



VAT FRAUD IN AFRICA

TRENDS & CHALLENGES: KENYA

Linnet Ojiambo

OECD Africa Tax & Financial Crime Academy

VAT/GST Fraud Specialty programme 2023

CASE EXAMPLE: MISSING TRADER

Informants

- Information received on 6 traders paying marginal taxes are making little or no taxes on their returns.
- Position achieved by buying and selling goods to each other.
- Traders amiss. Cannot be located physically or on phone.

Investigation methodologie

- Database analysis of itax and Simba system
- Third party information - Registrar of Cos, Banks, Clients
- Surveillance - mobile phone tracking
- Interviews

CASE EXAMPLE: FINDINGS

1. Business registration details

Registrar of Cos.

- M1-M5 are business names while M6 is trading on own PIN
- M1 & M2 registered on same date by same Mr.K (M6)
- M3 & M4 registered on same date by Mr. J
- M6 registered by Mr.P

itax registration

- Proprietors as per Registration certificate different from iTax partners.
Proprietors – Asian
iTax partners - Local

2. Analysis of iTax returns

- Businesses duly file VAT returns
- Declared sales made to unregistered customers
- Claim input tax equal to or more than output tax
- Self invoicing observed eg. in 2 yrs M1 supplied M2 Shs.1.6Bn goods while M2 supplied M1 Shs.1.3Bn goods
- Proprietors do not file Corporation tax and PAYE returns

3. Analysis of bank statements

- Deposits were approx. 3-10% of declared sales
- Deposits from several registered companies
- Said registered cos. claim huge inputs from the MTs
- Depositors mainly in construction sector, importers of construction materials and hardware from China

CASE EXAMPLE: FINDINGS

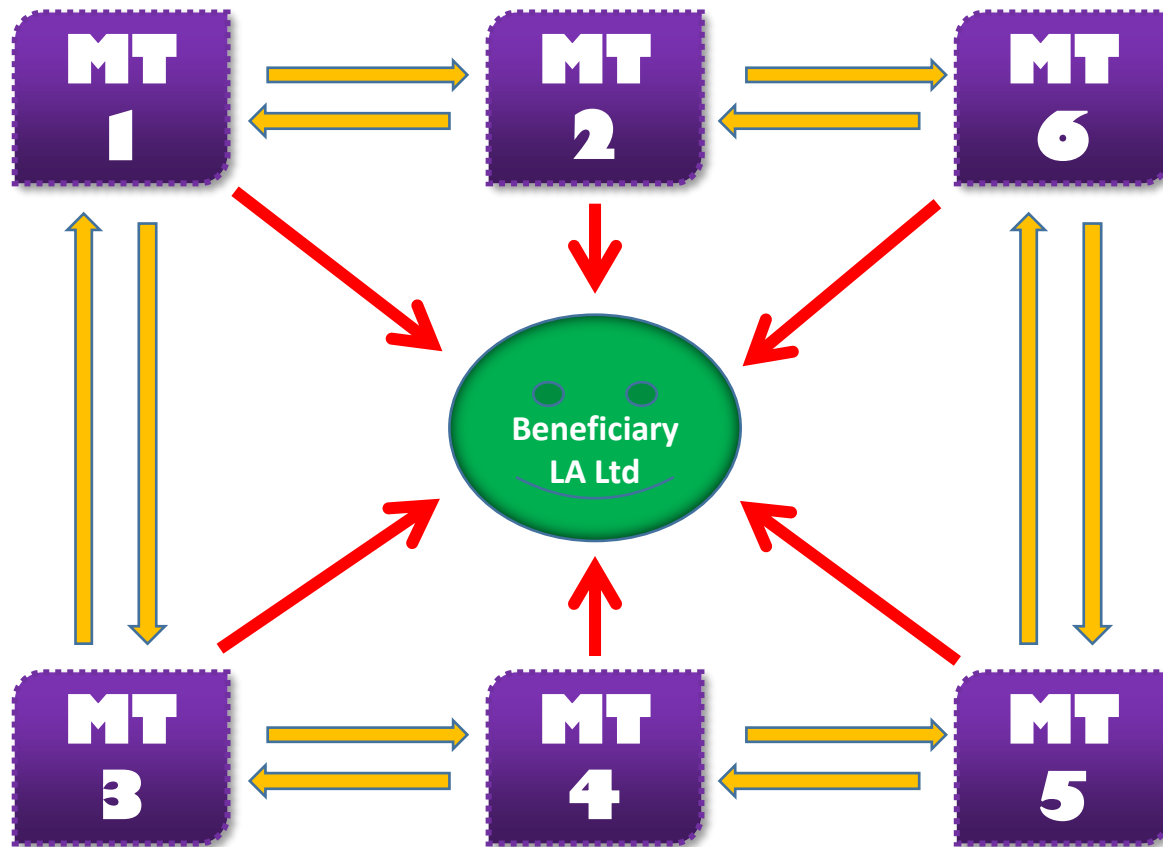
4. Analysis of returns filed by Registered 'buyers'

- Claim huge inputs from the MTs and expense in P&L
- Paid little to no VAT and carried huge creditors from MTs in Balance sheet
- Claimants mainly in construction sector, importers of construction materials and household hardware from China

- *Recall MTs reported supplies to unregistered customers*
- *Hence; either MTs are under-declaring sales or claimants are claiming fictitious inputs*

5. New business registrations

- Mr. J, proprietor for M3 and M4 found to have abandoned Cos 2 yrs later and registered 3 new ones engaged in the same business



THE SCHEME

- Individuals register several businesses for invoicing purposes
- Businesses supply invoices to each other
- Invoices sold at a fee of 3-10% of invoice value to would be beneficiaries interested in claiming fictitious inputs



Self invoicing



Sale of invoices

Admitted liability



☐ 3 registered buyers gave statement without prejudice owing up to scheme and purchase of invoices



Motivation



☐ **Importers of household goods:** Importers understate imports to pay less duty and VAT then make up with fictitious purchases to reduce VAT payable

☐ **Construction sector:** Cos mainly source goods from unregistered suppliers hence attempt to reduce VAT payable using fictitious purchases

☐ **Scrap metal dealers:** Source goods mainly from unregistered Juakali traders and make up for the input tax claim with fictitious purchases

Notably;

- Goods sourced locally from MTs are similar to those imported
- MTs are not importers and no Co. manufactures similar products locally

BREAK OUT SESSIONS

What counter measures can your revenue authorities employ to mitigate VAT fraud?

What challenges may emerge in your implementation of the suggested counter measures?

15 min

SUGGESTED COUNTER MEASURES



- **Enhanced preregistration checks** - particularly in high risk industry
- **Stakeholder engagement** - taxpayer education, tax professionals, business registration agencies, consider providing public registration checkers
- **Shared databases** - customs, third party, registrar of cos, regional block
- **Automation of VAT compliance processes** - Tax Invoice Management System, cross matching system (VAA), Kenya Success story
- **Capacity building** - specialized officers / task force
- **Risk profile indicators** - high value invoices, high risk entities, high risk supplies
- **In depth verification checks** - include detailed checks into the veracity of supply chains and due diligence carried out by a trader to ensure that the proposed transaction is not connected to fraud (eg. [Galaxy Tools](#))
- **Criminal/Civil investigation** - have clear strategy and punitive measures of deterrence. Convictions communicate consequences
- **Legal measures** - Reverse charge, Joint & several liability, Cannot claim input before sale is declared

VALUE ADDED TAX
TECHNICAL NOTE ON
MISSING TRADER FRAUD



An ATAF Publication



CASE EXAMPLE: ACTIONS TAKEN



Deregister all MTs



Publication done in newspapers requiring all cited MTs to report to commissioner of investigation



CSD to conduct 100% verification of major importers of household goods and construction materials



Prosecution of all parties involved in scheme



Proposal to have scrap metal dealers appointed as Withholding VAT agents / Exempted / only charge tax if last on the value chain



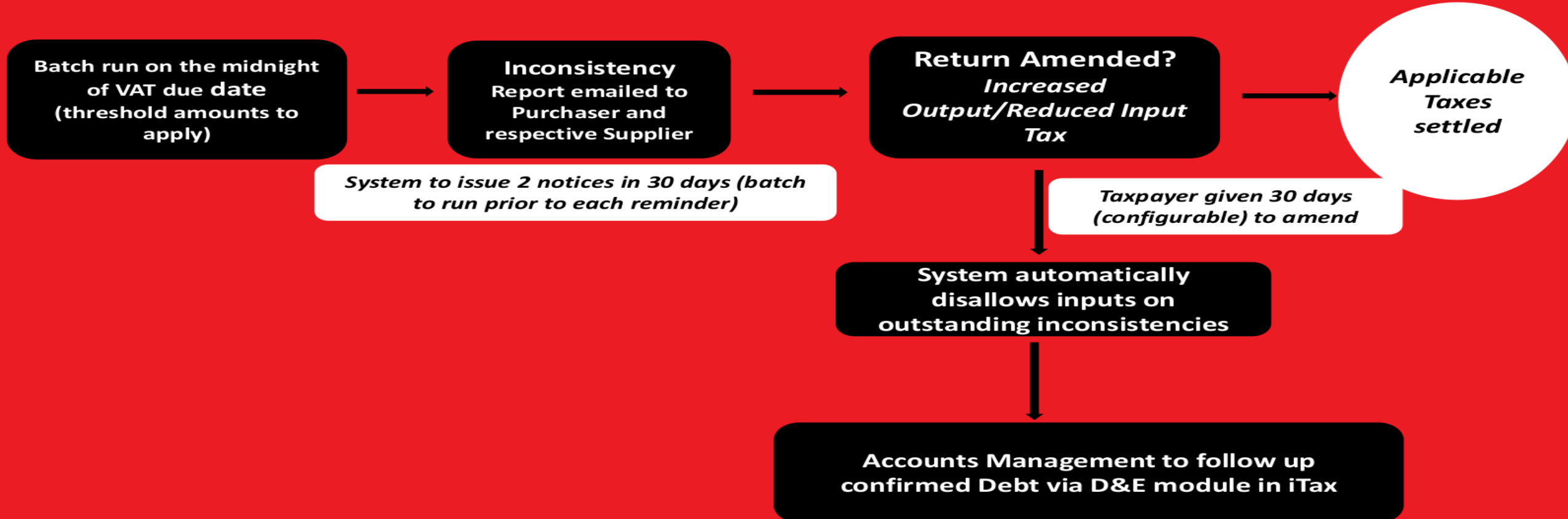
Renewed vigilance to check on such cases

VAA - VAT AUTO ASSESSMENT

- A system based solution that will detect inconsistencies, communicate to the relevant parties and automatically disallow unresolved input tax

HOW DOES VAA WORK?

Workflow - Cross Matching of Invoices in iTax



COMMISSIONER OF INVESTIGATION & ENFORCEMENT VS PEARL INDUSTRIES LTD [2022]

- 17. Under section 56 of the TPA, it was incumbent upon the Respondent to prove that the Commissioner's findings above were wrong. How could it do so? By providing evidence and supporting documentation to dislodge the Commissioner's findings. For instance, it could

(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1)—

(a) the person does not hold the documentation referred to in subsection (3), or

(b) the registered supplier has not declared the sales invoice in a return, the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation:

had been insinuated by the Tribunal because the request was within the Commissioner's powers under section 59 of the TPA.

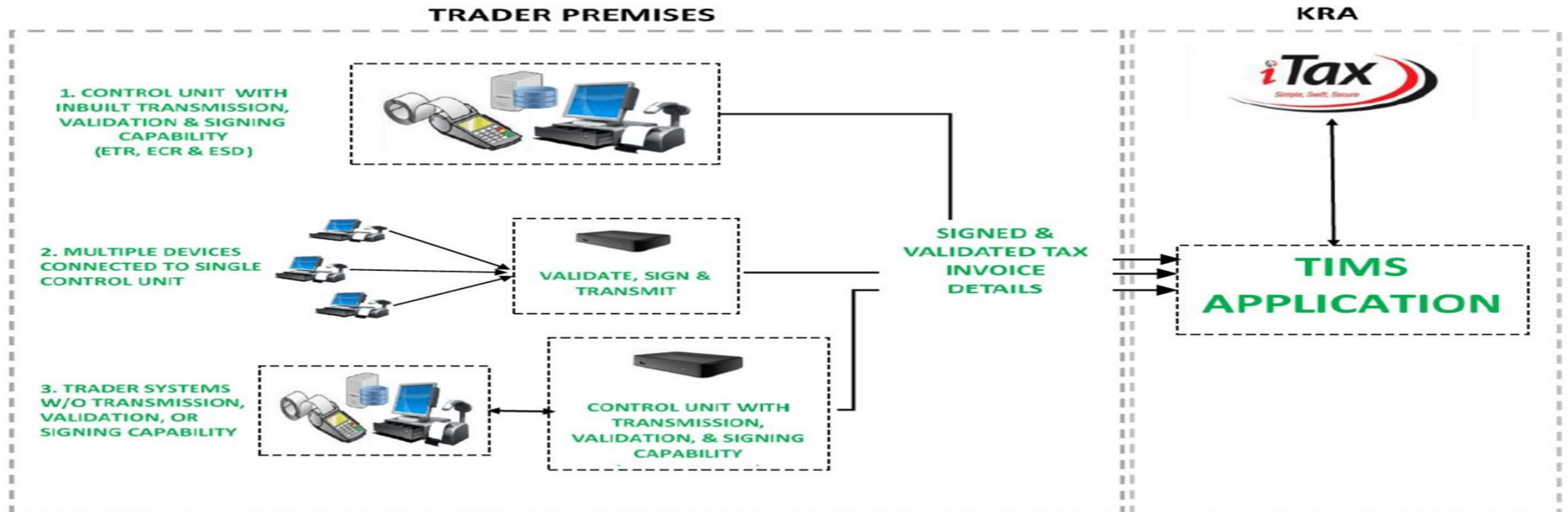
- 19. In this case, the pendulum of proof swung three times; the first was upon the Respondent, which it did by providing the documents requested by the Commissioner; the second shifted the Commissioner, who after reviewing the documents challenged their authenticity and validity. This meant that the burden of proof finally swung back to the Respondent to prove that the Commissioner was wrong in its position and overall findings.



TIMS - TAX INVOICE MANAGEMENT SYSTEM

TIMS - A system that offering Integration with trader systems, Standardization and authentication of issued tax invoices on a real time basis, Seamless integration with iTax, Storage module of tax invoice data & Verification of the validity of tax invoice

CONCEPTUAL OVERVIEW OF TIMS



ETIMS – ELECTRONIC TAX INVOICE MANAGEMENT SYSTEM

- **eTIMS - A software solution geared towards e-invoicing, Stock management module, Prefilled VAT returns, Non-intrusive verification of tax processes**


Why eTiMS

- Real-time invoicing transmission.
- Accurate tax invoice declarations.
- Access through electronic devices including computers and mobile phone apps.


Visit etims.kra.go.ke for sign up.



- A tax invoice generated from a register shall contain (Regulation 7)—
 - (a) the PIN of the registered user of a register;
 - (b) the time and date of issuance;
 - (c) the serial number of the invoice;
 - (d) the buyer's PIN;
 - (e) the total gross amount;
 - (f) the total tax amount;
 - (g) the item code of supplies (for exempt, zero-rated and other rate supplies) as provided by the Commissioner in accordance with the Act;
 - (h) a brief description of goods and services;
 - (i) the quantity of supply;
 - (j) the unit of measure;
 - (k) the tax rate charged;
 - (l) the unique register identifier;
 - (m) the unique invoice identifier;
 - (n) a quick response (QR) code; and
 - (o) any other requirement as may be specified by the Commissioner.



INVOICE TO
 ORDER: Netan [REDACTED]
 TAX PIN : P [REDACTED]
 Name : [REDACTED]



INVOICE NO : KRACU010000 [REDACTED] / 2
Date : 03-05-2023

CU invoice number

Item Code	Item Description	Qty	Rate	Amt Excl. Tax	Tax Amt	Amt Incl. Tax
K120T0000000001	Hydrological Survey	1	16%	42,000	6,720	48,720
K120U0000000001	Environmental Impact Assessment	1	16%	20,000	3,200	23,200
K120U0000000002	Summary Report	1	16%	10,000	1,600	11,600

SCU INFORMATION

Date : 03-05-2023 Time : 11:27:57


SCU ID : KRACU010000 [REDACTED]

Int. Date : [REDACTED]

Kept Signature : [REDACTED]

Powered by eTIMS v1.0

Tax Rate	Taxable Amt	Tax Amt	Total Amt
16%	72,000.00	11,520.00	83,520.00
0%	0.00	0.00	0.00
0%	0.00	0.00	0.00
0%	0.00	0.00	0.00
Total	72,000.00	11,520.00	83,520.00



QR Code

VAT SPECIAL TABLE

- A mechanism implemented in iTax to enhance VAT compliance where certain categories of VAT registered taxpayers are **restricted from performing certain processes** i.e.

Reasons for on-boarding of Taxpayers on the VAT Special Table

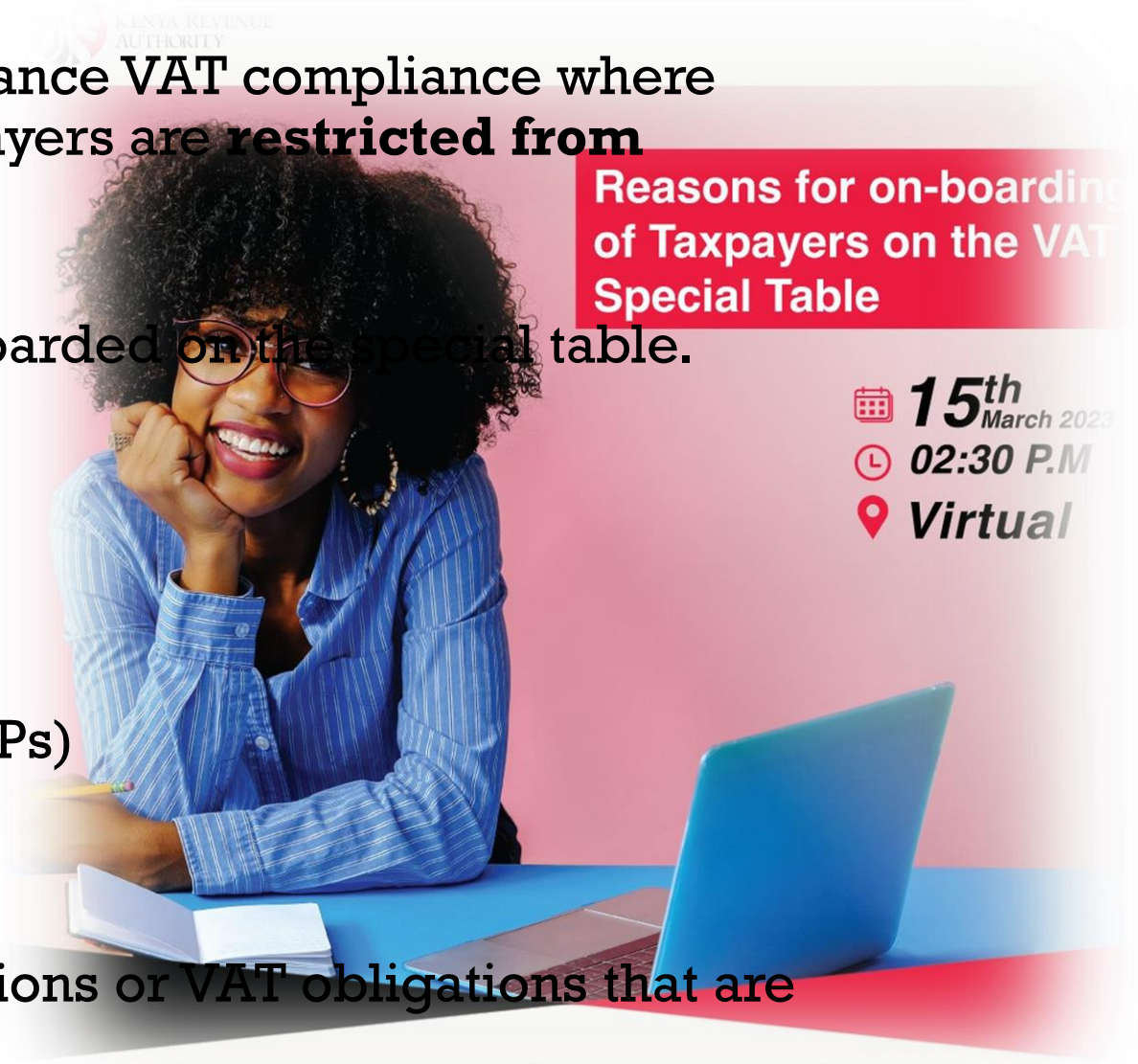
- filing VAT returns and
 - claiming input tax from taxpayers' on boarded on the special table.

- **These categories include:**

- Nil filers
 - Non-filers
 - Missing Traders
 - Payment returns without payment (PRWPs)
 - eTIMS non-compliant traders

- **Benefits of the VAT Special Table:**

- Identify erroneously added VAT obligations or VAT obligations that are no longer required.
 - Reduces cases of abuse of traders PIN by fraudulent persons.
 - Assist traders to conduct business with compliant suppliers.



 **15th**
March 2023
 **02:30 P.M**
 **Virtual**

020 4 999 999 / 0711 099 999

callcentre@kra.go.ke

www.kra.go.ke



MANDATORY REQUIREMENTS FOR VAT REGISTRATION APPROVAL

The Commissioner will require the following documents from ALL applicants before adding the VAT obligations:

Mandatory VAT Registration

- ❖ **CR12 & Directors ID's and Passports**
- ❖ **Business permits**
- ❖ **Work permits for aliens**
- ❖ **TCC for all directors**
- ❖ **Contact details – physical address, email, telephone, meter number, rent agreement e.t.c**
- ❖ **Contract agreements or sample invoices.**

Are you aware that, any person supplying, or who expects to supply taxable goods or services with a value of Kshs 5 Million or more in a year, is required to register for VAT?



How to update Beneficial Ownership Information

- Login the Directors or Director-shareholder account on www.ecitizen.go.ke and enter the username and password
- Select Business Registration Service and click view on the company you want to make changes under "My Businesses"
- Select maintain a company
- Choose the beneficial owners' option
- Select change of particulars and click change of officials from the list of Directors
- Select update Beneficial Owner
- Fill in details on the provided BOF 1 form
- Upload the form and submit

Please note that the percentage shareholding should be as captured by the system if the company has more than 1 shareholder.

Every company to maintain a register of its beneficial owners and to submit a copy of this register to the Registrar of Companies as of 31st January 2021 (Companies Act, 2015) with info as below:

As per BO regulations 2020 and BO amendment regulations 2022

- Full name ;
- copy of his/her National Identification Cards, Passports or Birth Certificate;
- Postal Address;
- Residential Address;
- copy of his/her PIN Certificate;
- his/her telephone number and occupation;
- the nature of ownership or control the beneficial owner has in the company;
- the name of shareholder (if any) holding shares on behalf of the beneficial owner;
- The date on which any person became a Beneficial Owner; and
- The date which any person ceased to be a Beneficial Owner.



iwhistle

The system will generate a unique identifier that you will use when following up on what you have reported



See it. Report it





How long can you remain in Green Channel Framework?

You can remain in the green channel as long as the framework exist. In order to uphold compliance, there is frequent vetting and verification of the green channel.



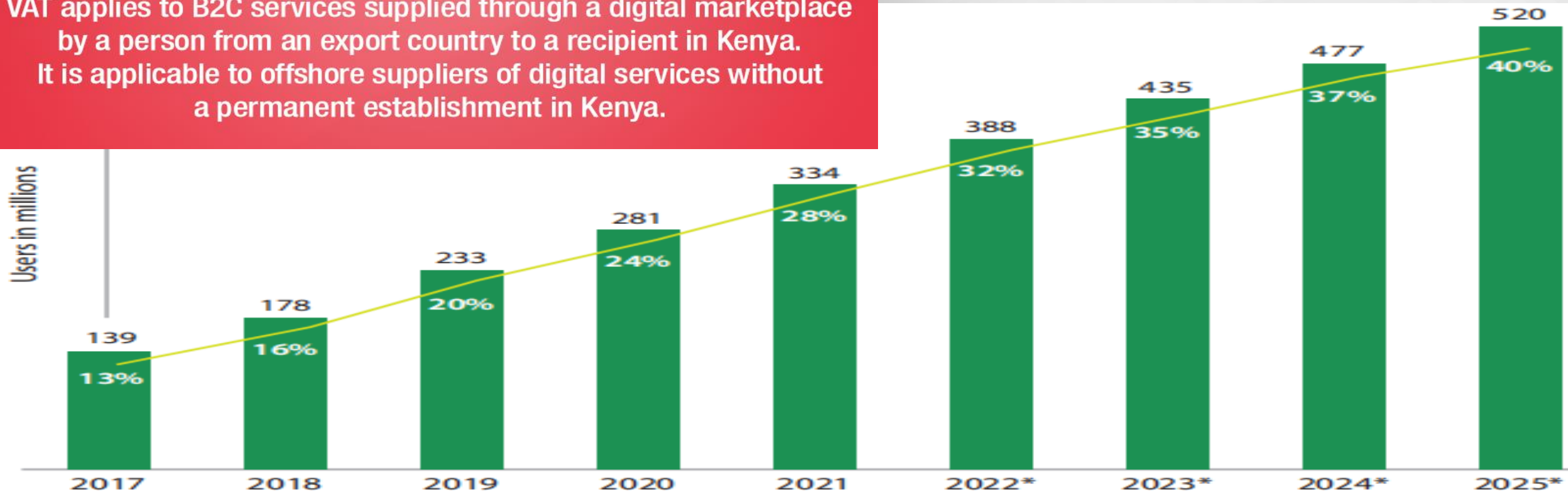
- The green channel framework provides a list of sectors identified as low risk.
- Claims by taxpayers from these sectors receive preferential treatment aimed at fast tracking processing of the refunds.
- The claims undergo minimal verification before payment but are **SUBJECT to POST AUDIT** to mitigate any risk.



Did You Know?

VAT applies to B2C services supplied through a digital marketplace by a person from an export country to a recipient in Kenya. It is applicable to offshore suppliers of digital services without a permanent establishment in Kenya.

A “digital marketplace” means an online or electronic platform, which enables users to sell or provide services, goods or other property to other users.



Note: *forecast.

Source: International Trade Administration (2021), *The Rise of eCommerce in Africa*, <https://www.trade.gov/rise-e-commerce-africa>.

- **Innovative Fraud Schemes:** Evolving tactics challenge detection.
- **Underground Economy:** Unreported transactions complicate oversight.
- **Cyber-security Threats:** Digital reliance exposes authorities to cyber risks.
- **Adaptive Criminal Networks:** Sophisticated networks adapt to enforcement changes.
- **Political and Legal Barriers:** Political and legal constraints affect effective measures.
- **Complex Supply Chains:** Identifying fraud in intricate supply chains is challenging.
- **Regulatory Gaps:** Inconsistencies and gaps in regulations are exploited. Complex tax laws provide opportunities for fraud;.
- **Public Perception and Resistance:** Resistance to anti-fraud measures may arise.
- **Emerging Technologies:** Rapid tech adoption introduces both challenges and opportunities.
- **Digital and Online Transactions:** Rise in online activities creates new opportunities for VAT fraud through e-commerce platforms and electronic payments.
- **Resource Limitations:** Lack of resources, impacting investigations and technological solutions.
- **Lack of International Coordination:** Ineffective cooperation due to a lack of standardized procedures and agreements among countries.
- **Technological Challenges:** Advancing fraud techniques require investments in data analytics, AI, and machine learning tools.



AfCFTA – GOOD & UGLY



Creating One African Market

Africa Continental Free Trade Agreement (AfCFTA)

- Liberalize trade and facilitate easy movement of goods and services on the continent,
- Removing tariff barriers to trade
- Provide free access to foreign markets and free movement of people
- Entry into Force 1st January 2021

Enabling environment?

Relaxation of fiscal rules and checks at the physical borders creates fertile ground for

- MTIC fraud
- smuggled or misrepresented imports
- unregistered entities, hijacked VAT identities or fake entities to be used in the importation of goods/services
- obscure value chains

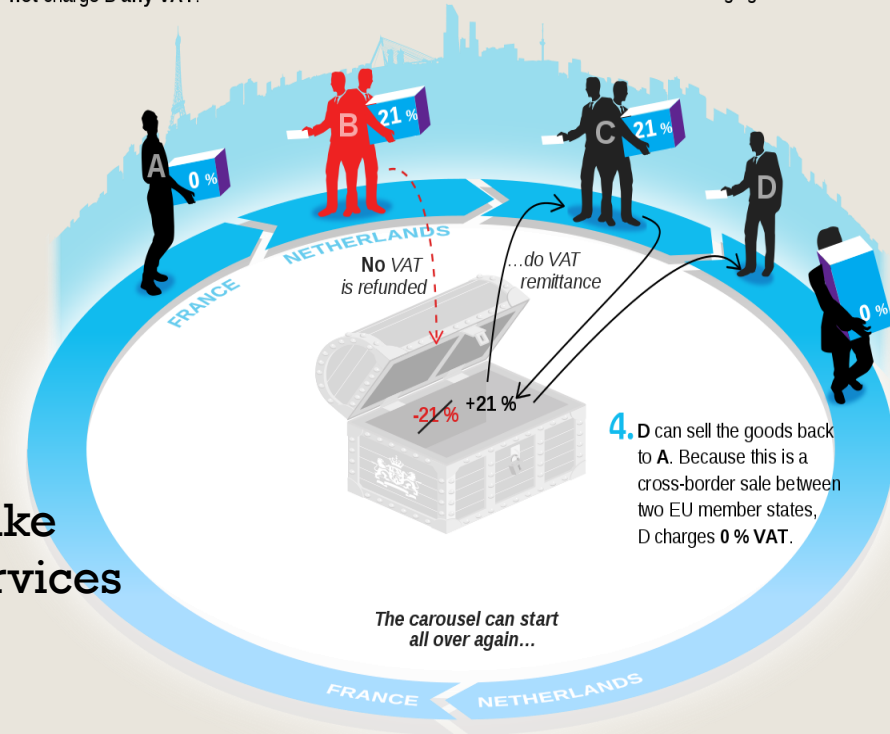
Counter Measures?

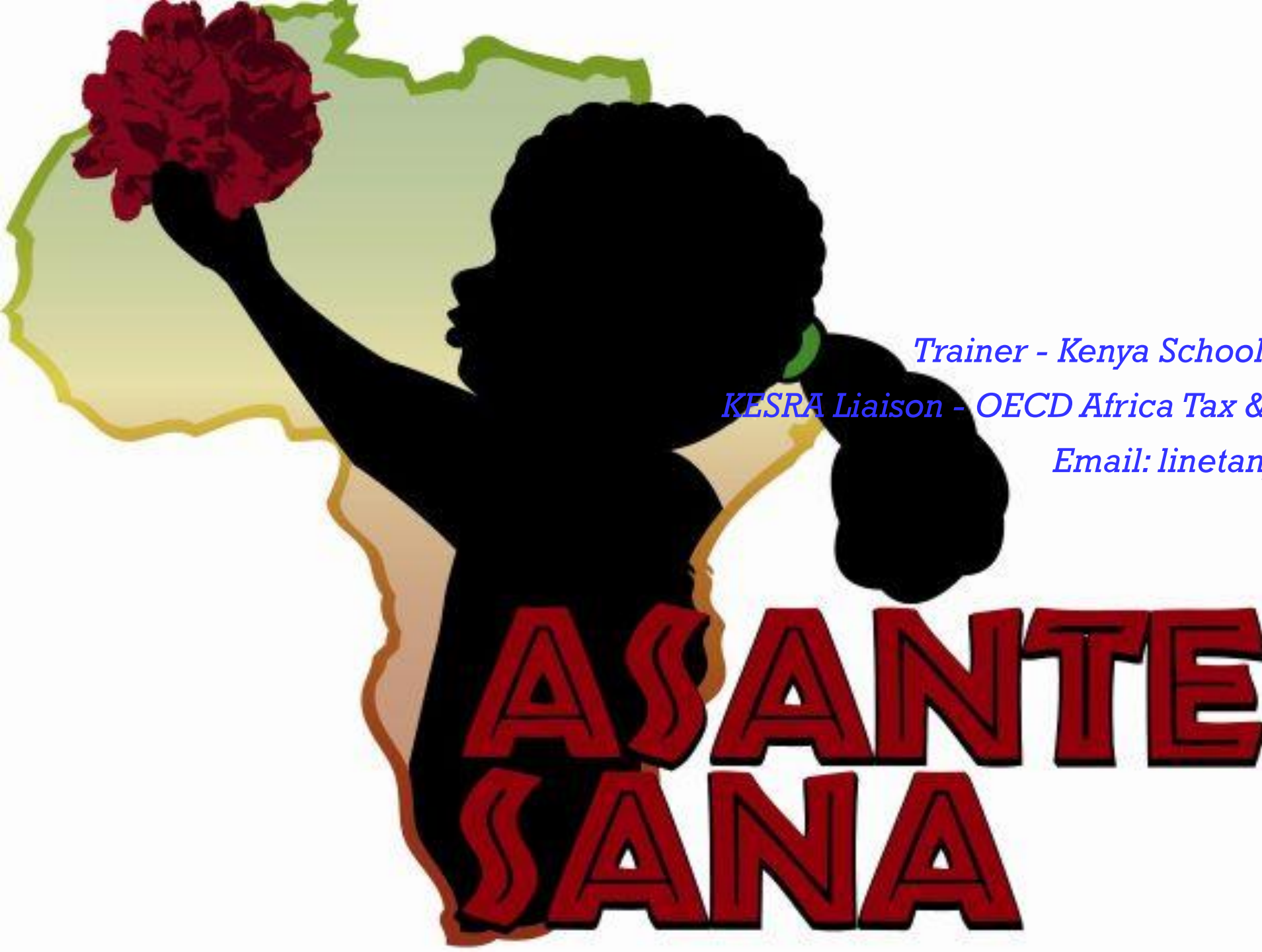
- Shared database - of entities flagged as high risk for MTF / Cross border tax audits / EOI - ATAF Agreement on Mutual Assistance in Tax Matters (AMATM)
- Harmonization of VAT – Registration no. & Rate

Missing trader fraud

In carousel VAT frauds, a merchant fails to remit VAT to the taxing authority, despite charging his buyers the price of the sold goods plus VAT.

1. Business A delivers goods to B in the Netherlands. Because this is a cross-border sale within the EU, A does not charge B any VAT.
2. B sells the goods to C and charges him 21 % VAT. He has to remit this to the taxing authority, but **fails** to do so. He commits **fraud**.
3. C has paid 21 % worth of VAT to B, which he can deduct on his VAT return. C delivers the goods to D and charging VAT.





Linet Ojiambo

Trainer - Kenya School of Revenue Administration

KESRA Liaison - OECD Africa Tax & Financial Crime Academy

Email: linetanyango.ojiambo@kra.go.ke

Tel: +254722997181

