- VAT is an indirect tax, It is essentially a tax on the domestic expenditure or consumption. Under VAT, it the end user or consumer that ultimately bears the tax burden.
- VAT is charged on each transaction in the production and distribution chain.

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QUESTION:
A manufacturer purchased raw materials at sh. 1 m on which VAT was charged at 16%. At each stage of the production and distribution chain conversion cost of 25% was incurred and a markup of 30% included to determine the selling price. Calculate the total VAT collected for the government.

ANSWER:

	Value Sh.000	VAT Sh.000
Supplier		
Cost of materials	1,000	
VAT @ 16%	160	160
	1,160	
Manufacturer		
Purchase of materials	1,000	
Conversion cost @ 25%	250	
	1,250	
Mark-up @ 30%	375	
Selling price	1,625	
VAT @ 16%	260	260
	1,885	
Less input VAT		(160)
		100
Wholesaler		
Purchase of product	1,625	
Additional cost @25%	406.25	
	2,031.25	
Mark-up @ 30%	609.375	
Wholesale price	2,640.625	
VAT @ 16%	422.5	422.5
	3,063.125	
Less input VAT		(260)
		162.5
Retailer		
Purchase of product	2,640.625	
Additional cost @ 25%	660.156	
	3,300.181	
Mark-up @ 30%	990.234	
Retail price	4,291.015	
VAT @ 16%	686.562	686.562
	4,977.577	
Less input VAT		(422.5)
		264.0

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Total VAT collected for Cost

	Sh.000
Supplier	160
Manufacturer	100
Wholesaler	162.562
Retailer	264
	686.562

NB

- The illustration above demonstrates that it is the end user or consumer to bears the burden of tax. The participants in the production and distribution chain are simply the collection agents of the government.
- It also shows that incase there is tax evasion, the loss of revenue by the government is minimized.

REGISTRATION AND DE-REGISTRATION OF TAXABLE PERSONS

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REGISTRATION FOR VAT

- Registration, de-registration and changes affecting registration are dealt with in the sixth schedule of the VAT Act.
- Compulsory registration applies to any person who in the course of his business has supplied taxable goods or taxable services or expects to supply taxable goods or taxable services, or both, the value of which is Sh. 5,000,000 or more in a period of twelve months.
- Any person who meets the above conditions is a taxable person and should, within thirty days of becoming a taxable person, apply for registration.
- Voluntary registration is permissible under the law, but is granted at the discretion of the commissioner.
- Where a person qualifies for registration, a registration certificate shall be issued within ten working days after receipt of the application by the commissioner.
- Where an application for registration is made within 30 days of becoming a taxable person, the effective date for registration is deemed to be the 30th day from the date the person became a taxable person. However, the commissioner has the discretion to vary the effective date, and in practice, the date of receipt of the certificate applies.
- Every registered person is required to display the registration certificate in a clearly visible place in his business premises. Where a person has more than one place of business, certified copies (by the commissioner) must be displayed in each of those places.

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TOPIC 9

CUSTOMS TAXES AND EXCISE TAXES

CUSTOMS PROCEDURE

INTRODUCTION

Customs and Excise duties are charged under the custom and excise Act cap 472. The custom department is charged with the responsibility of controlling imports and exports, enforcing prohibitions and restrictions and collecting revenue on both imports and excisable goods.

- On arrival cargo from an aircraft, vehicle or vessel which unloaded must be declared to customs in a prescribed form within 21 days. The goods should be entered either for home consumption, transit, transshipment, warehousing or to an export processing zone.
- Where there is insufficient information, the declaration maybe made on provisional status subject to approval by the proper officer. Where provisional entry has been allowed, the proper officer will require the owner to deposit an amount estimated as the duty payable.
- Where goods have not been entered for clearance within 21 days, they will be deemed as deposited in a customs warehouse where rent will be charged at the prescribed rates. Where goods are not removed from the customs warehouse within the notice period granted by customs, they may be sold by public auction to recover customs duty and warehouse rent payable on them.

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TAX POWERS AND RIGHT TO REVENUE

POWERS OF THE COMMISSIONER OF CUSTOMS AND EXCISE

1. S. 9 of customs and excise Act states that the commissioner can appoint and fix the limits in the Kenya gazette of:
    - Ports
    - Customs airport
    - Customs areas
    - Entrances and exits
    - Routes in Kenya over which goods in transit can be conveyed
    - Bonding stations i.e. area appointed by the commissioner for air crafts and vessels arriving or departing from a port may be kept.
    - Places of loading and unloading of goods within a port.
    - Places of examination of goods.

- Places for landing and embarkation of persons.

2. Provision of suitable accommodation for offices
3. Power to permit roads, area, place, boarding station, route entrance and exit etc to be used on a temporary basis if so appointed
4. Power to disclose information to a person in the service of the government in the revenue department for official duties.
5. Power to compound an offence by agreement
6. Power to revoke a license issued to manufacture excisable goods
7. Power to furnish to a competent authority any information, certificate or official import document etc of goods in or from a foreign country
8. Power to require information from importers concerning dumping of goods

POWERS OF THE OFFICERS

To prevent smuggling and evasion of duty the Act gives the following powers to officers:

1. Power to require vessels to board failure to which the master of the ship or vessel is liable to a fine of sh. 100,000 and seizure of the vessel.
2. Power to require a vessel to depart from the Kenyan port within 12 hours, failure to which a maximum fine of Sh.100,000 is imposed and the vessel is liable to forfeiture.
3. Power to patrol freely and move the vessels i.e. He can take the aircraft of vessel to a place convenient for investigation of smuggling or evasion without any legal liability to the office.
4. Power to board a vessel and make a search. If the master of the ship refuses he is liable to;
    a) A fine not exceeding Sh. 500,000 or
    b) 3 years imprisonment
    c) Forfeiture of goods
5. Power to require persons entering or leaving Kenya to answer questions concerning their luggage.
6. Power to search persons where he has reasonable grounds to believe that the person has excisable goods or uncustomed goods. However, a female office can only search a female person
7. Power to seal and search premises. They can sea, lock or secure:
    a) Buildings, rooms or receptacle of a plant
    b) Excisable goods or material in a factory
    c) Aircraft, vessels, vehicles or container
8. Power to have a search warrant issued by the magistrates to enable the officer to enter day and night premises to seize and carry away uncustomed goods, plant or documents

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IMPORTS AND EXPORT DUTIES

DUTY

- Duty is defined to include:-
  Customs duty, excise duty, levy, cess, imposition of tax, surtax
  Imposed on goods by the commissioner

CUSTOMS DUTY

- This is the duty or tax paid on goods imported through any port of Kenya or goods imported and which are specified in the first schedule of the Customs and Excise Act
- Goods subject to customs duty include:
  - Machinery
  - Textiles
  - Electronics
  - Vehicles
  - Food commodities

- The **purposes of customs duty** are:
  - To **raise revenue** for the government.
  - To **protect local industries** e.g. impose high customs duty to discourage consumption of imports.
  - To **prevent dumping of goods** into the Kenyan Market e.g. impose high anti – dumping duty
  - To **discourage production of harmful goods** e.g. excise duty imposed on manufacture of beer and cigarettes.

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EXPORT DUTY

- This is **tax** that is **imposed on goods which are exported to foreign countries**. The main purposes of excise duties are:
  - To **raise revenue** for the government.
  - To **discourage the exportation of certain goods** e.g. scrap metal, hides and skins.
  - To **encourage the use of materials locally** e.g. scrap metal.

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