

TOWARDS MORE EFFECTIVE TAX INVESTIGATIONS WITH THE RISE OF MOBILE MONEY PAYMENTS

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Abstract

Technological advances can transform the environment in which governments enforce compliance with tax legislation and collect tax revenues. This includes the emergence and rise of mobile money payments, which have been changing the financial landscape in Africa since the launch of the mobile money transfer platform, M-Pesa, in Kenya in 2007. The emergence of this payment platform may present unique opportunities for driving tax compliance and tax investigations. This article is aimed at stimulating debate on how this emerging platform can be used for providing additional information to be used by the tax administration. It uses Kenya as a case study and highlights how these platforms can provide additional information that can be used for tracking and monitoring tax payers' activities, to enable tax administrations to determine whether tax payers' declarations in their tax returns reflect their economic activities. The article also highlights how it can provide information on individuals and businesses that, by the nature of their activities, ought to be included in the tax base, and also to provide information for identifying individuals and businesses that do not file tax returns despite being economically active. The article also highlights that the real-time data that could be made available to tax administrations could be useful for compliance monitoring, and provide a more reliable audit trail and, finally, the potential challenges.

1 Introduction

According to the Organisation for Economic Co-operation and Development (OECD), the overriding objective of tax administration is to minimise revenue losses due to non-compliance with tax laws. Compliance with tax laws is not limited to filing tax returns. This covers a broader range of processes which often takes place outside the view and

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control of a tax administration.¹ It also notes that the advancement of technology increasingly has led tax administrations to utilise technological developments to enhance tax compliance.² Using Kenya as a case study, the article examines the emergence of the mobile payments platform and how revenue bodies can tap into it to enhance tax compliance.

It is structured as follows: I first examine the emergence of mobile money payment platforms, and then highlight the challenges posed by tax administrations, particularly in the informal sector and small and medium enterprises (SMEs). I then turn my attention to tax compliance strategies adopted by tax administrations, as proposed by the OECD, and how these have over time evolved, particularly dealing with the increasing adoption of technology by businesses. I then look at how the emergence of mobile money payment platforms presents a unique opportunity to tax administration for tax investigations and enhancing compliance with a case study of Kenya. Finally I highlight the potential challenges.

2 Background

Mobile money payment platforms have been changing the financial landscape in Africa since the launch of the M-Pesa in Kenya in March 2007.³ However, following the launch of M-Pesa, other mobile money platforms, such as Airtel money, Orange Money, Equitel, Mobikash and Tangaza have also emerged to provide robust payment platforms. Adapted from *pesa*, the Swahili word for money, and an abbreviation of 'M' for mobile, it translates to mobile money. M-Pesa allows for easy transfer of money between registered users, whether individuals or businesses, without using the traditional banking channels. It allows any person registered on the platform to do almost everything, from paying for routine grocery shopping to settling utility bills to paying their doctors' bills.⁴

The main effect of M-Pesa, and similar mobile money transfer platforms in Kenya, is financial sector deepening: Groups that hitherto had limited access to formal financial services have benefited from the financial products offered through M-Pesa. Of special interest, M-Pesa has empowered business creation as many individuals and small companies

1 OECD *Right from the start: Influencing the compliance environment for small and medium enterprises* (2012) 3.

2 As above.

3 J Bright 'A brief overview of Africa's tech industry and 7 predictions for its future. World Economic Forum' <https://www.weforum.org/agenda/2016/05/a-brief-history-of-africa-s-tech-industry-and-7-predictions-for-its-future> (accessed 14 December 2017).

4 M-Pesa and the secret of mobile payments (February 2015) <https://www.pymnts.com/in-depth/2015/m-pesa-and-the-secret-of-mobile-payments/> (accessed 13 June 2016).

now rely on M-Pesa for nearly all transactions, or provide services underpinned on the M-Pesa platform.⁵

Over time, M-PESA has evolved from a money transfer service to a robust payment platform and driver of financial inclusion for Kenyans. According to Safaricom, it has grown to incorporate over 19 million customers, of which 13 million are active and supported by a nationwide agent network of 81 025 outlets. The key M-Pesa services include *Lipa na* M-Pesa (pay using M-Pesa); *Lipa Kodi* (paying property rent using M-Pesa); salary disbursements; utility payments (for example water and electricity); airtime purchase; M-Shwari (a bank account pinned on an M-Pesa account); linkages to a bank account to facilitate deposits into and transfers from the bank account without visiting the bank or using an automated teller machine; and cashless distribution for companies such as Coca Cola; Unilever; East African Breweries Ltd; British American Tobacco; Nairobi Bottlers; Nation Media; and the Standard Group.⁶

Lipa na M-Pesa promotes the use of M-Pesa as a primary tool for payment collection and is part of the broader M-Pesa initiative to convert Kenya to a cashless or cash-lite economy (utilising electronic payments rather than cash). It enables individuals as well as companies to effortlessly collect and manage cashless payments from M-Pesa's significant customer base.⁷ It also facilitates trade between businesses and their customers while improving business efficiency. As at December 2014, there were 122 000 merchants on *Lipa na* M-Pesa of which 24 137 were active. Further, as at December 2014, *M-Shwari* had 3.6 million active customers with Kshs 4.0 billion in deposit and Kshs 1.2 billion worth of loans issued per month with non-performing loans (NPLs) at 2.7 per cent.⁸ Over and above providing SMEs with a formal electronic payment collection service, the other key benefits of *Lipa na* M-Pesa include enhancing record keeping as every transaction made is readily accessible via till statements. M-Pesa is also already integrated with 37 financial institutions.⁹

However, can the data underlying the M-Pesa transactions be useful to tax administrations to facilitate tax compliance and tax investigations? Before that question is answered, it is necessary to first consider the tax compliance challenges of SMEs and the informal economy that are prevalent in developing countries such as Kenya.

5 D Runde 'M-Pesa and the rise of the global mobile money market 12 August 2015 <http://www.forbes.com/sites/danielrunde/2015/08/12/m-pesa-and-the-rise-of-the-global-mobile-money-market/#4e82e32423f5> (accessed 13 June 2016).

6 Safaricom Limited Annual Report 2014 42.

7 Safaricom Limited Annual Report 2014 19 43.

8 Safaricom Limited Annual Report 2014 19.

9 Safaricom Limited Annual Report 2014 19 43.

In many countries, SMEs have been identified as the least compliant component of the taxpayer population. As a result, they have become a target for many tax administrations.¹⁰ Recent studies have concluded that there is a considerable risk that SMEs may not report some of their income in their tax returns with the aim of reducing their tax liability. This may be prevalent where the income of SMEs may not be subject to third party reporting to the tax administration and/or where it is difficult for the tax administration to directly verify the income with third parties, hence making it easy for SMEs to conceal income. Another risk is that expenses claimed against business income may be overstated with the aim of reducing the tax liability. These challenges may be compounded during audits due to poor-quality, or non-existent, books and records. For these reasons, it is acknowledged that auditors need a set of tools to indirectly measure taxpayers' taxable income.¹¹

Many developing countries also have a significant informal (shadow) economy that largely operates outside the formal tax system. Many countries have not been able to tax these sectors, thereby effectively limiting or shrinking the tax base.¹² For example, the Kenya Revenue Authority (KRA) has projected that the informal sector has been growing faster than the formal sector. In its Sixth Corporate Plan,¹³ the KRA projected that the latter grew at 82 per cent against the former at 18 per cent, implying that the proportion of the hard-to-tax informal sector will continue to grow.¹⁴

In a cash economy, it is difficult for the tax administration to identify players in the informal sector and bring them into the tax bracket. The records of financial transactions to enable the tax administration to detect economic activities or to be used for verifying turnover or as confirmation of transactions are limited. However, if SMEs and the informal sector are not brought within the tax bracket or if they are not properly taxed, the burden of taxation will continue to be borne by a small percentage of businesses.

It therefore is likely that the mobile money payment platforms could present an opportunity for developing investigative tools and for

10 OECD *Reducing opportunities for tax non-compliance in the underground economy* (2012) 4.

11 OECD *Strengthening tax audit capabilities: Innovative approaches to improve the efficiency and effectiveness of indirect income measurement methods strengthening* (2006) 4.

12 EM Zolt & RM Bird *Technology and taxation in developing countries: From hand to mouse* Columbia Law School Tax Policy Colloquium 4 July 2008 7.

13 The Kenya Revenue Authority, Sixth Corporate Plan was launched on 18 September 2015 and covers three years, ie the period 2015/16-2017/18. It was developed by KRA to provide a road map for attaining revenue collections of up to Kshs 5.2 trillion in the next three years and also provides a framework for further transforming KRA in its quest to facilitate Kenya's ease of doing business ranking scores. For more, see the press release at <http://www.kra.go.ke/notices/pdf2015/PRESS-RELEASE-6TH-CORPORATE-PLAN.pdf>. It is available at <http://www.kra.go.ke/index.php/6th-corporate-plan> (accessed 13 June 2016).

14 Kenya Revenue Authority, Sixth Corporate Plan 2015/16-2017/18 21.

enhancing tax compliance. However, how does this harmonise with the current thinking on tax compliance? The following part traces the evolution of tax compliance strategies at the OECD to the current acknowledgment of the growing role of technology in enhancing tax compliance with a particular focus on mobile money payment platforms and SMEs, which will provide a basis of how utilising data from mobile money platforms could be useful for the KRA.

3 Evolution of tax compliance strategies: Perspectives from the OECD

Tax compliance strategies have over time evolved. Since tax administrations have traditionally been viewed as the enforcers of tax law, as a result most confined themselves to reviewing filed tax returns, verifying their correctness and targeting non-compliance by subjecting taxpayers to audits, which targeted high-risk tax returns.¹⁵ The success of this approach was measured by audit yield and relied largely on the careful selection of audit cases through a proper identification of risks.¹⁶ This method often targeted past events with the audit deployed as the main compliance tool. This was a costly and time-consuming process which required the collection of information from and exchanges of positions with the taxpayer before the case was concluded. When positions were disputed, there could be lengthy appeal process before tax dispute resolution bodies.¹⁷

The focus on better selection of audit cases led to an increased interest in risk management. In 2004 the work of the OECD's Forum on Tax Administration (FTA) on compliance risk management¹⁸ concluded that improved compliance rather than audit yield was the desired outcome of any compliance process and, therefore, it was important to understand the underlying causes of non-compliance and look at the taxpayer holistically rather than focusing on audit yield. This led to a shift towards managing risks, which in turn led to an increased interest in understanding the compliance behaviour of taxpayers. Consequently, the FTA through its 2010 Information Note entitled 'Understanding and influencing taxpayer compliance behaviour'¹⁹ concluded that a strategy based solely on deterrence can have major drawbacks and does not necessarily result in improved compliance. The key point was that compliance was not about finding as many errors as possible, but rather about influencing the

15 OECD *Tax compliance by design: Achieving improved SME tax compliance by adopting a system perspective* (2014) 21.

16 As above.

17 OECD (n 10 above) 3.

18 OECD *Compliance risk management: Managing and improving tax compliance* (2004).

19 OECD *Understanding and influencing taxpayer compliance behaviour* (2010).

environment of the taxpayer to make it easier for them to comply and difficult not to comply.²⁰

The compliance risk management approach gave way to the 'right from the start' approach, as elucidated in the FTA 2012 Information Note 'Right from the start: Influencing the compliance environment for small and medium enterprises'.²¹ This approach marked a shift in compliance strategies and placed the emphasis on influencing the taxpayer's environment.²² The conclusions from the work that evolved out of the 2012 FTA Information Note were that, first, there was a tendency to overestimate the importance of external factors when assessing people's behaviour; second, that small changes in a taxpayer's environment can have a big impact on their compliance levels.²³

The 'right from the start' approach is a way of working and thinking that encompasses four different dimensions, namely, (a) the tax administration acts in real time and addresses problems as they occur; (b) that the tax administration focuses on the taxpayers' end-to-end processes and adapts its processes to fit into those of the taxpayers instead of attempting to make the taxpayers' processes fit into those of the tax administration; (c) making it easy to comply and difficult not to comply; and (d) involving the taxpayers and their intermediaries in the compliance process.²⁴

The 'right from the start' approach recognises that participants, such as tax intermediaries, third parties, software developers, banks and industry associations can play a significant role in driving compliance up by providing additional certainty and/or more cost-effective solutions.²⁵ For example, the information note suggests that tax intermediaries can transform information on taxable transactions into information on taxable profit and deliver it to the tax administration; third parties can have information on taxpayers' transactions that can substantiate, or verify, the information from the taxpayer; software developers can provide an infrastructure for transferring, transforming and storing information in a secure way; banks can supply information, handle tax payments and provide support services to the taxpayer; and, finally, industry associations can have specialised competences regarding the taxpayers' context that can support both the taxpayer and the tax administration.²⁶

20 OECD (n 19 above) 19.

21 OECD (n 1 above).

22 OECD (n 1 above) 21.

23 OECD (n 1 above) 22.

24 OECD (n 1 above) 3 10 23.

25 As above.

26 OECD (n 15 above) 25.

The 'right from the start' approach recognises that compliance is a main function of tax administrations.²⁷ Compliance with tax laws is not limited to filing tax returns. It covers a broader range of processes which often take place outside the view and control of the tax administration.²⁸ This approach seeks to redirect the tax administration's attention from the tax return to the taxpayer's environment. The approach focuses on the processes that culminate into the tax return. Therefore, it emphasises the need to create an environment that underpins compliant behaviour and reduces opportunities for non-compliant behaviour at an early stage in a taxpayer's processes, preferably before the tax return is filed.²⁹ The approach emphasises on getting it 'right from the start' by involving and engaging taxpayers and participants and putting in place more up-front measures to support compliance and prevent non-compliance as opposed to reactive measures.³⁰ The main argument for this approach is that up-front investment in the taxpayer's environment can foster a culture of voluntary compliance by influencing all the taxpayer's processes at the input stage. This may lead to correct declarations and returns being filed.³¹ It therefore can improve the efficiency and effectiveness of the tax administrations themselves, while at the same time benefiting the taxpayers: getting tax issues right from the start means less trouble (extensive audits, re-assessments and fines) and uncertainty in the end.³²

As a result, most tax administrations have over the years adopted strategies to address tax compliance risks before a taxpayer files a tax return with the primary aim of creating an environment which promotes compliance because it is the inevitable result of actions and transactions performed by taxpayers.³³ Although aimed at eliminating errors and reducing the possibility for non-compliant behaviour, the approach has the broader objective of reducing intentional tax evasion and strengthening the overall willingness to comply.³⁴ The approach requires the tax administration to shift its focus from the past to the present; from reports of previous fiscal years to ongoing tax-related processes in the taxpayers' businesses.³⁵ It recognises that intervening at the front end of a taxpayer's process could be more effective than checking individual returns afterwards. The fact that a taxpayer knows that tax compliance is built into his or her processes could significantly model their behaviour.³⁶ The tools available for implementing this approach include legislation; cooperation with stakeholders; the application of new technologies; the use of third

27 OECD (n 1 above) 1.

28 OECD (n 1 above) 7.

29 OECD (n 1 above) 1.

30 OECD (n 15 above) 2 20.

31 OECD (n 1 above) 8.

32 OECD (n 1 above) 1.

33 OECD (n 1 above) 3.

34 As above.

35 OECD (n 1 above) 8.

36 OECD (n 1 above) 35.

party data; education and support initiatives; field inspections; initiatives designed to influence social norms; and other tailor-made interventions to ensure that effective results will arise from a combination of these tools.³⁷

The 2014 FTA study stretches the ‘right from the start’ approach further to be effective in money payment systems. The FTA notes that the digital landscape has evolved significantly and that taxpayers, more so SMEs, are adapting to these technological changes to increasingly manage their information and payments digitally.³⁸ It recognises that a complete digital chain of information and payments, where everything fits together from recording business transactions to bookkeeping and accounting for tax, can improve processes as well as tax compliance. Hence, business transactions can be captured digitally and co-ordinated with electronic payments and electronic bookkeeping and further on with electronic reporting and payments to the government.³⁹

The 2014 FTA study recognises that, in an effort to shape the compliance environment, tax administrations increasingly are utilising technological developments and are promoting further developments in order to be more effective. Examples of the initiatives that build on these developments are certified cash registers; on-line bookkeeping and filing; and e-invoicing arrangements.⁴⁰ These measures encapsulate the ‘tax compliance by design’ concept as recommended by the OECD, which seeks to make tax compliance a natural part of the day-to-day transactions of taxpayers as they take place by leveraging technological developments.⁴¹

The ‘tax compliance by design’ concept relies on two principal strategies, namely, the secured chain approach and the centralised data approach.⁴² First, there is the secured chain approach, where the primary focus is on the taxpayer’s internal processes and how these processes are supported by trusted intermediaries.⁴³ Using this approach, the collection of data and processing it into information takes place within the taxpayer’s business and the intermediaries that support the taxpayer’s business. Second, there is the centralised approach where data is collected by third parties and the information is supplied directly to the revenue body which then transforms it into information about tax liabilities and payments that is fed back into the business.⁴⁴ The latter approach is premised on the idea that tax administrations can capture as many business transactions from the source as possible in order to determine the right amount of tax to be

37 OECD (n 1 above) 10.

38 OECD (n 15 above) 25.

39 OECD (n 15 above) 25-26.

40 OECD (n 15 above) 30.

41 As above.

42 As above.

43 As above.

44 OECD (n 15 above) 31.

paid with minimum information from the taxpayer. Tax compliance requirements are built into the information technology systems and processes used by taxpayer and data is delivered by third parties who may not have an incentive to manipulate it. Theoretically, therefore, this makes it easier to gain a desired level of certainty as data is not delivered by the taxpayer.⁴⁵ The OECD 2014 study notes that although the secured chain approach and centralised data approaches are different designs under the 'tax compliance by design' concept, they are all premised on the need for real-time collection of data about a business transaction and its use in automated processes that translate that data into information about taxes due and, where possible, payment of those liabilities.⁴⁶

4 Utilising mobile money payment systems data to facilitate tax investigations

The evolution of tax compliance strategies indicates that tax administrations are called upon to leverage technological advancements and innovations to facilitate tax compliance. More so, recent work by the FTA indicates that growth in e-commerce, which has been enabled by the availability of and faster internet connectivity, on the one hand, and the emergence and continued growth of electronic payment systems, internet payment services and mobile payment services, on the other, may offer greater opportunities for concealing income especially from underground economic activities in both domestic and offshore locations. The flip side is that these payment systems can also create electronic records that could prove to be a significant source of intelligence for tax administrations on unreported business proceeds.⁴⁷

The FTA, drawing on the work of the Financial Action Task Force (FATF), concluded that the significant rise in transactions and the volume of funds using these models require that they be kept under review as they could be used to facilitate tax evasion practices.⁴⁸ As a result, the FTA therefore recommends that tax administrations should be vigilant for evidence of tax non-compliance facilitated by the use of electronic payment systems and, where appropriate, to take advantage of electronic records created by the electronic point of sale (EPS) to identify unreported business income that may have been earned by those participating in the underground economy.⁴⁹

45 OECD (n 15 above) 35.

46 OECD (n 15 above) 30. See 39 for the differences about the secured chain and centralised data approaches for tax compliance by design concept table 3.1.

47 OECD (n 10 above) 2.

48 OECD (n 10 above) 3.

49 As above.

In Kenya, mobile payment is used by approximately 90 per cent of the population, not only to make peer-to-peer payments but also as a broader 'branchless banking' platform. This creates an opportunity for tax compliance mainly in terms of tax payment and data on mobile transactions that informs the recruitment of more taxpayers.⁵⁰

Historically, the primary tax compliance tool in Kenya has been audit and compliance checks. However, the KRA has noted that audit has a narrow focus as it mainly targets corporations. The KRA recognises that the process is mostly manual and takes a long time to complete, leading to a long list of pending cases.⁵¹ Because the traditional methods of improving tax compliance based on examination and sanctions have been counter-productive and ineffective, the KRA has had to rethink how to revamp its recruitment strategy to ensure that more taxpayers are brought into the tax net.⁵²

Hence, the combination of a shrinking tax base and the advancement of technology, more specifically the emergence of mobile payment platforms, has led the KRA to include a plan to broaden the tax base through enhanced taxpayer recruitment in its Sixth Corporate Plan. To this end, the target of the KRA is to recruit an additional two million taxpayers by targeting, among others, SMEs that transact through mobile payment platforms or use agency banking, to register for electricity or water connections or pay for services of which the payments are automated.⁵³ The KRA has estimated that there are over 2.7 million SMEs in Kenya that are mainly unregistered for tax purposes.⁵⁴

One of the key thrusts of the Sixth Corporate Plan is leveraging technology to enhance service delivery and promote compliance.⁵⁵ According to this Plan, the KRA intends leveraging technology to achieve a fully electronic service, in the hope that this will enhance its operational efficiency and thus result in greater customer satisfaction.⁵⁶ The KRA plans to achieve this by identifying opportunities for digital integration with partners and stakeholders in the tax system and explore a real-time automated review of taxpayer submissions.⁵⁷

Keeping abreast with recent approaches to tax compliance, particularly the 'right from the start' approach and the 'tax compliance by design' concept, the KRA has the opportunity to tap into mobile payments data and influence the taxpayer environment at the transaction level. This

50 Kenya Revenue Authority, Sixth Corporate Plan 2015/16-2017/18 22.

51 Kenya Revenue Authority (n 50 above) 33.

52 Kenya Revenue Authority 21.

53 Kenya Revenue Authority 30.

54 Kenya Revenue Authority 46.

55 Kenya Revenue Authority xiv xv 3.

56 Kenya Revenue Authority x.

57 Kenya Revenue Authority 23.

data could facilitate tax investigations under the new approaches to tax compliance in the following ways:

4.1 Tracking and monitoring taxpayers

An important task of tax administration is to bring together information from different sources, both within the administration and from other relevant government and private sources, in order to verify the information supplied by taxpayers themselves.⁵⁸ It usually is difficult to monitor transactions that are cash-based. However, the use of banking channels for payment makes transactions easier to observe and monitor. The growth of the financial sector and its greater role in the market economy broaden the potential scope of taxation and makes administration of certain taxes simpler.⁵⁹

The KRA can leverage technology to use mobile payments data as a tool for observing and monitoring transactions and taxpayers, thus detecting economic activity in the informal sector and bringing them into the formal sector.⁶⁰ Additionally, mobile payments data can be used to track receipts and expenditures not only of businesses into focus, but also of their suppliers and businesses down the economic activity chain. In this way it provides information about the financial capacity of both the seller and purchaser, and this can be matched to tax returns to authenticate the tax position.⁶¹ It is reported that in September 2015 alone, *Lipa na M-Pesa* transacted Sh15 billion. This, therefore, will enable the KRA to monitor individual transactions and profile businesses and individual M-Pesa users to measure the spending habits of an individual or a business, and its turnover and income levels.⁶² It therefore presents a huge data mining opportunity for the KRA.

4.2 Identifying individuals and businesses that fail to file returns

When access to mobile payment data has been granted, the KRA will receive information on a taxpayer's transactions with other businesses and information from intermediaries on the mobile payment platforms that transact with the taxpayer. Access to M-Pesa information can provide an

58 Zolt & Bird (n 12 above) 16.

59 Zolt & Bird 9.

60 Zolt & Bird 8.

61 Zolt & Bird 9.

62 E Okoth 'KRA targets mobile money to smoke out tax cheats' *Business Daily* 9 May 2016, <http://www.businessdailyafrica.com/KRA-targets-mobile-money-to-smoke-out-tax-cheats/-/539546/3196228/-/bovukwz/-/index.html> (accessed 13 June 2016). See also 'KRA now targets mobile money to smoke out tax cheats' *Daily Nation* 9 May 2016, <http://www.nation.co.ke/business/KRA-radical-plan-to-catch-tax-cheats/-/996/3196496/-/brq96h/-/index.html> (accessed 13 June 2016).

individual's expenditure, including bill payments, which can be analysed and the resulting data matched with tax returns to reveal discrepancies. The information from mobile money transfer platforms then can be matched with the taxpayer's tax records and their filing patterns analysed using their personal identification numbers (PINs). This could help in identifying both individuals and businesses that are active but that are not meeting their tax obligations.⁶³ If properly analysed, it can point out those that are not registered for tax purposes, while their activity levels indicate that they should be registered. It can also help to identify those that are active but do not file returns. Further, it can help to give indicators of those that are not filing appropriate returns and not paying the correct amount of taxes. These persons then can be profiled for targeted compliance monitoring or audits.

4.3 Expanding the tax base

Data from mobile money payments could be used to bring the hitherto untaxed population into the tax base. This is in line with the Sixth Corporate Plan, which outlined the KRA's intention to use electronic data to suggest incomes of those using mobile money to pay bills and make purchases as part of the effort to expand the tax net and rope in individuals and businesses using retail level data.⁶⁴ The move will enhance the KRA's financial data-gathering scheme to unearth income sources which have not been declared in tax returns and demand full compliance.

4.4 A more reliable audit trail

Tax audits play a critical role in the administration of tax laws through their detection of non-compliance and by serving as a deterrent to the wider population of taxpayers who might otherwise engage in non-compliant behaviour.⁶⁵ Audits are necessary because it may be the only way to reveal intentional noncompliance where other means have failed to reveal underpayment of tax. It involves examining returns filed by taxpayers as well as supporting documents to determine the correctness of self-assessed taxes.⁶⁶ According to Bird and Zolt audits may also be used for studying the characteristics within a group of taxpayers which serve as indicators within that group. However, the strategy deployed in auditing and the success thereof '... depend on the quality of the information available to the auditor, which in turn depends on three factors: the information gathered from the taxpayer and third parties; the information-processing capacity of auditors; and the strategy pursued.'⁶⁷

63 Kenya Revenue Authority (n 50 above) 30-31.

64 Kenya Revenue Authority (n 50 above) 57.

65 OECD (n 11 above) 7.

66 Zolt and Bird (n 12) 21.

67 As above.

Revenue bodies have been encouraged strongly to be vigilant for evidence of tax non-compliance facilitated by the use of electronic payment systems and, where appropriate, to take advantage of electronic records created by the electronic payment systems to identify unreported business income that may have been earned by those participating in the underground economy.⁶⁸ The third party records created by for example, the *Lipa na M-Pesa* transaction till, can therefore create meaningful electronic evidence that can be used during audits.

4.5 Pre-filling tax returns

Information from mobile money payment platforms could also be used as a pre-case investigation tool. For example, the information could be analysed and, where found to be relevant, used to pre-fill tax returns.⁶⁹ Using the current system of self-assessment, a taxpayer will be required to verify this information. This declaration then could be compared to information obtained from the mobile money payment platform and which is already hosted in the system to determine whether a true account of the taxpayer's activities had been rendered. Where there are mismatches and where there is no full declaration, further investigations can be launched into the taxpayer's affairs.

5 Potential challenges

Access to mobile payment data needs to be anchored in law. To this end, the KRA has planned to propose legislation that will grant it full and regular access to data collected by other organisations for the purpose of tax administration, specifically targeting mobile companies.⁷⁰ In the 2016 Budget Statement, the Cabinet Secretary for the National Treasury announced:⁷¹

In order to make it easier for taxpayers to submit their tax returns in the i-Tax system, I propose to amend the Tax Procedure Act to grant Kenya Revenue Authority powers to collect information in advance from identified persons for purposes of pre-populating the information in the i-Tax system.

However, any proposed amendment to the law may face challenges, and there is a need to widely sensitise and lobby both the National Assembly

68 OECD (n 10 above) 3.

69 OECD (n 15 above) 35.

70 Kenya Revenue Authority (n 50 above) 31.

71 Republic of Kenya 'Budget statement for the fiscal year 2016/2017 (1 July-30th June)' by Mr Henry K Rotich, Cabinet Secretary for The National Treasury, para 148 30-33. See also 'KRA hopes to attain target by netting mobile cash tax evaders' *Sunday Nation* 12 June 2016, <http://www.nation.co.ke/business/KRA-hopes-to-attain-target-by-netting-mobile-cash-tax-evaders/-/996/3245552/-/vnq1oh/-/index.html> (accessed 13 June 2016).

and the Senate and the mobile money payment platform operators on the advantages that may be brought about by granting such access.⁷²

Another potential challenge to access to mobile payments data is invasion of privacy.⁷³ Following this announcement, concerns have already been raised about the plan going against the right to privacy as enshrined in article 31 of the Constitution of Kenya. Banking and microfinance laws also provide for confidentiality of data and may require to be amended for access to be granted.

It has also been noted that the mobile payment data may be abused by government officials and others.⁷⁴ Therefore, there is a need for proper safeguards to ensure that data from mobile payments is used only for intended purposes.

Lastly, because of the significant data that is available on mobile payments, there is a need for proper infrastructure, both software and hardware, and analysis so as to derive any meaningful value from this data. There will be a need to train and equip KRA officers with appropriate skills to enable them to handle the data gained from such access and properly analyse it so that it gives out information that is useful for tax compliance monitoring.

6 Conclusion

The advances in technology have the potential to alter the economic environment in which governments seek to collect tax revenue. In developing countries, the upsurge in mobile payments may make it easier to move some individuals and businesses from the informal to the formal economy. Data from this payment platform can be used as an investigative tool to enhance compliance. However, there are obstacles such as the enactment of enabling legislation; overcoming privacy concerns; and assembling an enabling infrastructure before the revenue bodies can use the available data as an aid to compliance.

72 C Munda 'Tax experts laud KRA on its bid to access M-Pesa, bank accounts to nab tax cheats' *The Star* 20 May 2016 http://www.the-star.co.ke/news/2016/05/20/video-tax-experts-laud-kra-on-its-bid-to-access-m-pesa-bank-accounts_c1354133 (accessed 13 June 2016).

73 Zolt & Bird (n 12 above) 36.

74 As above.

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