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A Review of the fiscal regime and tax compliance in the oil and gas industry in Kenya

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DECLARATION

I declare that this work has not been previously submitted and approved for the award of a degree by this or any other University. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

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ABSTRACT

The recent discovery of oil and gas in Kenya is an opportunity to establish sound policies to support the generation of revenue. For citizens not directly benefiting from the oil and gas industry, revenue to the nation will be shared for the benefit of all, including future generations. Protecting this revenue throughout the life of the finite resource then is a major consideration for policy makers.

Taxpayers are not always of the same conviction as the Government of the revenue they should pay, hence revenue from macroeconomic projections and actual revenue collected can vary. Worldwide, disputes arising from oil and gas have resulted in loss of revenue to Governments. In addition to revenue forecasting, it is prudent to plan for collection through taxpayer compliance management in order to mitigate against revenue shortfalls resulting from realised tax compliance risks. Progressive taxation planning is an international best practice in oil and gas revenue planning that allows policy makers to move to seal loopholes as and when they occur since it is difficult to foresee all challenges facing the fiscal regime in oil and gas. This research sought to add to knowledge in progressive taxation planning by reviewing Kenya's oil and gas fiscal regime and tax compliance factors for optimised revenue collection.

Revenue regimes and tax compliance factors in the research were determined by studying fiscal regimes and compliance actions in the oil and gas industry in Africa from publicised cases that have been determined and concluded in a court of law. Fiscal regimes were compared with Kenya's corresponding fiscal regime and tax compliance factors that work in Kenya were deduced from taxpayer compliance actions using qualitative content analysis methods.

It was found that Kenya's fiscal regime in the oil and gas industry provides for collection of tax on Transfer of Interests and Signature Bonus, meaning that the fiscal regime was robust enough to facilitate for scenarios of collection of taxes from Transfers of Interest and Signature Bonus from oil and gas. However, the fiscal regime did not provide for staying proceedings in order to seek arbitration provided under Production Sharing Contracts (PSCs), which pointed to an area of possible loss of revenue collection through parallel and unrelated processes for tax dispute resolution.

The factors of tax compliance found to apply in Kenya were deterrence, norms, opportunity for evasion, fairness and trust, economic and financial factors and industry practice. It was deduced that a taxpayer in the oil and gas industry: unlike other industries, has favourable and robust options in dispute resolution processes; may want to avoid prolonged disputes; and can enjoy protection under the PSCs that fiscal regimes are not enforceable when they default.

Overall, the taxpayers in the oil and gas industry showed preference for functioning PSCs that provided for the demands of the industry; clearly defined fiscal regimes and incentives; mitigation of issues that can result in reputational risks, disadvantages to the business and financial losses; and a good-natured working relationship with the Government leaning heavily on legal compliance. PSCs were found to be strong tax compliance instruments leveraged by International Oil Companies and needed harmonised with fiscal regimes for optimal revenue collection.

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LIST OF ABBREVIATIONS

CIT – Corporation Income Tax

GoK – Government of Kenya

IOCs – International Oil Companies

IMF – International Monetary Fund

KRA – Kenya Revenue Authority

KSh. – Kenya Shillings

MPM – Ministry of Petroleum and Mining

OECD – Organization for Economic Co-operation and Development

PSA – Production Sharing Agreement

PSC – Production Sharing Contract

SAFLII – South African Legal Information Institute

UNCITRAL – United Nations Commission for International Trade Law

USD – US Dollars

WB – World Bank

WHT – Withholding Tax

VAT – Value Added Tax

DEFNITION OF TERMS

Accelerated capital cost allowance - allowing oil and gas companies to recoup higher amounts of costs by deducting them from taxes in a shorter period.

Appraisal – this is a distinct sub-stage of exploration following oil or gas discoveries, where companies assess the findings to make a decision to produce the oil if the quantity and quality are found to be commercially viable.

Bonus – a cash consideration paid by the oil company to the Government for the execution of an oil and gas PSC.

Cost oil – a proportion of oil that is produced that an oil company deducts from production in order to recover costs as defined in the PSC.

Debt-to-equity ratio – is the comparison of an oil company's total debt to total equity that can give it advantages when it comes to tax liability.

Depletion allowance – a tax deduction allowed to compensate for depletion of oil or gas resources.

Deterrence – This is a factor of tax compliance and is defined as the fear of detections and audits by taxpayers. The taxpayer will therefore pre-empts action to prevent being on the wrong side of tax compliance and the motivating factor for compliance is it costs more not to comply than to comply.

Economic and Financial factors – This is a factor of tax compliance and is defined as the motivation for companies to operate in a country, such as incentives given by the host Government.

Fairness and trust – This is a factor of tax compliance and is defined as the perceptions of tax systems by different taxpayers.

Fiscal regime – is a component of a country's fiscal policy specifically designed for the oil and gas industry that states the different sources of Government revenue, how much and how it will be collected. It differs slightly from tax policy that is a component of fiscal policy that specifies taxes to be collected.

Industry practice – This is a factor of tax compliance and is defined as the attributes that cause taxpayers to act in ways that are standard to industry or profession.

Investment credit – allow oil companies to deduct a percentage of capital costs from their taxable income.

Loss carry-forward – allowing oil and gas companies to carry forward losses to deduct from taxes until the cost of capital is recouped. This is a useful benefit since the oil and gas industry is capital intensive.

Norms – This is a factor of tax compliance and is defined as those attributes that cause taxpayers to conform to group mentality.

Oil block – division of a country's land to allocate places which oil companies can carry out exploration for oil and gas.

Opportunity for evasion – This is a factor of tax compliance and is defined as the existence of little or no barriers not to comply with tax requirements.

Petroleum development – a stage in the oil and gas industry after a decision to produce oil or gas is made where an IOC builds production wells to facilitate oil deposits below the ground or under water to be brought to surface.

Petroleum exploration – a stage in the oil and gas industry covering the activities carried out in the period when IOCs are prospecting for oil.

Petroleum fiscal progressivity – fiscal progressivity in taxation is the increase in taxation with the subsequent increase in income. In oil and gas, fiscal progressivity represents the changing fiscal regime that is carried out to ensure that revenue optimisation is achieved.

Petroleum fiscal regime – a country's set of laws, regulations and agreements which govern the economic benefit from petroleum exploration and production.

Petroleum production – a stage in the oil and gas industry which happens after development works are complete and is the stage where oil or gas is brought to ground level.

Profit oil – the amount of oil in production after cost oil has been deducted

Production sharing – the division of profit oil between parties participating in a PSC and a host Government.

Resource/ Oil rent – the value of extraction of mineral resources (oil) compared to the share of return.

Revenue – is a fiscal policy tool and is the finances received by a Government from taxes, aid, fees, fines, rents, investments, loans, state owned enterprises, donations and so on.

Ring-fencing – limiting expenses from oil and gas activities that can be deducted from taxes to the block that where those costs have been derived from.

Royalties – Money paid to the Government and is a percentage of the production of oil and gas

Stabilization – protects oil and gas companies from a country's changes in fiscal policy and political risks.

Super profit – the excess of average profits over normal profits. It can also be known as windfall profits.

Tax compliance – this is the taxpayer's ability to calculate the right amount of taxes, fill the tax return and file and pay that amount in time. Voluntary tax compliance is the ability for the taxpayer to do these activities on his own without the tax agency.

Tax policy – is a component of a country's fiscal policy that highlight the taxes to levy, in what amounts and to whom. In oil and gas, revenue is not limited to taxes only, therefore a petroleum fiscal regime applies.

Tax holiday – an incentive by host governments to attract investment to the oil and gas industry that offers oil companies reduced or nullified taxes.

Tax morale – citizen's or businesses' attitudes towards paying taxes.

Transfer pricing – the value of transactions between a parent company and its subsidiaries (related parties) that can give it advantages when it comes to tax liability.

Upstream industry – the three stages (exploration, development and production) of oil and gas activities.

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Most of all, I acknowledge the hand of God in His guidance to me in doing this research. I believe God has great insights into the task ahead for our nation.

To all who had input in this research, may God bless you.

DEDICATION

This research is dedicated to the God of all creation, who gives natural resources generously and works creatively to streamline the oil and gas industry in Kenya, and to the Republic of Kenya, a beautiful land with unfathomable potential.

CHAPTER 1: INTRODUCTION

1.1. Background of the Study

High investment is required to carry out oil and gas industry activities and International Oil Companies (IOCs) seek ways to carry out exploration, development and production activities, through which working capital can be injected into these activities. In the case of oil and gas, Joint Venture (JV) investments are sought where a company injects working capital into an exploration block in exchange for a share of profits from production (Tordo, 2007). The high cost of investment in the oil and gas industry means that companies that participate in the oil and gas industry appreciate the high risk and high returns models. They also prefer to work in countries where economic policy creates a more stable, profitable and predictable operating environments (Kemp & Rose, 1984).

With so much emphasis on returns that maximise profits, Governments also needs to ensure that Government shares of profit oil and taxes from the oil and gas industry are realised. Simply put, the more the taxpayer profits, the less the Government will profit from oil and gas. Fiscal regimes in the oil and gas industry are therefore are a balancing act so that taxpayers recoup their costs through investment tax credits and depreciation and make a reasonable amount of profit, and the Government (citizenry) benefits from its natural resources (Weller & Rao , 2008).

The balance between profits to the host Government and IOCs is maintained using optimal tax theory which applies fiscal regime that ensures that revenue from oil and gas allows IOCs to recoup the high costs invested, and retain a fair amount of revenue for the Government. This fiscal regime is implemented by applying fiscal regimes and in oil and gas, as well as making constant changes to the fiscal regime to ensure that the right amount of profits are also allocated to the host Government (Daniel, Keen, & McPherson, 2010).

The fiscal regimes and compliance risk management provide connections between revenue projections from economic policies and actual revenue collections. If fiscal regimes provide taxpayers with regimes to pay taxes, then revenue collection is assured (Gambo, Mas'ud, Nasidi, & Oyewole, 2014). Similarly, if compliance risk is monitored, taxpayers can be guided to tax compliance patterns that ensure that revenue is also collected as expected (Stead & Orozco, 2019).

Changing fiscal regimes in oil and gas have been seen in countries around the world that produce oil and gas or mineral resources. This paper has reviewed progressive fiscal regimes for Norway and Nigeria for oil and gas and Tanzania for minerals as part of the Literature Review. Changing fiscal regimes in an attempt to optimise revenue to the Government can result in less revenue as seen in Nigeria from 1971-1993, delayed revenue as seen in Norway from 1972-1996 or immediate returns of increased revenue to mineral resources industries, which is the intended outcome of fiscal progressivity of the oil and gas fiscal regime.

African Governments go a long way in developing local industries like attracting investment in their industries. African countries have grappled with the reality of aid and foreign direct investments it receives in return for problems of tax evasion and exploitation of resources by the same countries and companies from those countries (Kar & Feitas, 2012). For the oil and gas industry, due to the high investment required in this industry, IOCs are given incentives to invest in exploration and production in African countries with little return back to the host Government (Moyo, 2009).

Petroleum exploration has been on-going in Kenya since the 1950s and commercially viable petroleum discoveries were made in Lokichar in Turkana in 2012. Significant gas discoveries have also been made offshore (Ministry of Petroleum and Mining, 2019). During the period following the discovery in Turkana, the country experienced an increase in exploration activities for oil and gas in the country by local and multinational companies as evidenced by the uptake of contract for exploration blocks at the State Department of Petroleum. Kenya has now signed forty-two PSCs (Ministry of Petroleum and Mining, 2019). The Government has progressed oil and gas economic policy with an aim of boosting economic growth. Oil and gas now is a driver of Vision 2030 (Government of Kenya, 2010). The Government has implemented the National Energy Policy and Petroleum Act 2019 with Regulations like the Local Content regulations, which ensure inclusion in oil and gas economic activities of locals and nationals as labour, product providers and service providers. The petroleum fiscal regime to cater for the industry has also been improved and is under constant scrutiny to ensure that revenue from the industry is appropriately collected. Revenue legislations such as the Income Tax Act of 2014 introduced the Ninth Schedule, which specifically provided for mining and oil and gas activities (National Assembly, 2014). This holistic approach to economic planning and growth are activities that have to be carried out to position the oil and gas to propel the economy forward.

In Kenya, a contract, known and the PSC, details the contractual relationship between the Government of Kenya and the JV and the requirements either party will meet. The negotiated and agreed upon obligations include fiscal and non-fiscal terms. Fiscal terms detail how financial risks and benefits will be shared between oil companies and governments, while non-fiscal terms detail how the oil and gas oil and gas industry will be governed and managed for efficient and effective operations (Tordo, 2007). Key fiscal terms are defined by: bonus, royalties, income tax, windfall profits tax, oil rents, government equity, other taxes and fees, production sharing, transfer pricing, debt-to-equity ratio, ring-fencing, loss carry-forward and stabilization clauses (Tordo, 2007). Non-fiscal terms are defined but are not limited to accelerated capital cost allowances, depletion allowances, investment credits and tax holidays (Natural Resource Governance Institute, 2010). An example of the use of fiscal and non-fiscal terms is how costs will be approved by the Government and recouped by the IOC (JV) and how profits will be shared between the IOC (JV) and the Government.

Activities in the oil and gas industry all occur in the context of Kenya's political economy in which citizens have high expectations of improved livelihoods. Other issues facing oil and gas include IOCs seek to maximise profit; global business and the tax issues arising from cross border transactions; and the fact that the resource is finite and will be depleted after a period of exploitation (Botlhole, Asafu-Adjaye, & Carmignani, 2014). Countries must practice prudent tax policy planning in order to make sustainable gain from resource wealth as Governments gets better returns (profits) and collects a fair share of tax from economic activity from the industry (Daniel, Keen, & McPherson, 2010). This calls for the need for a suitable fiscal regime.

In anticipation of large inflows of revenue from oil and gas, this paper reviewed Kenya's oil and gas fiscal regime and tax compliance factors. This was done by comparing Kenya's oil and gas fiscal regime with information drawn from case studies in other countries in Africa.

1.2. Problem Statement

Optimal taxation is more critical in oil and gas than other industries since the resources are of high value and are limited i.e. are depleted after a period (Daniel, Keen, & McPherson, 2010). Although much effort is put into optimal taxation, as evidenced by the various methodologies that have been developed to monitor production (IMF, 2019), revenue loss can occur at the point where it is collected through the IOCs recovering costs, transfer pricing, failing to declare value-added transactions that have taken place on- or off-shore, among other harmful practices (Luca & Puyo, 2016). Failure to plan for collection of the right amount of revenue from oil and gas will be regretted at the end of the production period, since there will be nothing tangible in the economy to show for those depleted resources, and nothing to carry forward for the future generations (Barnett & Ossowski, 2003).

Similarly, compliance monitoring in Government agencies responsible for revenue follows standard or generic compliance monitoring standards based on compliance risks (Coglianese, 2012), which may not be suitable in collecting optimal revenue from the oil and gas industry.

The high revenue, finite oil and gas resources, disadvantage that African countries have faced when exploiting their natural resources and modest or generic tax compliance framework by Governments involved in the oil and gas industry call for research to strengthen the fiscal regime and tax compliance framework for optimised revenue collection. The type of optimal taxation which anticipates problems that hinder collection of the appropriate amount of revenue is an international best practice used for fiscal regime planning in the oil and gas industry also known as progressive fiscal systems. It allows changes to be made when revenue collection is not consistent with projections because of unanticipated gaps in the fiscal regime (Daniel, Keen, & McPherson, 2010).

A shift in generic fiscal regimes and compliance monitoring is required in order to optimise revenue from the oil and gas industry (Luca & Puyo, 2016). This paper reviews fiscal regimes and compliance factors that will result in revenue optimisation in the oil and gas industry in Kenya.

1.3. Research Objectives

The overall objective of the paper was to review the Kenya oil and gas fiscal regime and factors of compliance for optimised revenue collection. The specific objectives were to:

i. Identify tax instruments and taxpayers' compliance actions in all the publicly available oil and gas industry court cases in Africa.
ii. Compare identified tax instruments with the corresponding Kenyan oil and gas fiscal regime for provisions for the tax instruments.
iii. Deduce factors affecting tax compliance in Kenya's oil and gas industry from the taxpayers' compliance actions.

1.4. Research Questions or Hypothesis

i. What are the tax instruments and taxpayers' compliance actions in all the publicly available oil and gas industry court cases in Africa?
ii. Does Kenya's oil and gas fiscal regime provide for the tax instruments found in court cases from other countries in Africa?
iii. From oil and gas industry taxpayers' compliance actions in Africa, what are the factors affecting tax compliance in the oil and gas industry in Kenya?

1.5. Scope of the Study

This research reviewed Kenya's oil and gas the fiscal regime to ensure timely, sound and appropriate for collection of revenue by checking for tax compliance. It collected and reviewed information of taxpayer compliance and comparisons for Kenya's regime.

It did not study the political economy of oil and gas and macro-economic planning and projections for oil and gas activities, which are pre-requisites to formulation of the fiscal regime. The research did not study the soundness of legal arguments in the case studies but only drew from information that was used to check fiscal regimes and make inferences on taxpayer compliance behaviour. It also did not study cases arising from the complex sub-contractual agreements that are common in the industry, which introduced dynamics of taxpayer compliance that will need to be subjected to further study.

1.6. Significance of the Study

This research provides tax policy makers with knowledge on whether the fiscal regime is timely, sound and appropriate for collection of revenue in the oil and gas industry in Kenya. Fiscal regimes and compliance monitoring follow legally entrenched and pre-determined or standardized policies based on compliance risk factors.

County Governments in Kenya will also gain better understanding of the operations of IOCs in their counties and provide better support to fiscal regimes and compliance monitoring frameworks. With the current changing business environment from local operations to global business transactions, changes in fiscal regimes and compliance monitoring yield higher compliance by corporations and individuals in counties and ensure that higher returns in revenue.

IOCs can benefit from the research by getting deeper insights of Government set fiscal regimes and compliance monitoring. This will result in better interaction between the Kenya Government and IOCs.

Tax compliance monitoring for the oil and gas industry can be improved in Kenya Revenue Authority and other African revenue collection agencies by monitoring fiscal regimes and specified taxpayer compliance factors. This study resulted in known tax compliance trends of IOCs involved in the oil and gas industry in Kenya.

It is possible for Government agencies that collect revenue to provide fiscal regimes and compliance monitoring from a deeper understanding taxpayers' compliance patterns. This is expected to yield higher revenue from oil and gas.

This dissertation is also available for reference by academic researchers at the Strathmore University's database.

CHAPTER 2: LITERATURE REVIEW

This Chapter reviews academic literature on the theoretical framework for the fiscal regime of oil and gas companies' including a comparison of the output of fiscal regimes showing revenue from oil rents in sub-Saharan Africa and Organization for Economic Co-operation and Development (OECD) countries.

Different aspects of Fiscal planning in other countries like Norway, Tanzania, Nigeria and Kenya are used to discuss the theoretical underpinnings of oil and gas fiscal regime.

2.1. Economic Policy for the Oil and Gas Industry

The former Managing Director at the IMF once remarked, "There are few areas of economic policy making which the returns to good decisions are so high - and the punishment of bad decisions so cruel - as in the management of resource wealth." (Daniel, Keen, & McPherson, 2010).

Oil and gas is a distinctive industry which poses special challenges to macroeconomic policy, but whose returns promise change for the better to livelihoods of masses, directly or indirectly. For this reason, economic policy in resource rich countries should be well appraised of: (i) the impact of non-resource economic sectors; (ii) budget stabilization to absorb volatile commodity prices of natural resources; (iii) fair sharing of benefits of resource wealth across the people of the nations and its generations; and (iv) transparent and accountable governance structures for the financial flows that arise from natural resource wealth (Daniel, Keen, & McPherson, 2010). Barnett & Ossowski give guidelines on how fiscal regime design and evaluation should focus on the wider government fiscal regime as opposed to focus on oil revenue to ensure that governments remain economically strong in spite of fluctuations that occur because of oil revenue (2003).

It can be understood from this argument that from a high-level perspective, attention should not be on oil and gas revenue because of how it affects economic stability, but overall economic policy should focus on non-oil revenue. However, the fiscal policy for oil and gas is important because some countries rely on its revenue to boost the economy (European Bank for Reconstruction and Development, 2001). For example, hydrocarbons contribute up to 70% of revenue in countries like Yemen and Algeria (Daniel, Keen, & McPherson, 2010). Revenue from natural resources can therefore not take a back burner in economic planning and policy formulation, although it is advised that it should not be central to Government macroeconomic policy in order to avoid challenges like the Dutch Disease as experienced in other countries.

This argument that non-oil revenue are best not used to fund the economy because it promotes economic stability does not favour African countries, which make use of revenue from oil and gas activities in the economy more than developed countries. According to World Bank statistics, non-high income countries are yet to implement a fiscal regime that stabilises revenue from oil and gas. Generally, oil rents as a percentage of GDP fluctuate far more in sub-Saharan African states than in more developed European (EU) or OECD states (The World Bank, 2019).

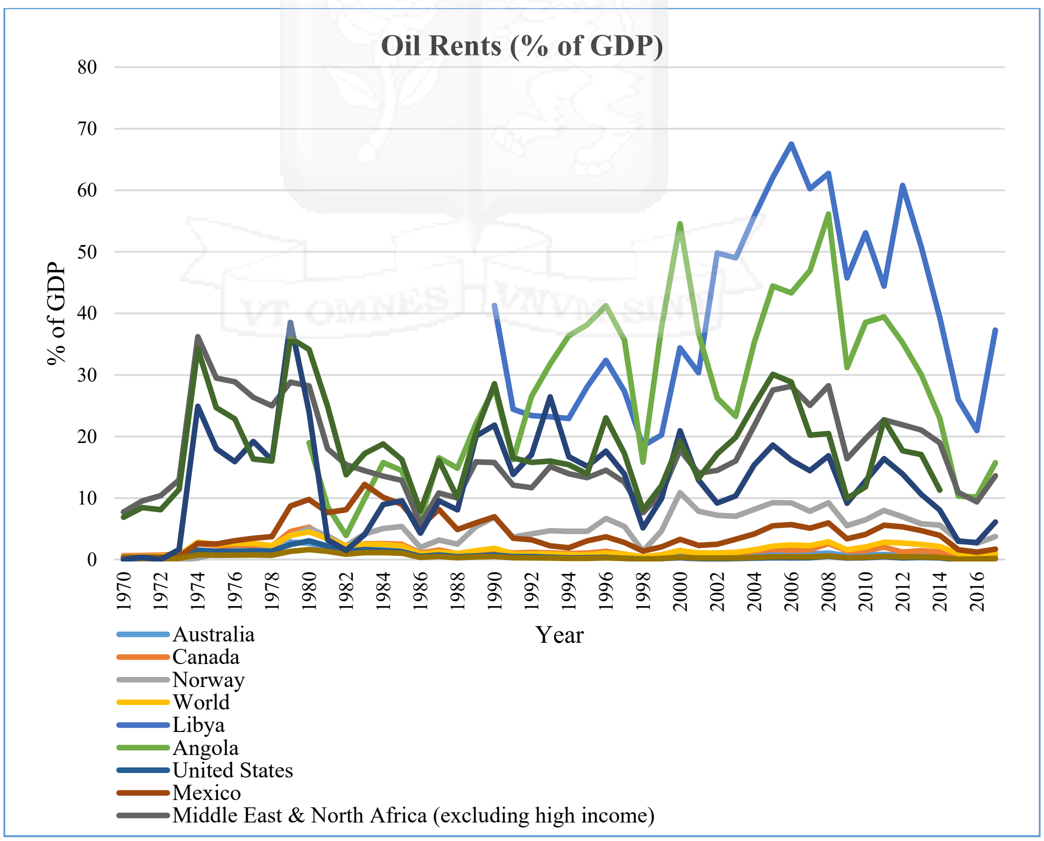

Figure 1: Oil Rents in Select Countries, Regions and the World as a Percentage of GDP

Even in more developed nations, fluctuations in oil rents as a percentage of GDP in the 1970s to 2017 illustrate that oil and gas revenue varied from time to time as Governments sought to best benefit from oil and gas as shown in Fig. 1 (The World Bank, 2019). Countries like the United States of America (USA) and Angola have the highest contributions from oil rents and this revenue fluctuates greatly as a percentage of GDP. Regional blocks like the Middle East and countries like Nigeria and Venezuela have moderately fluctuating oil rents as a percentage of GDP. Norway and the OECD block have relatively smooth fluctuations in oil rents.

It can be seen that especially in non-high income countries, except USA, oil rents as a percentage of fluctuate greatly. It is more likely that the oil is the cause of the fluctuation more than GDP.

Regardless of fluctuation, this revenue has always been and will continue to be collected as long as the resource is available. It therefore needs planning for revenue optimisation. This means that optimal taxation applies in oil and gas as its revenue in African countries is used directly to finance development, bridge budget deficits and provide public services (Botlhole, Asafu-Adjaye, & Carmignani, 2014).

2.2. Applying the Theory of Optimal Taxation in the Oil and Gas Industry

Having determined that the general direction of economic policy on the oil and gas industry in developing countries is to collect revenue and use it for the national budget and development, fiscal regime therefore needs to be determined and applied, in order to achieve optimal taxation.

Optimal tax theory in the oil and gas industry is the design and implementation of taxation in order to maximise collective welfare, without unfairly distorting the behaviour of IOCs and other participants in the industry (Mankiw, Weinzierl, & Yagan, 2009). In the oil and gas industry, since various sources of revenue are in place, optimisation of this revenue should be well thought out. It therefore is an important role of Government to implement fiscal regimes that are collectible and at the same time, proportionate to IOCs. Revenue to the Government from the oil and gas industry include revenue from taxes and revenue from other non-tax instruments, which are specific to the oil and gas industry. For instance, IOCs will pay income taxes, capital taxes or commodity taxes, depending on the obligations it has negotiated with the host Government. This also includes peculiar taxes like resource rents which are charged on super profits an IOC can make as a result of high oil selling prices or high production. They will also pay to acquire exploration and production contracts, acquire ownership in a JV or access the land on which the oil blocks lie (Luca & Puyo, 2016).

In oil and gas, optimisation of revenue therefore balances delicately between attracting investors by reducing their excess burden, and generating revenue to fund Government expenditure on public goods and services. Tax policies in the oil and gas industry are designed to collect taxes and revenue from the different types of revenue. The fiscal regime therefore is the collective legislations, regulations and agreements through which Kenya governs economic benefits derived from petroleum exploration and production. The difference between tax policy and the petroleum fiscal regime therefore lies in the fact that the tax policy limits its rules to collection through taxes, and a petroleum fiscal regime collects revenue through tax and non-tax revenue. In Kenya, revenue and taxes from the oil and gas industry are collected by KRA (National Assembly, 2019). With that understanding, the IOCs in this research were referred to as taxpayers for all the types revenue remitted to KRA and the term revenue was used interchangeably with tax.

Progressive improvement of fiscal regimes is therefore important for developing countries since taxation is an instrument for wealth redistribution (Huesca Reynoso & Araar, 2016). The constant change in a fiscal regime is described as the fiscal progressivity of an oil and gas fiscal regime, which makes it necessary for Governments to constantly review economic policy in oil and gas to ensure that it collects the right amount of revenue is collected. This means that these variable economic policies cascade down to equally varying fiscal and monetary policy in oil and gas (Luca & Puyo, 2016).

The petroleum fiscal regime will be reviewed and tax compliance factors will be identified in line with the theory of optimal taxation, in an effort to determine revenue collection in the oil and gas industry.

2.3. Oil and Gas Fiscal Regimes in Different Countries

Loss of revenue can seem to be greater in the petroleum sector due to the amounts and different streams of revenue (Kar & Feitas, Illicit Financial Flows from Developing Countries: 2001-2010, 2012). As an example, it has been reported that Africa relies on the extractives sector to power economies with countries like Nigeria relying on oil to fund 75% of its government revenue and Zambia's copper that contributed 73% of total exports in 2015. During this period, exports from African countries were comprised of 67% extractives, 50% of which was petroleum. Illicit financial flows from Africa represented more than $1 trillion in the last fifty years (Kar & Leblanc, 2013).

Countries such as Norway are successful in managing natural resources revenue and have been used as benchmarks to compare performance of the oil and gas sector in other countries (Holden, 2013). Norway is said to have established institutions early on in oil and gas development and have a stable democracy that limited political interference in economic decision making. This institutional alignment made way for appropriate channelling of policy direction in fiscal and monetary policy (Thurbera, Hultsa, & Hellerb, 2011). Fiscal regimes were applied accompanied by fiscal and monetary policies that ensured that oil and gas revenue was diverted to sovereign wealth funds.

Norway's fiscal regime includes use of tax rates and non-tax factors to optimise revenue. The state owned oil company which is directly involved in oil and gas production was formed in 1972 and owned 100% by the Government, was privatised and listed in New York and Oslo Stock Exchanges in 2001 with a second offering in 2004 and a merger in 2007. The Government currently owns 67% of Statoil (Liu, 2016). This means that the Government not only get taxes and the Government's share of profit oil from the production and sale of oil and gas, it also gains a larger amount from cost oil and profit oil since it is directly involved in oil and gas activities, as opposed to the Kenyan Government which has a carried interest in the industry through PSCs. The result is that Norway has had much more share of revenue and a relatively stable, predictable and smooth revenue from oil and gas. Oil rent in Norway has gradually increased from 0%-5% in 1972-1996 to between 5%-10% of GDP from 1996-2014 (The World Bank, 2019). Norway is a good example of how a country has optimised revenue by using taxes and non-tax revenue, in this case through ownership of the company. In this case, since revenue is going back to the country through ownership of what we know as IOC operations, it is less critical to monitor tax rates for the purpose of progressivity of the fiscal regime.

In Africa, the reliance of Nigeria on oil and gas is seen in its exports of approximately USD 100 billion of oil and gas annually (Africa Progress Panel, 2013). The progressivity of the fiscal regime followed the path of adopting JVs in 1971 and issuing the PSC in 1973 with royalty rate at 0%-16.7%; making the royalty regime at 12.5% in 1975; a Corporation Tax ring fencing regime in 1981, increasing PRT to 45%, 60% and 70% by 1981 and to 75% in 1982; abolishing the royalty regime in 1982; reducing PRT to 50% in 1993 (Alade, 2012). These variations of the fiscal regime were necessary in order that the Government would get a fair share from Nigeria's oil resources. The resulting revenue to Nigeria as a percentage of GDP was 1.6% in 1973, 18.0% in 1975, 1.5% in 1981, 26.4% in 1993 (The World Bank, 2019). The regime may not have resulted in consistent increases in revenue for various reasons including the fact that it was underpinned by a royalty regime from the time it began to 1982 and introduced an income fiscal regime, after which it rose steadily from 1.5% of GDP in 1982 to between 15%-25% of GDP in the subsequent years to 1993. This illustrates the importance of consistently reviewing the fiscal regime until a satisfactory fiscal regime is found. If the fiscal regime in Nigeria had remained largely the same of had very small changes, revenue would have been lost, even more than was already lost as the Government progressively improved its fiscal regime.

Although Tanzania primarily has more mineral resources than oil and gas, the principle of revenue optimisation in another African country is seen through its evolving tax rates. In 1997, Tanzanian Government's share of total benefits was significantly less by about 10% of the production share, compared to the share collected under the 2004 regime. The 1997 fiscal regime allowed for 100% debt financing and 4% royalty rate with 0% equity financing. In 2004, the fiscal regime retained the 4% royalty rates and 0% free equity. It also introduced 20% resource rent tax and 15% uplift rates and reduced debt financing to 75% (Daniel, Keen, & McPherson, 2010).

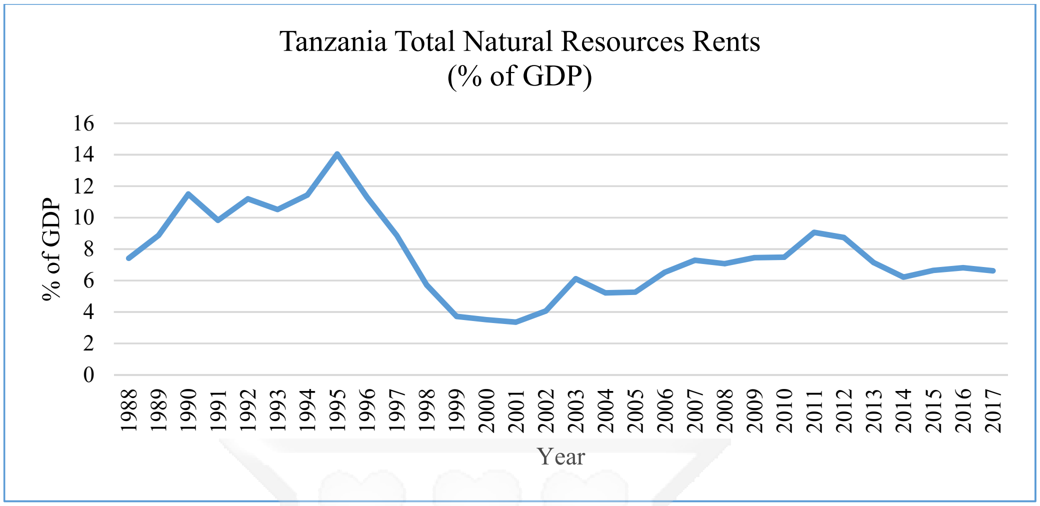

Figure 2: Tanzania's Total Natural Resources Rents a Percentage of GDP

As shown in Figure 2 above, Tanzania's natural resources rents was 8%-15% before 1997, 3%-7% of GDP in 1997-2002 and 5%-10% of GDP from 2004 onwards (World Bank, 2019). Tanzania has therefore utilized various tax instruments over time to optimize returns to the Government, representing a progressive fiscal regime. It can be noted however, that the rents dipped after 1997, which can be attributed to the fiscal regime in use not being optimal.

In preparation for revenue from oil and gas, the Government of Kenya has borrowed principles that oil revenue should be planned for, collected and disbursed as a distinct revenue stream, even as other economic sectors are being monitored (Daniel, Keen, & McPherson, 2010). By formulating a specific regime for oil and gas revenue, the Government is better able to monitor performance of the fiscal regime.

2.4. Kenya's Oil and Gas Fiscal Regime

Before oil discoveries in 2012, Kenya did not have a robust operating environment for the sector under the Petroleum (Exploration and Production) Act of 1985, which only has twelve sections. The Petroleum (Exploration, Development and Production)

Act was enacted into a law in 2019, brought into force a new fiscal regime and introducing the new Model PSCs (National Assembly, 2019).

Kenya's PSC has evolved including more tax provisions in the Model PSC (Ministry of Petroleum and Mining, 2016). Under the Income Tax Act 2014 and VAT Act, IOCs are expected to pay CIT, WHIT and VAT. Detailed tax treatment of companies in the upstream sector are specified in a separate schedule in the Income Tax Act i.e. the Ninth Schedule. Provisions for taxation of direct or indirect Transfer of Interest and Hedging were introduced. Provisions on how capital expenditure deductions, ring fencing and allowable expenses would be treated for tax purposes are also clearly stated (National Assembly, 2014).

Kenya is not producing oil and gas, therefore its fiscal regime is not in full use and can't be reviewed for optimised revenue collection from IOCs, and it only anticipates that it will be effective. The fiscal regime can be reviewed by comparing it to fiscal regimes in countries that are in production that have similar challenges. With strengthened fiscal regimes and tax compliance monitoring, Kenya's is able to optimise revenue from the oil and gas industry. Best practice however, calls for constantly reviewing and amending the fiscal regime in oil and gas in order for Governments to gain from the industry (Barnett & Ossowski, 2003). It therefore is prudent to anticipate challenges that an oil and gas fiscal regime can encounter and provide against such risks.

2.5. Tax Compliance and its Factors

Public policy evaluation is an important part of Government since it seeks to establish how well regulations and regulatory policies work. Regulatory administration, behavioural compliance and outcome performance are ways in which policy effectiveness and efficiency can be measured (Coglianese, 2012). Compliance with tax requirements provides a good measure of the effectiveness of an optimal tax policy.

Behavioural economics studies have proved that decision making by human being follows predictable patterns and that man is bound to stumble from rational decisions for various reason (Ariely, 2010). Lobel and Amir assert that gaps arising from human missteps can be resolved by laws and policies from insight into behavioural economics (2009). This signifies a new perspective in the implementation of optimised taxation that was more contentious and adversarial between a taxpayer and the agency in charge of revenue collection.

OECD suggests that tax compliance monitoring can use a model of assuming taxpayers are rational and make right decisions when it comes to paying taxes, combined with nudges from the responsible agency in order to foster tax compliance (OECD, 2013). OECD gives factors that contribute to tax compliance in an analysis of taxpayer behavior. They are (i) deterrence such as fear of detections and audits; (ii) norms which cause parties to conform to group mentality; (iii) opportunity for evasion; (iv) fairness and trust as perceived by different parties; (v) economic factors such as tax rates; (vi) financial factors such as incentives; and (vii) industry practice in which parties act in ways that are standard to industry or profession (2006). It is possible to interpolate and customize these compliance factors to other taxpayer categories (2013).

Kenya has changed its tax compliance policies in line with more developed countries' policies, to more facilitative approaches preceding enforcement approaches. KRA has embarked on an initiative that seeks to improve its delivery of services to taxpayers based on a more trusting and facilitative approach and relationship to improve voluntary compliance among its taxpayers (Kenya Revenue Authority, 2015). This is as opposed to a more tax compliance model based on the force of the law and the power to enforce tax laws in order for taxpayers to comply with tax requirements, also known as enforced compliance. This means giving taxpayers an opportunity to comply by working with them to ensure that they meet their tax requirements, as opposed to giving guidelines and monitoring for those who do not comply in order to enforce tax laws (Wahl, Hoelzl, & Kirchler, 2008). This tax compliance policy has to be tried to ensure that revenue loss does not occur. One of the ways is to review taxpayer compliance patterns and to design fiscal regime in line with those compliance patterns (Manhire, 2015).

Tax revenue represents less than a third of GDP in sub-Saharan Africa is low compared to OECD countries where tax revenue accounts for a third of GDP

(Gambo, Mas'ud, Nasidi, & Oyewole, 2014). This is an indicator of lower tax compliance in African countries. However, OECD have attempted to illustrate tax morale or the willingness of business taxpayers to comply with taxes. From the illustration below, tax morale in Africa is higher for businesses compared to other regions in the world (Stead & Orozco, 2019).

Tax Morale in Businesses

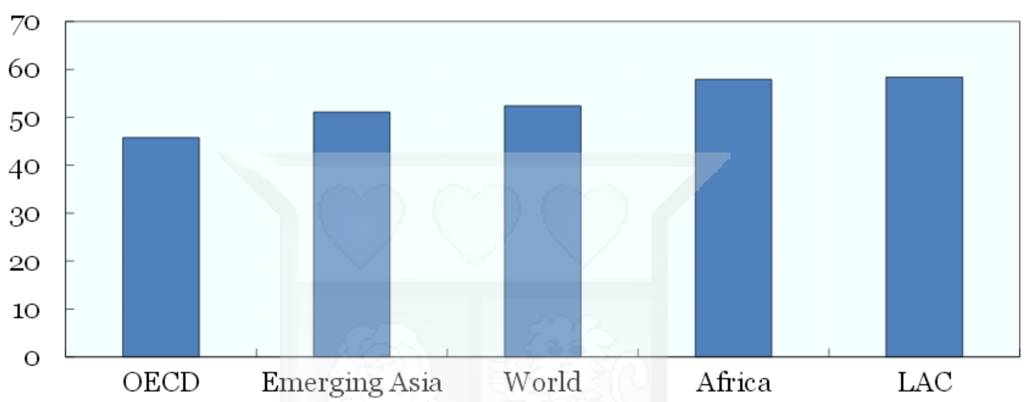

Figure 3: Tax Morale of Businesses

This represents a contrast to low tax revenue as a percentage of GDP in sub-Saharan Africa where figures are generally below 20% (Gambo, Mas'ud, Nasidi, & Oyewole, 2014). This points to the fact that tax revenue, even if collected in sub-Saharan Africa through compliance mechanisms, are not high. That in itself brings to questions if revenue is being lost through other means that have not been detected such as illicit financial flows, in which the oil and gas industry in Africa contributes (Kar & Leblanc, 2013). Studying fiscal regimes and tax compliance can shed light into trends in tax revenue in Africa.

Fiscal regimes are measures of an optimised fiscal regime and of how well the tax administration can collect revenue, while tax compliance is a measure of how well the tax administration can depend on a taxpayer to declare, file and pay taxes correctly (Manhire, 2015). It therefore is possible to study revenue collection by reviewing fiscal regime performance and taxpayer compliance indicators.

2.6. Summary and Knowledge Gap

Kenya, like other resource rich countries in Africa, has an opportunity of great economic development potential in the oil and gas industry. Revenue from oil and gas is utilized in the local economies in African countries in spite of the shocks it causes because of price volatility. Worldwide, countries are continually reviewing fiscal regimes in oil and gas in order to optimise revenue collection. An appropriate fiscal regime will achieve the economic development that oil and gas activities can bring Kenya. It is possible to review fiscal regimes by studying reactions to them in other jurisdictions that are already using the policies.

This study, therefore, provides insight that will gradually improve fiscal regimes in the oil and gas industry i.e. towards building a progressive fiscal regime in the oil and gas industry expected to result in increased revenue collection from the oil and gas industry in Kenya.

2.7. Analytical Framework

This research uses case studies and the reasoning that an experience that has occurred in one jurisdiction can be used to improve on a fiscal regime in a country that is developing a regime. The independent variable is the fiscal regime that is already in use that is being used to mirror advantages i.e. fiscal regimes in African countries. The dependent variables are the fiscal regimes in the country developing its regime i.e. Kenya. The theoretical basis for the fiscal regimes and factors of compliance used are discussed in the Literature Review.

Court rulings are used to moderate between the variables. They give an indication of how a fiscal regime should be treated i.e. fiscal regime is beneficial to Government or a compliance factor is relevant for the purpose of comparison with Kenya.

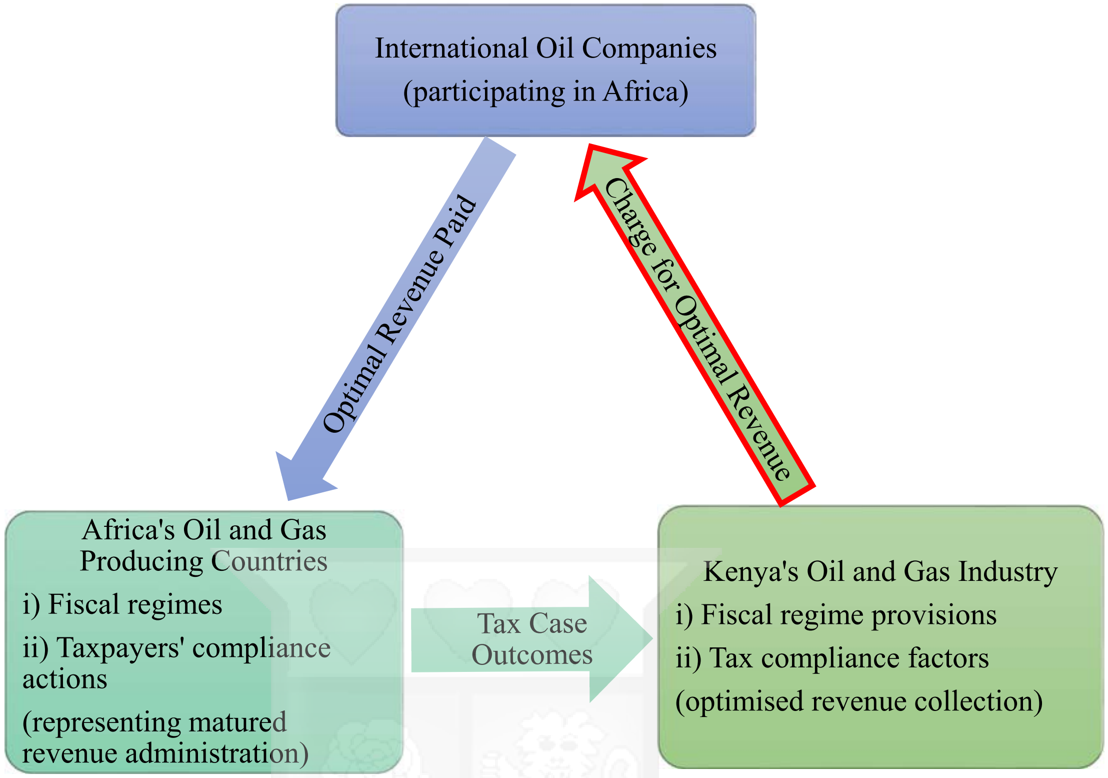

Figure 4: Analytical Framework of Taxpayer Compliance to the Fiscal regime in the Oil and Gas Industry

The analytical framework is as follows:

The International Oil Companies

IOCs operate using the same company policies in the different countries they operate in. IOC working with fiscal regimes in other African countries provide information on the fiscal regime in Kenya and the tax compliance factors.

Africa's Oil and Gas Producing Countries Fiscal regimes and Taxpayer Compliance Actions

These are the fiscal regime and tax compliance actions in the oil and gas industry that are being implemented in other African countries.

Court judgments from African oil and gas producing countries are used to elicit the fiscal regime including the following fiscal and non-fiscal terms: accelerated capital cost allowances, depletion allowances, investment credits, tax holidays, bonus, royalties, income tax, windfall profits tax, oil rents, government equity, other taxes and fees, production sharing, transfer pricing, debt-to-equity ratio, ring-fencing, loss carry-forward and stabilization (Natural Resource Governance Institute, 2010; Tordo, 2007).

Court judgments from African oil and gas producing countries are also used to moderate between the outcomes of fiscal regimes and how they are applied in corresponding Kenyan fiscal regimes. For instance, a judgement can require an IOC to pay taxes for oil rents, and indicate why it is payable. The Kenyan fiscal regime will check for provisions requiring the taxpayer to pay and tax compliance factors will be derived from the taxpayer not paying for the specified reasons.

Kenya's Oil and Gas Industry Fiscal regimes and Taxpayer Compliance Factors

Fiscal regimes in Kenya that will be compared can include the following fiscal terms: accelerated capital cost allowances, depletion allowances, investment credits, tax holidays, bonus, royalties, income tax, windfall profits tax, oil rents, government equity, other taxes and fees, production sharing, transfer pricing, debt-to-equity ratio, ring-fencing, loss carry-forward and stabilization (Natural Resource Governance Institute, 2010; Tordo, 2007).

The factors of compliance in Kenya for optimised revenue collection that could be deduced are: deterrence; norms; opportunity for evasion; fairness and trust; economic factors; financial factors such as incentives; and industry practice (OECD, 2013).

CHAPTER 3: RESEARCH METHODOLOGY

3.1. Research Design

This research aims to review Kenya's oil and gas fiscal regime and identify tax compliance factors for optimised revenue collection. The unit of analysis was publicly available and concluded oil and gas court cases in Africa, IOCs.

The study was based on constructivism philosophy, as it elicited descriptions of fiscal regimes and taxpayer compliance actions from court case studies in the oil and gas industry from other African countries (Creswell, 2014).

The research made use of secondary and qualitative data from an electronic data source. The research method of qualitative content analysis using deductive categorisation was used to collect and analyse information. Deductive categorisation connected the qualitative data generated in the research to predetermined theory on optimal fiscal regimes and fiscal progressivity (Yin, 2014). Propositions referred in this research to as key words have been defined from expert theory discussed in the literature review. Key words identified from Natural Resource Governance Institute (2010), Tordo (2007) and OECD (2013) theory were used to search for relevant information from the cases and analyse the information by comparing to Kenya's fiscal regime in order to review revenue collection and factors of tax compliance.

3.1.1. Method of Review of Fiscal Regimes and Tax Compliance Factors

In studying the success of the Norwegian model in oil and gas revenue administration, Doric & Dimovski assert that other countries involved in the oil and gas industry can be assessed against the Norwegian model using success factors they identified. These ensure the oil and gas sector is able to sustain growth and generate wealth, which also is an output of a sound fiscal regime (2018). This research proposes that success factors that work in jurisdictions are comparable to other jurisdictions and can used to compare if the fiscal regime design is appropriate.

Countries have strictly enforced fiscal regimes entrenched in the Constitution requiring that a tax or levy must be enforced through a legislation. In a study on the background of taxation in Kenya, Warris shows concern that Kenya has not developed a taxation system based on sound taxation principles, but rather has maintained colonial taxation perspectives that had no guidelines, rules or internationally accepted principles (2007). Although Kenya lacks an overall policy that governs proper working of taxation based on principles, the oil and gas fiscal regime is captured in the Income Tax Act, Ninth Schedule. In this context, reviewing the fiscal regime can be done by reviewing compliance with tax law by collecting information on taxpayer behavioural patterns to make inferences on tax compliance. .

Learning institutional best practices using case studies, like court cases, presents useful exploratory tools of simulating how real life circumstances apply in business, law and policy (Crowe, et al., 2011) and can be used to uncover patterns, determine meanings, construct conclusions and build theory (Patton & Appelbaum, 2003). In this research, data drawn from court case studies in the oil and gas industry from other African countries was used to review the fiscal regimes and factors of tax compliance in Kenya.

Similarly, oil and gas industry legal disputes are complex and costly and the industry generally observes high levels confidentiality (McManus, 2013). The researcher anticipated shortage in information on taxpayers in Africa and this also informed selecting case studies as the method of research, since a small sample could be used to make a reliable inference on tax risk and tax compliance (Crowe, et al., 2011).

The research reviewed court case studies of the oil and gas industry in Africa to analyse taxpayer actions for tax compliance and compare to Kenya's fiscal regime. The reason for using court case studies in the research was they provided a source of data on taxpayer compliance actions that was publicly available, could be collected and reviewed for tax compliance. Tax compliance behaviour that has occurred in the African continent was comparable to Kenya since common challenges in oil and gas revenue mobilisation have occurred in Africa which have resulted in loss of revenue legally through aggressive tax planning and through illicit financial flows (Kar & Leblanc, 2013).

A search engine in the SAFLII database was used to identify the population and select the sample that would be used as case studies. SAFLII was selected, as it is the only institutionalized legal information database focused on Africa. SAFLII has relevant legal information from sixteen African countries: Angola, Botswana, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

3.2. Population and Sampling

This research reviewed one hundred per cent of SAFLII tax case studies from the oil and gas industry in other African jurisdictions. The information was extracted from the database and cross-referenced as explained in the data collection procedures (Saunders, Lewis, & Thornhill, 2009).

The population was comprised of cases going back as far as records are available. IOCs operate global enterprises in high entry barrier economic sectors. It is expected that the same companies practice the same policies in different jurisdictions. In addition, taxpayer compliance behaviour can be built over a long period of time (Manhire, 2015).

Sampling was done by selecting those cases where the contractual instruments used between Governments and the IOCs are similar to that in Kenya, which is a PSC (Creswell, 2014).

3.3. Data Collection

On a networked laptop, in the SAFLII database and using the SAFLII search engine, the following criteria was used to search for data on: (i) "oil and gas" using "any of these terms" search option in "all databases"; and (ii) "tax or fiscal or revenue" using a "Boolean search" option in "all databases". Search criteria of "any of these terms" looks for data that has either oil or gas and populates the results. A Boolean search looks for data relevant to all words separated by "or" and populates the results. These searches ensured that all results with the words "oil", "gas", "fiscal", "tax" or "revenue" were in the results. Since the research represents two knowledge areas, i.e. taxation and oil and gas, two separate searches were done to get homogenous data.

This avoided losing relevant information, which could happen if broader or generic searches are, used (Yin, 2014).

To get the population of fiscal regime cases relevant to the oil and gas industry, these two datasets were copied to MS Excel and cross-referenced using VLOOKUP function. Results from the oil and gas search criteria were cross-referenced with results from the tax or fiscal or revenue search criteria, and vice versa. This was done to narrow in on cases from the oil and gas industry that focus on fiscal regimes. Data cleaning was done to remove information that is not relevant to the research that comes up under the two searches like legislations and journal articles relevant to the search topics. Duplicated cases were also identified using Highlight Duplicates function in MS Excel.

Cases that emerged from cross-referenced searches formed the population. Detailed case study information on the population was extracted from the SAFLII database and copied in the Checklist in Appendix 1. The extracted information was scanned for tax instruments using searches for the keywords of fiscal and non-fiscal terms (Natural Resource Governance Institute, 2010; Tordo, 2007). The country and type of production agreement between the country and the taxpayer were also identified. Country of the case, parties, tax instrument and type of agreement were recorded in the Checklist in Appendix 1. The keywords included other fiscal regimes, which are grouped in some terms e.g. corporation tax and capital gains are income taxes.

Samples were then selected from cases that have similar contract agreements as Kenya i.e. the PSC, since they were comparable with Kenya's fiscal regime. Samples were recorded in the template in Appendix 2 according to the tax instrument that was being disputed. They were numbered according to Case Study One, Two, and so on. Shortened sections of the judgments and taxpayers compliance actions were recorded in the template in Appendix 2. Only data relevant to the fiscal regime and the taxpayer's compliance actions was recorded. For focus on fiscal regimes and compliance and not on the actual court proceedings, the parties in the case studies were referred to as taxpayer for the party from who payment was expected and Government for the party responsible for collection of revenue. IOCs participating in the case were referred to as Taxpayer A in Case Study One, B in Two, and so on.

Taxpayers were also anonymised according to SAFLII's General Principles on Terms of Use on privacy in Appendix 4.

The corresponding Kenyan legislation to be searched for fiscal regime provisions was identified by the legislation quoted in the case studies. They included but were not limited to East Africa Community Customs Management Act, VAT Act, Income Tax Act and the PSC. A search of the Kenyan legislation using keywords by Natural Resource Governance Institute and (2010) and Tordo (2007) identified provisions in Kenyan legislation. These provisions were recorded in the Table in Appendix 2 for comparative analysis.

The data collection process was repeated by a reviewer to check for similarity of results.

3.4. Data Analysis

Comparative analysis was carried out for the fiscal regimes in the case studies and that in Kenya. Presence of the provisions in Kenyan fiscal regime indicated opportunities for oil and gas revenue collection in the fiscal regime and absence indicated a gap.

In line with deductive categorisation data analysis, the taxpayers' compliance actions were analysed according to theory on factors of tax compliance (2013). Descriptions matching the OECD explanations were used to identify which tax compliance factors are used by oil and gas industry taxpayers in Africa. Since Africa faces similar challenges in oil and gas revenue management, these findings included the circumstances Kenya would face when it went into production.

3.5. Research Quality

The Checklist (Appendix 1) was used to focus the research including who owns oil resources, what legal instrument is used and the fiscal regime terms. Only cases that had fiscal and fiscal terms were studied. For objectivity, only concluded cases in

Africa were included in the study and the research relied purely on external, secondary and publicly available data sources, which can be verified. Value judgements made by the researcher were guided by defined propositions (key words) used by tax theory experts in the areas of fiscal regimes and tax compliance.

The validity and reliability of research findings was secured by analysing publicly available judgements made by the judge/arbitrator and not subjecting the comparative study to judgements in one country only, but analysing cases from other countries in Africa. This is an adequate control since the judgments are made within the confines of law, regardless of the jurisdiction or participants in the case. It is assumed that the judge issued fair judgements according to the law in the cases analysed. An independent reviewer counterchecked cases drawn from databases for errors of data entry. The reviewer confirmed the data collected to assure data credibility. Fields where there was incomplete or inconsistent data were indicative of a non-compliance pattern and were analysed further for impact on tax compliance. Where there was match to tax compliance, the sample was discarded.

The research stuck to known values as much as possible. Outliers were analysed and a decision made to retain or discard outliers e.g. contradicting judgements from different jurisdictions would be analysed for differences in form or substance.

3.6. Ethical Issues in Research

This research used secondary data and did not require interviews. It did not contain any studies with human or animal subjects performed by any of the participants.

To safeguard research ethics, ethical approval from the Strathmore University Institutional Ethical Review Committee and a permit from the National Commission for Science, Technology and Innovation (NACOSTI) were obtained before conducting the research. Ethical issues arising from use of secondary data were assured by retrieval and rechecking by an independent investigator. Use of information from SAFLII followed the Terms of Use in Appendix 4 and SAFLII was acknowledged in the research (Creswell, 2014).

Independent review of the data collected was incorporated; investigators signed a conflict of interest declaration; data fabrication or misinterpretation was not possible by defining the data collection and analysis processes; biases from personal opinions were avoided by making inferences from the data; and errors and negligence were avoided by proper design of the model and data analysis.

CHAPTER FOUR: ANALYSIS OF FINDINGS

4.1. Data Extraction and Determination of the Population

Data collection was carried out by searching the SAFLII database and yielded 403 results for "Oil and Gas" and 12,110 results for "Tax or Fiscal or Revenue" search criteria. This data was cleaned to remove legislations and journal articles. After cross-referencing and data cleaning, the following was the population:

i. Taxpayer A Vs Uganda Revenue Authority (Civil Appeal No 14 of 2011) UGCOMMC 97 (12 September 2011)
ii. Petroleum Oil and Gas Corporation of South Africa (SOC) Limited v The Commissioner for the South African Revenue Service (42716/15) ZAGPPHC 871 (6 November 2018)
iii. Taxpayer B v Uganda Revenue Authority (TAT APPLICATION NO 4 OF 2011) UGTAT 1 (16 June 2014)
iv. Uganda Revenue Authority v Total Uganda Limited (Civil Appeal No. 08 OF 2010) UGCOMMC 170 (21 December 2012)
v. Federal Government of Nigeria and 6 others v. Taxpayer C (SC 268/2001) (13 December 2002)
vi. GE International Operations (Nig) Ltd v Q Oil and Gas Services Limited (SC207/2014) NGSC 31 (18 March 2016)
vii. Abet Inspection Engineering (Pty) Ltd v Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd and Another (15599/16) ZAWCHC 39 (8 March 2017)
viii. Mthimunye-Bakoro v Petroleum Oil and Gas Corporation of South Africa (SOC) Limited and Another (12476/2015) ZAWCHC 113; 2015 (6) SA 338 (WCC) (4 August 2015)
ix. Indwe Aviation (Pty) Ltd v Petroleum Oil and Gas Corporation of South Africa and Another (A4610/2011, 14366/2010) ZAWCHC 457 (20 September 2011)
x. Co-Operative Worker Association and Another v Petroleum Oil & Gas Co-Operative of SA and Others (C437/2003) [2006] ZALC 83; 1 BLLR 55 (LC) (1 September 2006)

4.2. Sampling Frame

The following sampling frame was used to identify the case studies to be subjected to further review. Those cases that used the Production Sharing Contract were selected.

Table 1: Sampling Frame

	Country	Case	Oil Resource Ownership	Appellant	Respondent	Legal Instrument	Fiscal Terms Disputed	Case Study Identification
1.	Uganda	Civil Appeal No 14 Of 2011 UGCOMMC 97 (12 September 2011)	Government	Taxpayer A	Uganda Revenue Authority	Production Sharing Agreement	Capital gains tax dispute resolution method	Taxpayer A
2.	South Africa	Case Number: 42716/15 ZAGPPHC 871 of 6 November 2018	Not an oil and gas case. It focuses on distribution of processed oil products	Petroleum Oil and Gas Corporation Of South Africa (SOC) Limited	The Commissioner For The South African Revenue Service	N/A	-	-
3.	Uganda	Tax Appeals Tribunal TAT Application No. 4 of 2011	Government	Taxpayer B	Uganda Revenue Authority	Production Sharing Agreement	Capital gains tax assessed on a transfer of interests in blocks in Uganda	Taxpayer B
4.	Uganda	Civil Appeal No. 08 OF 2010) UGCOMMC 170 (21 December 2012)	Not an oil and gas case. It focuses on distribution of processed oil products	Uganda Revenue Authority	Total Uganda Limited	N/A	-	-
5.	Nigeria	SC 268/2001 (13 December 2002)	Government	Federal Govern ment of Nigeria and 6 Others	Taxpayer C	Production Sharing Contract	Signature Bonus and reserve value	Taxpayer C

	Country	Case	Oil Resource Ownership	Appellant	Respondent	Legal Instrument	Fiscal Terms Disputed	Case Study Identification
6.	Nigeria	SC207/2014 NGSC 31 (18 March 2016)	Not an oil and gas case. It focuses on It focuses on distribution of processed oil products	GE International Operations (Nig) Ltd	Q Oil and Gas Services Limited	-	-	-
7.	South Africa	15599/16 ZAWCHC 39 (8 March 2017)	Not an oil and gas case. It focuses on It focuses on distribution of processed oil products	Abet Inspection Engineering (Pty) Ltd	Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd and Another	-	-	-
8.	South Africa	12476/2015 ZAWCHC 113; 2015 (6) SA 338 (WCC) (4 August 2015)	Not an oil and gas case. It focuses on It focuses on distribution of processed oil products	Mthimunye-Bakoro	Petroleum Oil and Gas Corporation of South Africa (SOC) Limited and Another	-	-	-
9.	South Africa	A4610/2011, 14366/2010 ZAWCHC 457 (20 September 2011)	Not an oil and gas case. It focuses on It focuses on distribution of processed oil products	Indwe Aviation (Pty) Ltd	Petroleum Oil and Gas Corporation of South Africa and Another	-	-	-
10.	South Africa	C437/2003 ZALC 83; 1 BLLR 55 (LC) (1 September 2006)	Not an oil and gas case. It focuses on It focuses on distribution of processed oil products	Co-Operative Worker Association and Another	Petroleum Oil & Gas Co-Operative of SA and Others	-	-	-

In summary, from the population of ten case studies, three cases studies were found on tax disputes in the oil and gas industry in Africa. Two were from Uganda and one from Nigeria.

The three case study companies were identified in the research as Taxpayer A in Case Study One, Taxpayer B in Case Study Two and Taxpayer C in Case Study Three. The population was transferred to Table 1 as shown and the findings for the three case studies were transferred to Table 2, 3 and 4, where interpretation was done.

4.3. Findings and Interpretation of the Fiscal Regime and Tax Compliance

Table 2 below has the results to the first research question of tax instruments and taxpayer compliance actions in Africa.

Table 2: Findings of the Tax Instruments and Taxpayer Compliance Actions in Africa

	Tax Instrument	Taxpayer Compliance Actions
Case Study 1	Objection to Capital Gains Tax on Transfer of Interest	i. The taxpayer objected to tax assessments for Capital Gains Tax that were made under the authority of the Income Tax Act and filed two applications in the Tribunal ii. Before hearing of the two applications were finalized, the taxpayer filed Miscellaneous Applications seeking to stay the proceedings in those applications and have the matter referred to arbitration in accordance with the arbitration clause in the PSA ii. When denied a stay of proceedings at the TAT, the taxpayer appealed that the TAT erred in refusing to stay its proceedings.
Case Study 2	Capital Gains Tax on Transfer of Interest	i. The taxpayer did not declare income on transfers of interest undertaken, triggering tax assessments from the Government Agency ii. The taxpayer challenged initial assessments, which were revised, of income tax (being capital gains tax) ii. The taxpayer was aggrieved by the assessments and appealed to the Tribunal. iv. The taxpayer paid an amount being 30% of the tax assessed.
Case Study 3	Signature Bonus	i. The taxpayer applied for, succeeded and an oil block was allocated, subject to certain conditions. He would have to pay what was referred to as Signature Bonus and reserve value as conditions for allocation of oil blocks. ii. The taxpayer paid part of the amount within the required period, but required a grace period of forty five days to pay

	Tax Instrument	Taxpayer Compliance Actions
		the balance. iii. The taxpayer instituted action in the High court, which found that a valid contract existed between the parties. iv. It ordered the parties to conclude the contract. v. The Government appealed against that decisions to the Court of Appeal but their appeal was dismissed. vi. The Government therefore lodged a further appeal to the Supreme Court. The appeal was dismissed by a majority decision.

The disputed tax instruments were two case studies on Capital Gains Tax on Transfer of Interests and one on Signature Bonus. The summarised taxpayer compliance actions in Africa were the taxpayer objected to TAT hearings and prefers for disputed Capital Gains assessments to be heard in arbitration; the taxpayer did not declare income on Transfer of Interest and was aggrieved by assessments on it by the Government; and the taxpayer did not pay Signature Bonus prior to effecting the contract but wanted to continue to perform the PSC on the exploration block.

Table 3 below has the results to the second research question of the corresponding Kenyan fiscal regime to the one found in other African countries and the interpretation.

Table 3: Findings and Interpretation of Fiscal Regime Provisions in Kenya

	Tax Instrument	Kenya's Fiscal Regime Provisions	Comparative Interpretation of the Kenya Oil and Gas Fiscal Regime
Case Study 1	Objection to Capital Gains Tax on Transfer of Interest	The Income Tax Act allows for Determination of Objections, Appeals and Relief for Mistakes Under Part X of the Income Tax Act Section 86(1). It allows taxpayers in the oil and gas industry to appeal decisions made relating to taxation of oil and gas fiscal terms. As was peculiar to the dispute in this case study, the Income Tax (Tribunal) Rules however, do not provide for staying hearings in	The Income Tax allows for determination of disputes related to tax instruments in oil and gas. Income Tax (Tribunal) Rules however, do not provide for staying hearings in order for PSC or any other dispute resolution alternatives to be followed by the parties. The existence of two parallel dispute resolution mechanisms in the oil and gas industry, i.e. the Tribunal and arbitration, provide opportunities and challenges. Preference for international arbitration using United Nations Commission for International Trade Law (UNCITRAL)

	Tax Instrument	Kenya's Fiscal Regime Provisions	Comparative Interpretation of the Kenya Oil and Gas Fiscal Regime
		order for PSC or any other dispute resolution alternatives to be followed by the parties.	Arbitration Rules may be an indicator of inefficiencies of local dispute resolution instruments. Perhaps cases take too long to be heard, since the case mentioned that parties could resort to arbitration after sixty days of the dispute, or IOCs may not feel they get a fair hearing in tax Tribunals. Without resolution of perceived issues of the local Tax Appeals Tribunals in Africa, oil and gas tax disputes will be heard in international forums, at risk of revenue and other additional cost to the Governments.
Case Study 2	Capital Gains Tax on Transfer of Interest	The Income Tax Act provisions on Capital Gains Tax are charged according to Section 3 (2) (f) but this does not include tax on transfer if petroleum interests which is specifically provided for separately. Transfer of Interest is brought to charge under Section 3(2)(g), Section 3(3) and the Ninth Schedule Section 13.	It was found that the Kenyan fiscal regime specifically provides for a separate tax instrument for tax on Transfer of Interest and not just Capital Gains tax. These provisions were found to be sufficiently clear on bringing tax to charge. Unlike the fiscal regime in Uganda that charged transfer of interests under Capital Gains tax instrument, Kenya's regime clearly sets the consideration received from transfer of interest as being taxable under specific provisions. Clarity in tax legislation defining what tax is payable helps to alleviate disputes, which may have been the trigger of this dispute. Since the law did not expressly say capital gains was payable, the taxpayer in this case study probably did not believe that capital gains tax was payable.
Case Study 3	Signature Bonus	The Petroleum Act 2019 states that the contractor shall pay to the National Government Signature Bonus prior to the award of the petroleum agreement in Section 55.	In this case, in spite of the PSC in Nigeria clearly requiring the taxpayer to meet his contractual obligation as a condition for being allocated a block, did not stop the taxpayer from failing to pay Signature Bonus in time with the court's indulgence. The difference between contract law and tax law is clear here. Tax is payable when it becomes due, whereas payments under contract law are enforceable under a different set of rules.

In summary, all three tax instruments representing the three fiscal terms in the oil and gas industry in Africa were found to be present in Kenya's oil and gas fiscal regime. However, there were some peculiarities that would make the provisions more difficult to implement. For example, the PSC had provisions to settle tax disputes using alternative means but Kenya's tax law did not provide for staying tax dispute proceedings in order to pursue alternative dispute resolution that taxpayers in the oil and gas sector seemed to prefer.

Table 4 below has the results to the third research question of the factors of tax compliance in Kenya and the interpretation.

Table 4: Findings and Interpretation of Factors of Tax Compliance in Kenya

	Taxpayer Compliance Actions	**Deductive Interpretation of Kenya's Tax Compliance**
Case Study 1	i. The taxpayer objected to tax assessments for Capital Gains Tax that were made under the authority of the Income Tax Act and filed two applications in the Tribunal ii. Before hearing of the two applications were finalized, the taxpayer filed Miscellaneous Applications seeking to stay the proceedings in those applications and have the matter referred to arbitration in accordance with the arbitration clause in the PSA iii. When denied a stay of proceedings at the TAT, the taxpayer appealed that the TAT erred in refusing to stay its proceedings.	i. Norms: IOCs rely on the proper functioning of a PSC to protect their business as seen in case study one. Norms are clearly defined in and form part of the fiscal regime. ii. Fairness and trust: The UN system of arbitration is an international dispute resolution system compared to the Tax Appeals Tribunal, which was locally constituted in the country the dispute occurred. Although the case study clearly states that UNCITRAL processes could be embarked upon after sixty days of a dispute not being resolved, the taxpayer always had arbitration as an option should the TAT hearing seem not to go in his favour. iii. Economic and Financial factors: Defined as motivation for companies to operate such as incentives. This may be linked to case study two where the taxpayer failed to declare and pay Capital Gains Tax on Transfer of Interest. The taxpayer may have perceived tax on transfer of interest as having been excluded in order to attract it to carry out exploration and production activities i.e. no tax on transfer of interest as an incentive of doing business in that country since favourable tax rates, exemptions and holidays are often used to attract investment. iv. Industry practice: Defined as parties act in ways that are standard to industry or profession. Industry practice features heavily in all case studies, and likely the reason why there is a PSC between Government and IOCs to administer work carried out in the industry. Overall, it is clear that the industry is highly litigious in order to get interpretation of tax and contract law. As seen in case study one, the industry also has its

	Taxpayer Compliance Actions	Deductive Interpretation of Kenya's Tax Compliance
		own dispute resolution provisions, separate from tax dispute resolution. In case study three, performance of the contract in the industry is perceived as an on-going exercise as opposed to taxation that enforces due dates. From case study two, revised assessments of taxes occur as a result of the interaction between the IOCs and Government Agency, probably because of the back and forth of determining the actual taxable status of revenue. It therefore was clear from the beginning how much taxes are payable.
Case Study 2	i. The taxpayer did not declare income on transfers of interest undertaken, triggering tax assessments from the Government Agency ii. The taxpayer challenged initial assessments, which were revised, of income tax (being capital gains tax) iii. The taxpayer was aggrieved by the assessments and appealed to the Tribunal. iv. The taxpayer paid an amount being 30% of the tax assessed.	i. Deterrence: The taxpayer is not in fear of audits, but in fear of other enforcement actions being undertaken resulting from defaulting on payment. It can be hypothesised that the taxpayer did not want to lose his contract area, even though he had not met all obligations and communicated before time asking for a grace period to pay. The action shows willingness, if given a chance, to move from non-compliance to compliance. If the taxpayer remained silent and hoped not to be detected, then he would risk his oil block being reallocated without defence of performing the contract. ii. Norms: IOCs expect incentives from the Government such as exemption from some taxes, as seen in case study two. iii. Opportunity for evasion: There was an incident of unwillingness to pay assessed tax because the legislation did not clearly stipulate it as being payable. The taxpayer perceived that the Income Tax Act did not specify that Capital Gains Tax was payable and therefore did not declare or pay tax. iv. Fairness and trust: The fact that in case study two the tax legislation was not explicit in detailing payable tax may have resulted in an "unfairly treated" attitude from the taxpayer. v. Economic and Financial factors: The taxpayer failed to declare and pay Capital Gains Tax on Transfer of Interest. The taxpayer may have perceived tax on transfer of interest as having been excluded in order to attract this taxpayer to carry out exploration and production activities i.e. no tax on transfer of interest as an incentive of doing business in that country since favourable tax rates, exemptions and holidays are often used to attract investment. vi. Industry practice: Revised assessments of taxes occur as a result of the interaction between the IOCs and Government Agency, probably because of the back and forth of determining the actual taxable status of revenue. It therefore was clear from the beginning how much taxes are payable.

	Taxpayer Compliance Actions	Deductive Interpretation of Kenya's Tax Compliance
Case Study 3	i. The taxpayer applied for, succeeded and an oil block was allocated, subject to certain conditions. He would have to pay what was referred to as Signature Bonus and reserve value as conditions for allocation of oil blocks. ii. The taxpayer paid part of the amount within the required period, but required a grace period of forty five days to pay the balance. iii. The taxpayer instituted action in the High court, which found that a valid contract existed between the parties. iv. It ordered the parties to conclude the contract. v. The Government appealed against that decisions to the Court of Appeal but their appeal was dismissed. vi. The Government therefore lodged a further appeal to the Supreme Court. The appeal was dismissed by a majority decision.	i. Deterrence: The taxpayer is not in fear of audits, but in fear of other enforcement actions being undertaken resulting from defaulting on payment. It can be hypothesised that the taxpayer did not want to lose his contract area, even though he had not met all obligations and communicated before time asking for a grace period to pay. The action shows willingness, if given a chance, to move from non-compliance to compliance. If the taxpayer remained silent and hoped not to be detected, then he would risk his oil block being reallocated without defence of performing the contract. ii. Norms: The IOC expected incentives from the Government such as exemption from some taxes. iii. Opportunity for evasion: The taxpayer was granted a reprieve for not pay Signature Bonus but still retaining the contract area, in spite of non-payment of the full amount of Signature Bonus which was required when his allocation for the contract area was approved. Clearly defined fiscal regimes provides opportunities where the taxpayer will or will not comply. iv. Fairness and trust: v. Industry practice: Performance of the contract in the industry is perceived as an on-going exercise as opposed to taxation that enforces due dates.

Generally, all the factors of tax compliance from OECD theory were found to be active in the oil and gas industry in one way or another i.e. norms, fairness and trust, economic and financial factors, industry practice, deterrence and opportunity for evasion. Based on the illustrations on the taxpayers' actions, it was deduced that a taxpayer in the oil and gas industry: unlike other industries, has favourable and robust options in dispute resolution processes; may want to avoid prolonged disputes, hence the preference for international processes that resolve disputes that have gone on for six months; will show unwillingness and strong conviction against paying taxes where the tax is not clear; and can enjoy protection under the PSC that fiscal regimes are not enforceable when they default.

CHAPTER FIVE: DISCUSSIONS, CONCLUSION AND RECOMMENDATIONS

The overall objective of the paper was to review the Kenya oil and gas fiscal regime and factors of compliance for optimised revenue collection. This research found three case studies in Africa that had tax instruments and taxpayer compliance actions. The two tax instruments in Africa were Capital Gains on Transfer of Interests and Signature Bonus.

The summarised taxpayer compliance actions in Africa were the taxpayer objected to TAT hearings and prefers for disputed Capital Gains assessments to be heard in arbitration; the taxpayer did not declare income on Transfer of Interest and was aggrieved by assessments on it by the Government; and the taxpayer did not pay Signature Bonus prior to effecting the contract but wanted to continue to perform the PSC on the exploration block.

This research points to critical areas the oil and gas industry that the Kenyan Government should be aware of and the challenges of administering fiscal regimes in the context of PSCs. The promise that the oil and gas industry has in revenue to GoK can be realised to satisfaction if the fiscal regime are harmonised with the PSC. This research discussed the findings, conclusion and recommendations of the Kenyan fiscal regime and the factors of tax compliance in the following paragraphs.

It also found that of the two disputed tax instruments in the African oil and gas industry, Kenya's fiscal regime had provisions for both of them i.e. tax on Transfer of Interests and Signature Bonus. However, it did not provide for hearing of tax disputes through arbitration as given in the PSC. Similarly, a challenge was identified in case study three in spite of having legislation providing for payment of Signature Bonus. The court ruled that the PSC was enforceable even when the taxpayer had not paid Signature Bonus in full. Since the fiscal regime was present but Signature Bonus was not collectible at the time it was due, it was proven that fiscal regimes do not suffice in collection of the right amount of revenue. PSC provisions and administrative errors can hinder the collection of revenue even in cases where the law provides for collection.

The fiscal regime for the oil and gas industry on its own may not be adequate in ensuring that the taxpayer complies with revenue requirements under the PSC. Administrative measures can hinder enforcement of the fiscal regime. The result is losses to Governments that are not empowered to administer the fiscal regime. Actions by the GoK have to be procedural to the letter of the law.

Clarity of tax legislation and of administrative processes is a critical requirement in the PSC regime because IOCs require that kind of clarity when making the decisions to invest in Kenya. Failure to provide that clarity can lead to the taxpayer being aggrieved and protracted disputes, all at high cost or losses to the Government and a hindrance to invest further by IOCs. In addition, taxes involved in the industry are high and the expense must be planned in the corporate circle. This can only be done when tax requirements are well understood.

Disputes in the oil and gas industry can occur for various reasons including work performance in geological technical areas. A dispute resolution clause in the PSC allows generally for disputes to be arbitrated separately from the dispute mechanism provided for in Kenya's Income Tax Act. It would be beneficial for rules to be clearly set on the functioning of the PSC's tax dispute resolution. This is because in tax objection or appeal cases, GoK revenue is held pending the resolution of tax disputes. Allowing alternative dispute resolution processes to occur outside the purview of the Income Tax Act can put GoK revenue at risk.

With respect to compliance factors, they were found to feature strongly in the actions of the taxpayers in the three case studies. As found in the analysis, the OECD factors of compliance were found to function in African oil and gas industry through different ways. They are deterrence, norms, opportunity for evasion, fairness and trust, economic and financial factors and industry practice. Since the same companies working in the oil and gas industry in different parts of Africa also work in Kenya, the factors of compliance from the companies are applicable in Kenya.

Overall, the taxpayers in the oil and gas industry showed preference for functioning PSCs that provided for the demands of the industry; clearly defined fiscal regimes and incentives; mitigation of issues that can result in reputational risks, disadvantages to the business and financial losses; and a good-natured working relationship with the Government leaning heavily on legal compliance.

The PSC featured strongly in the tax compliance analysis due to the of taxpayers being deeply embedded in the PSC, which means that it is a tool used by the taxpayers to manage tax compliance and an area of compliance risk for KRA.

The oil and gas industry has complex and sophisticated codes of operation, introduced through PSCs. Whereas PSCs are useful in contracting parties to works to be carried out as part of an exploration or production area, they can provide IOCs with advantages that shield them from Government revenue management processes as seen in the case where Signature Bonus was payable. Where industry practices favouring the oil and gas industry cannot be captured under a fiscal regime, the PSC can indirectly provide IOCs with financial or economic benefits as incentives for investment. Since the Government's take from the oil and gas industry is tax revenue and profit oil, the IOC may pay normal taxes as prescribed by fiscal regimes and get reprieves on profit oil and other fees and levies. PSCs are compliance risks to Government revenue, which provide parallel legal channels through which revenue can be delayed or withheld. For Governments administering the oil and gas industry including Kenya, the challenge was that there could be cases where the PSC and revenue management legislations were not aligned, which could result in "gray" areas in the fiscal regime or the regime not covering important revenue aspects altogether. It is critical for Government of Kenya (GoK) to review the PSC for other provisions that would prevent revenue legislations from being implemented.

Knowledge of the factors of compliance in the oil and gas industry in Kenya can also be used to derive suitable fiscal regimes and administrative arrangements to carry the regimes. KRA is currently working with "trust through facilitation". In the oil and gas industry, the compliance factor of trust is it is enforced through legality or illegality of actions and not goodwill. GoK therefore is able to align its administration of the fiscal regime appropriately by ensuring procedures are followed. The main factor of compliance of heavy reliance on legal systems in the oil and gas industry in order to function properly also means and Governments have to invest in legal empowerment in order to function at the level of oil and gas companies. For Kenya, this means it is a cost to GoK to build its legal capacity in oil and gas revenue management. It also is a higher cost to GoK not to build its legal capacity in oil and gas revenue management because of revenue loss.

One limitation of the research was that data on fiscal regimes and taxpayer compliance actions in Africa was hard to come by. The information relied on the few publicised cases in Africa and some of the large oil producers had no publicly available information. This limited the findings to the information that was in available case studies only. It may have been possible to get more descriptions of fiscal regimes and factors of tax compliance. Another limitation was the reliance on concluded and public court case studies which could have been affected by institutional failures, thereby not depicting the actual explanation of the fiscal regime or factors of tax compliance.

As discussed above, the research is, however, resourceful to policy makers and related institutions who are looking for ways to optimise revenue from the oil and gas industry by pointing to areas focus on. For example, in this research, the PSC was found to be central to Government revenue optimisation in the oil and gas industry.

Further studies in the oil and gas fiscal regime can be carried out in the area of tax compliance in Africa and Kenya and more factors and instruments of compliance can be identified. Further work can also be carried out in ways to enforce compliance to fiscal regimes in the performance of a PSC. In spite of having legal information from various African countries, information on disputes is not as easily available as in more developed countries. Public information on large oil producing countries like Libya, Algeria, Angola, Morocco and other countries would be very beneficial. This can be used to profile taxpayers for additional tax compliance monitoring.

REFERENCES

Africa Progress Panel. (2013). *Africa Progress Report: Equity in Extractives: Stewarding Africa's Natural Resources For All.* Geneva: Africa Progress Report.

Alade, C. (2012). Factors Influencing the Developement and Reform of the Upstream Oil and Gas Fiscal Systems in the UK and Nigeria - A Comparative Study.

Ariely, D. (2010). *Predictably Irrational, Revised and Expanded Edition: The Hidden Forces That Shape Our Decisions.* New York: Harper Perenniel.

Barnett, S., & Ossowski, R. (2003). Operational Aspects of Fiscal Policy in Oil-Producing Countries. In J. Davis, R. Ossowski, & A. Fedelino, *Fiscal Challenges in Oil-Producing Countries: An Overview.* Washington DC: International Monetary Fund.

Botlhole, T., Asafu-Adjaye, J., & Carmignani, F. (2014). Natural Resource Abundance, Institutions And Tax Revenue Mobilisation In Sub-Sahara Africa. *South African Journal of Economics*, 135-156.

Coglianese, C. (2012). *Measuring Regulatory Performance Evaluating the Impact of Regulation and Regulatory Policy.* OECD Publishing.

Committee of Experts. (2010). The Constitution of Kenya. Nairobi: National Council for Law Reporting.

Creswell, J. W. (2014). *Research Design Qualitative, Quantitative and Mixed Methods Approaches.* California: SAGE Publications, Inc.

Crowe, S., Creswell, K., Robertson, A., Huby, G., Sheikh, A., & Avery, A. (2011). The Case Study Approach. *BioMed Central*, 50.

Daniel, P., Keen, M., & McPherson, C. (2010). *The Taxation of Petroleum and Minerals: Principles, Problems and Practice.* Washigton DC: Routledge / IMF.

Doric, B., & Dimovski, V. (2018). Managing petroleum sector performance – a sustainable administrative design. *Economic Research-Ekonomska Istraživanja*, 119-138.

European Bank for Reconstruction and Development. (2001). *Transition report 2001 Energy in Transition.* London: European Bank for Reconstruction and Development.

Government of Kenya. (2010). Kenya Vison 2030. Government Publisher.

Holden, S. (2013). Avoiding the resource curse the case Norway. *Energy Policy*, 870-876.

Huesca Reynoso, L., & Araar, A. (2016). Comparison of Fiscal Systems Progressivity Over Time: Theory and Application in Mexico. *Estudios Ecoomicos*, 50-58.

IMF. (2019, February 12). *Fiscal Analysis of Resource Industries (FARI).* Retrieved from Inernational Monetray Fund: https://www.imf.org/external/np/fad/fari/

Kar, D., & Feitas, S. (2012). *Illicit Financial Flows from Developing Countries: 2001-2010.* Washington DC: Global Financial Integrity.

Kar, D., & Leblanc, B. (2013). *Illicit Financial Flows from Developing Countries: 2002-2011.* Washington DC: Global Financial Integrity (GFI).

Kemp, A. G., & Rose, D. (1984). Investment in Oil Exploration and Production: The Comparative Influence of Taxation. In D. Pearce, H. Siebert, & I. Walter, *Risk and* *the Political Economy of Resource Development* (pp. 169-195). London: Palgrave Macmillan.

Kenya Revenue Authority. (2015). *Sixth Corporate Plan.* Nairobi: Kenya Revenue Authority.

Liu, G. (2016). *The Wealth of Norwegian Raw Oil and Natural Gas: 1970-2015.* Oslo–Kongsvinger: Statistics Norway.

Lobel, O., & Amir, O. (2009). Stumble, Predict, Nudge: How Behavioral Economics Informs Law and Policy. *Columbia Law Review, Vol. 108*, 40.

Longde, S., Chaoliang, F., Feng, L., Rukai, Z., & Dongbo, H. (2010). Petroleum exploration and development practices of sedimentary basins in China and research progress of sedimentology. *KeAi*, 385-396.

Luca, O., & Puyo, D. (2016). *Fiscal Analysis of Resource Industries (FARI) Methodology.* Washington DC: International Monetray Fund.

Manhire, J. T. (2015). What Does Voluntary Tax Compliance Mean? *University of Pennsylvania Law Review Online*. USA : University of Pennsylvania Law Review .

Mankiw, N., Weinzierl, M., & Yagan, D. (2009). Optimal Taxation in Theory and Practice. *Journal of Economic Perspectives, American Economic Association, vol. 23(4)*, 147-74.

McManus, L. C. (2013, September 12). *Mediation in Oil and Gas Law Disputes*. Retrieved from LexisNexis Legal Newsroom: https://www.lexisnexis.com/legalnewsroom/energy/b/oil-gas-energy/posts/mediation-in-oil-and-gas-law-disputes

Ministry of Petroleum and Mining. (2016). Model Production Sharing Contract. Nairobi: Government Press.

Ministry of Petroleum and Mining. (2019, January 2). *Petroleum and Mining*. Retrieved from Our Key Projects: http://www.petroleumandmining.go.ke/petroleum/

Moyo, D. (2009). *Dead Aid.* New York: Farra, Straus and Giroux.

National Assembly. (1985). Petroleum (Exploration and Production) Act. Government Publisher.

National Assembly. (2012). The Public Financial Management Act. Nairobi, Kenya: Government Publisher.

National Assembly. (2014). Income Tax Act. Government Publisher.

National Assembly. (2019). Petreoleum (Exploration, Development and Production) Act. Government Publisher.

Natural Resource Governance Institute. (2010, January 1). Oil, Gas, and Mining Fiscal Terms. New York, USA.

OECD. (2006). *Carrots and Sticks: Taxing and Subsidising Energy.* Paris: OECD Publishing.

OECD. (2013). *What drives tax morale?* Paris: OECD Publishing.

Patton, E., & Appelbaum, S. (2003). The case for case studies in management research. *Management Research News, 26(5)*, 60-71.

Petrotech Training & Consulting Services. (2019, January 15). *Production Sharing Contracts*. Retrieved from Petrotech Training & Consulting Services: http://ashokkumarbansal.com/international-petroleum-fiscal-systems/production-sharing-contracts/

Saunders, M., Lewis, P., & Thornhill, A. (2009). *Research Methods for Business Students Fifth edition.* Essex: Pearson Education Limited.

The World Bank. (2019, 04 04). *Oil Rents (% of GDP)*. Retrieved from The World Bank: https://data.worldbank.org/indicator/NY.GDP.PETR.RT.ZS?end=2016&locations=EU&name_desc=false&start=1970&view=chart

Thurbera, M., Hultsa, D., & Hellerb, P. (2011). Exporting the "Norwegian Model": The effect of administrative design on oil sector performance. *EnEnergy Policy*, 5366-5378.

Tordo, S. (2007). *Fiscal Systems for Hydrocarbons: Design Issues.* Washington DC: The International Bank for Reconstruction and Development / The World Bank.

Waris, A. (2007). Taxation without Principles: A Historical Analysis of the Kenyan Taxation System. *Kenya Law Report Vol 1: 272*, 272-304.

Weller, C. E., & Rao , M. (2008). *Can Progressive Taxation Contribute to Economic Development?* Boston : University of Massachusetts Boston.

World Bank. (2019, 6 3). *Total Natural Resources Rents (% of GDP)*. Retrieved from the World Bank: https://data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS?locations=TZ

Yin, R. K. (2014). *Case Study Research Design and Methods (5th ed.).* California: International Educational and Professional Publisher.

APPENDICES

Appendix 1: Sampling Frame

	Case	Oil resource ownership	Claimant	Respondent	Legal instrument	Fiscal terms disputed
e.g. Kenya	20125	Government	Company K	Commissioner of Tax	PSC	Corporation tax for non-residents not payable
Country A						
…						
Country Z						

Appendix 2: Results of Fiscal Regimes and Compliance Factors

Tax Instrument	Taxpayers' Compliance Actions	Kenya's Fiscal regime Provisions	Kenya Tax Compliance Factors
e.g. Corporation Tax	The taxpayer paid Corporation taxed	Section B of the Income Tax Act provides for non-resident companies to pay Corporation tax	Norms – IOCs pay corporation tax

Appendix 3: Ethical Review Approval

Strathmore
UNIVERSITY

24th April 2019

Ms. Chakava, Lillian
P. O. Box 50260 – 00200,
Nairobi.
lchakava@gmail.com

Dear Ms. Chakava,

REF Protocol ID: SU-IERC0399/19 **Student NO:** 084972/2014

A REVIEW OF THE TAX REGIME AND TAX COMPLIANCE IN THE OIL AND GAS INDUSTRY IN KENYA.

We acknowledge receipt of your application documents to the Strathmore University Institutional Ethics Review Committee (SU-IERC) which includes:

1. Study Protocol submitted 11th March 2019
2. Cover letter listing all submitted documents 11th March 2019
3. Proposal declaration Page signed by supervisors 11th March 2019

The committee has reviewed your application, and your study *"A Review of the Tax Regime and Tax Compliance in the Oil and Gas Industry in Kenya"* has been granted **approval**.

This approval is valid for one year beginning **24th th April 2019** until **24th April 2020**

In case the study extends beyond one year, you are required to seek an extension of the Ethics approval prior to its expiry. You are required to submit any proposed changes to this proposal to SU-IERC for review and approval prior to implementation of any change.

SU-IERC should be notified when your study is complete.

Thank you

Sincerely,

STRATHMORE UNIVERSITY INSTITUTIONAL
ETHICS REVIEW COMMITTEE
(SU-IERC)
24 APR 2019
TEL: +254 (0)703 034 000
P. O. Box 59857 - 00200
NAIROBI - KENYA

Prof. Florence Oloo
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Appendix 4: SAFLII Data Terms of Use

http://www.saflii.org/content/terms-use