Income tax

Basis of taxation

Income tax is charged on all the income of resident and non-resident companies, which has accrued in, deemed to be or is derived from Kenya. An entity will be regarded as resident if it is incorporated under Kenyan laws, effectively managed and controlled or declared to be resident in Kenya by the Cabinet Secretary by way of notice in the Kenya Gazette.

Rates of tax

### Resident companies

<table>
<thead>
<tr>
<th>Corporation tax</th>
<th>30%&lt;sup&gt;1&lt;/sup&gt;</th>
<th>37.5% (branch)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newly listed companies:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>– at least 20% of issued share capital listed</td>
<td>27%&lt;sup&gt;2&lt;/sup&gt;</td>
<td>3 Years</td>
</tr>
<tr>
<td>– at least 30% of issued share capital listed</td>
<td>25%&lt;sup&gt;3&lt;/sup&gt;</td>
<td>5 Years</td>
</tr>
<tr>
<td>– at least 40% of issued share capital listed</td>
<td>20%&lt;sup&gt;4&lt;/sup&gt;</td>
<td>5 Years</td>
</tr>
</tbody>
</table>

### Export processing zone

0% for the first 10 years 25% for the 10 year period commencing immediately thereafter

### Special Economic Zone

10% for the first 10 years of operation and 15% for the next 10 year period

### Withholding tax*

<table>
<thead>
<tr>
<th></th>
<th>Resident</th>
<th>Non-resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividends</td>
<td>5%&lt;sup&gt;5&lt;/sup&gt;</td>
<td>10%&lt;sup&gt;6&lt;/sup&gt;</td>
</tr>
<tr>
<td>Interest&lt;sub&gt;7&lt;/sub&gt;</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Interest on Government security&lt;sub&gt;8&lt;/sub&gt;</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Interest on bearer instrument&lt;sub&gt;9&lt;/sub&gt;</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>Interest on housing bonds&lt;sub&gt;10&lt;/sub&gt;</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>Royalties</td>
<td>5%</td>
<td>20%</td>
</tr>
</tbody>
</table>

---

1 A preferential corporation tax rate of 15% for companies which construct at least 400 residential houses annually subject to approval by the Cabinet Secretary in charge of housing. For companies engaged in multiple activities which include housing, the rate of 15% shall be applied proportionately to the extent of the turnover arising from the housing activity.
2 Preferential rate applies for three years following year of issue of shares to the public.
3 Preferential rate applies for five years following year of issue of shares to the public.
4 Preferential rate applies for five years following year of issue of shares to the public.
5 However, where a resident company controls 12.5% or more of the share capital of the company paying dividends, such dividends will be exempt from tax. The 5% is final tax for qualifying dividends.
6 East African Community citizens enjoy a preferential rate of 5%.
7 Interest on bonds issued by East African Development Bank (EADB) is exempt from tax.
8 Includes interest on Government bearer bonds of at least two years and treasury bills and bonds.
9 Interest on Bearer bonds with a maturity of 10 years and above is 10%.
10 Qualifying interest is limited to KES 300,000 p.a.
* Tax withheld at source and credited against taxpayer’s final tax assessment, in the case of residents. In the case of non-residents without a permanent establishment, it is a final tax.

<table>
<thead>
<tr>
<th>Withholding tax*</th>
<th>Resident</th>
<th>Non-resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissions paid by insurance companies to brokers</td>
<td>5%</td>
<td>20%</td>
</tr>
<tr>
<td>Commissions paid by insurance companies to agents and other persons</td>
<td>10%</td>
<td>20%</td>
</tr>
<tr>
<td>Management, technical and professional fees, including training fees</td>
<td>5%</td>
<td>20%11</td>
</tr>
<tr>
<td>Contractual fees – building, civil and engineering works</td>
<td>3%</td>
<td>20%</td>
</tr>
<tr>
<td>Interest paid to petroleum/mining companies</td>
<td>-</td>
<td>15%</td>
</tr>
<tr>
<td>Natural Resource income</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>Rent - commercial and residential**</td>
<td>10%</td>
<td>30%</td>
</tr>
<tr>
<td>Rent on lease equipment</td>
<td>-</td>
<td>15%</td>
</tr>
<tr>
<td>Pensions or annuities</td>
<td>10 – 30%**</td>
<td>5%</td>
</tr>
<tr>
<td>Deemed interest</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Gains on transmission of messages by cable, VSAT, television, radio</td>
<td>-</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Employee taxes</strong></td>
<td><strong>10 – 30%</strong>*</td>
<td><strong>10 – 30%</strong>*</td>
</tr>
</tbody>
</table>

11 Management and professional fees paid to East African citizens enjoy a preferential rate of 15%.

* Tax withheld at source and credited against taxpayer’s final tax assessment, in the case of residents. In the case of non-residents without a permanent establishment, it is a final tax.

** Rental income is now subject to withholding tax by withholding tax agents appointed by the commissioner. Rental income subject to income tax is capped at **KES 144,000** per annum translating to a minimum monthly rental income of **KES 12,000**.

*** Individual’s income tax table as shown below:

<table>
<thead>
<tr>
<th>Annual Taxable income (KES)</th>
<th>Rate of tax (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 134,164</td>
<td>10</td>
</tr>
<tr>
<td>Next 126,403</td>
<td>15</td>
</tr>
<tr>
<td>Next 126,403</td>
<td>20</td>
</tr>
<tr>
<td>Next 126,403</td>
<td>25</td>
</tr>
<tr>
<td>Over 513,373</td>
<td>30</td>
</tr>
</tbody>
</table>

− Personal relief – effective 1 January 2017 is KES 15,360 per annum
− Insurance relief – lower of 15% of the premiums and KES 60,000 p.a.
− Mortgage relief – mortgage interest deduction up to a maximum of KES 300,000 p.a.
− Per Diems – the first KES 2,000 per day is tax exempt as at 16 July 2016
− Bonuses, overtime and retirement benefits paid to individuals whose income does not exceed KES 11,180 per month effective 1 January 2017 is exempt from tax.
Tax losses
Tax losses are an allowable deduction from taxable income for the current and the next nine succeeding years of income with effect from 1 January 2016. A person may apply to the commissioner for an extension of time where he can demonstrate that he is not able to extinguish his tax losses within ten years.

Capital Gains Tax
Capital Gains Tax (CGT) was re-introduced in Kenya effective 1st January 2015. CGT is applicable on the transfer of property situated in Kenya, for example, land, buildings and marketable securities. The Capital Gains Tax (CGT) rate is 5% which is a final tax. A gain on transfer of a marketable security traded on any securities exchange licensed by the Capital Markets Authority of Kenya is not subject to CGT in Kenya.

Turnover tax
Turnover tax was introduced with effect from the 1 January 2007 in respect of businesses with a turnover of more than KES 500 000 and less than KES 5 million per annum. It is applicable at a rate of 3% on gross sales. Turnover tax is, however, not applicable to incorporated companies or on professional, management and training fees or rental income. The turnover tax is payable by the twentieth day of the following month of every quarter.

Retirement benefits
Monthly and lump sum pension payments to senior citizens (65 years or older) are exempt from tax, effective 15 June 2007. Lump sum withdrawals from registered schemes are also tax exempt up to a maximum of KES 600 000.

Transfer pricing and thin capitalisation rules
The Income Tax Act also provides for the replacement of arm’s length prices where the profits of a residents business are reduced, i.e. transferred as a result of or by virtue of business having transacted with a non-resident with whom the resident is related. A person will be regarded as related to another if either person participates directly or indirectly in the management, control or capital of the business of the other or if a third person participates directly or indirectly in the management, control or capital of the business of both. Thin capitalisation rules are applied when the debt/equity ratio exceeds 3:1. The debt/equity ratio for Petroleum Contractors and Mining Licensees has been set at 2:1. In calculating thin capitalisation, negative reserves are taken into account.

Deemed interest
A company, excluding banks and financial institutions, that has an interest-free loan from a related non-resident entity is required to compute deemed interest and add it back to the tax computation. The deemed interest attracts 15% WHT and is an off-the-financial-statement adjustment that only affects the tax computation (and not the financial statements). The deemed interest is based on the Commissioner of Domestic Taxes’ prescribed rates.

Inheritance, Gifts and donations
The transfer of property by way of gifting is chargeable to capital gains tax. Transfer through inheritance is however exempt from capital gains tax. Donations are not tax deductible in calculating the taxable income of a person except for those made to registered charitable organisations, exempted societies and political parties.

Taxation of group life policies
Not taxable.
Transaction taxes
Value added tax (VAT) is charged under the Value Added Tax Act 2013 on the supply of taxable goods and services and the importation of taxable goods and services into Kenya. The standard rate of VAT is 16%. The VAT rates in respect of exports and other essential goods is 0%. VAT is levied on rent for commercial buildings at the standard rate of 16%.

Withholding VAT
Withholding VAT is withheld by Government Ministries, Departments and Agencies as well as any other taxpayer whom the Commissioner of Domestic Taxes so appoints, are required to account for withholding VAT at the rate of 6 percent for taxable supplies made to them. This amount is required to be remitted to the Kenya Revenue Authority after every two weeks, that is, twice in a month. This however does not relieve the suppliers of their obligation to account for VAT.

Stamp and transfer duty
Stamp duty is payable on a broad class of legal instruments. Liability arises if the instrument relates to property situated in Kenya, or to any matter or contract to be performed in Kenya, regardless of where the instrument is executed.

Stock or marketable security

<table>
<thead>
<tr>
<th>Stock or marketable security</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfers of securities not listed on the stock exchange</td>
<td>1%</td>
</tr>
<tr>
<td>Transfer of securities listed on the stock exchange</td>
<td>Nil</td>
</tr>
<tr>
<td>Immovable property situated in any municipality</td>
<td>4%</td>
</tr>
<tr>
<td>Immovable property situated outside municipalities</td>
<td>2%</td>
</tr>
<tr>
<td>Creation or increase of share capital</td>
<td>1%</td>
</tr>
<tr>
<td>Lease with a period of 0 to 3 years</td>
<td>1%</td>
</tr>
<tr>
<td>Lease with a period over 3 years</td>
<td>2%</td>
</tr>
</tbody>
</table>

Excise duty on financial services
The term financial service provider has been replaced with financial institutions which includes banks, insurance companies, micro finance organisations, Savings and Credit Co-operative (SACCO) societies and the Kenya Post Office Savings Bank.

All charges that financial institutions charge for their services are subject to excise duty at the rate of 10% with the exception of interest on loan or return on loan or an insurance premium or premium based or related commissions.

The excise duty extends to the transaction fees that are charged on users of mobile money transfer services by telecommunication companies.

Other taxes
- Infrastructure development levy – 1.5% on all goods imported for home use except goods coming from the East Africa Community member states;
- Sugar development levy – 4% of sugar sold or imported;
- Refinery throughput tax – 15% of refining charges raised by a refinery; and
- Fringe benefits tax (FBT) – 30% of the benefit. FBT is payable by every employer in respect of a loan provided to employees/directors at concessional rates. The concessional rates are compared with rates prescribed by the Commissioner to determine the benefit.
<table>
<thead>
<tr>
<th>Country</th>
<th>Management and professional fees %</th>
<th>Royalties %</th>
<th>Rent: Real estate/Others %</th>
<th>Dividends %</th>
<th>Interest %</th>
<th>Pension and retirement annuities %</th>
<th>Entertainment sport and promotion %</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Kingdom</td>
<td>12 ½</td>
<td>15</td>
<td>30/15</td>
<td>10</td>
<td>15</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Germany</td>
<td>15</td>
<td>15</td>
<td>30/15</td>
<td>10</td>
<td>15</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Canada</td>
<td>15</td>
<td>15</td>
<td>30/15</td>
<td>10</td>
<td>15</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Denmark</td>
<td>20</td>
<td>20</td>
<td>30/15</td>
<td>10</td>
<td>15</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Norway</td>
<td>20</td>
<td>20</td>
<td>30/15</td>
<td>10</td>
<td>15</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Sweden</td>
<td>20</td>
<td>20</td>
<td>30/15</td>
<td>10</td>
<td>15</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Zambia</td>
<td>20</td>
<td>20</td>
<td>30/15</td>
<td>10</td>
<td>15</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>India</td>
<td>17 ½</td>
<td>20</td>
<td>30/15</td>
<td>10</td>
<td>15</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>France</td>
<td>As business profits</td>
<td>10</td>
<td>30/15</td>
<td>10</td>
<td>12</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>South Africa*</td>
<td>As business profits</td>
<td>10</td>
<td>-/-</td>
<td>10</td>
<td>10</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

*The Kenya - South Africa DTA was effective from 1st January 2016. Kenya unilateral Limitation of Benefit to apply.

Treaties with United Arab Emirates, Italy, Tanzania, and Uganda have been signed but are not yet in force.

In addition to Double Taxation Agreements (DTAs) and in line with the Organisation for Economic Co-operation and Development model agreement, Tax Information Exchange Agreements (TIEA) were introduced.

For a non-resident company to enjoy the benefits of a DTA between its resident country and Kenya, then at least 50% of its owners must be residents of its country or the non-resident company must be listed in a stock exchange in its country.

**Investment information**

**Investment rules**

Kenya has a long-standing, stable and positive attitude towards foreign private investment. The major instrument for attraction and protection of foreign investment is the Foreign Investment Protection Act. Kenya has also instituted the Industrial and Promotion Advisory Centre to assist approved investors with investment procedures.

Utilities and infrastructure are exclusively reserved for the public sector. There are no sectors or regions reserved for nationals to the exclusion of foreign investors. However, foreign investment in agriculture is controlled if it entails land ownership or leasing (freehold or leasehold).

There are local participation requirements for investments in the telecommunication sector where locals must hold at least 30% interest in such companies.

In the insurance industry, the East African Community (“EAC”) citizens must own at least one third of the paid-up capital in an insurance company. Further, at least sixty per cent of the paid up capital of an insurance broker should be owned by EAC citizens.

There are also restrictions in the extractive industry where it is required that the mineral right in respect of which a licence is issued should have at least 35 per cent component of local equity participation.
**Investment incentives**

**General**

The Cabinet Secretary to the National Treasury may declare any area in Kenya to be an Export Processing Zone (EPZ) or a Special Economic Zone (SZE). Manufacturing, commercial or service activities, as defined, may be undertaken in an EPZ/SZE, but to obtain a license from the EPZ/SEZ Authority the enterprise must:

- Be incorporated in Kenya, whether or not it is 100% foreign-owned, for the sole purpose of producing goods for export in that zone;
- Engage in eligible activities in the EPZ/SEZ in question;
- Not have a harmful effect on the environment, impinge on national security or pose a health hazard; and
- Conduct business in accordance with the laws in force.

EPZ/SEZ enterprises may be permitted to sell a percentage of their products in the local market and enjoy the following benefits:

- Exemption from VAT, excise duties and customs import duty on inputs;
- Operation under one license issued by EPZ/SEZ Authority and exemption from compliance with various laws applicable to non-EPZ enterprises;
- For EPZs, exemption from corporation tax for 10 years following the date of the first sale and at 25% rate for the next 10 years. The exemption and reduction does not apply to commercial activities;
- For SEZs, a corporation tax of 10% will apply for the first 10 years of operation while 15% will be applicable for the next 10 years.
- Investment deduction of 100% of capital expenditure;
- Investments of over KES 200 million outside the Cities of Nairobi, Kisumu and Mombasa attract an investment deduction of 150%;
- For EPZs, exemption from WHT on payments to non-residents for the first 10 years;
- EPZ enterprises are deemed to be non-residents and as such subject to non-resident - WHT on any payments made to them; and
- Exemption from stamp duties, import/export quota restrictions, rent or tenancy controls and personal income tax for non-resident employees.

**Taxation**

In addition to capital allowances on fixed-asset expenditure, an investment deduction is available on the cost of new buildings and new machinery used for manufacturing and hotel activities. The deduction is a form of an accelerated wear and tear allowance and is granted at a 100% rate.

The investment deduction is available only in the first year of use. The allowance is a before-tax deduction and therefore not a tax relief.

A capital allowance of 150% is available on the construction of a building or purchase and installation of machinery outside the city of Nairobi or the municipalities of Mombasa and Kisumu where the value of the investment is not less than KES200 million.

Capital allowance is given on the right to use the fibre optic cable at a rate of 5% and on computer software at 20% on straight line basis.
Recent Tax Developments

The Tax Procedures Act (TPA)

Non-residents with no fixed place of business in Kenya but who are eligible to register for tax, are required to appoint a tax representative. Should the non-resident person fail to appoint a tax representative, the Commissioner may appoint one on their behalf.

The TPA has also re-introduced the remission of waiver of interest. Upon coming to force, it had only provided for the remission of penalties.

The amendment has also set the reasons under which remission of interest or penalties may be granted. The grounds for seeking a waiver of interest or penalties are:

a) Uncertainty as to any question of law or fact;
   b) Consideration of hardship or equity; or
   c) Impossibility or undue difficulty or expense, of recovery tax.

Excise Duty Act

Excise duty in Kenya is governed by the Excise Duty Act, 2015, which came into effect on 1 December 2015.

Excise duty is imposed on the local manufacture or the importation of certain commodities and services. Excisable commodities include items such as bottled water, soft drinks, cigarettes, alcohol, fuels, and motor vehicles. Excisable services include mobile cellular phone services, fees charged for money transfer services, and other fees charged by financial institutions.

Further, excise stamps must be affixed on certain excisable goods, such as alcohol and tobacco products.

Finally, some goods have been exempted from excise duty by the Finance Act, 2016, namely; goods for direct and exclusive use in the implementation of an official Aid Funded Projects, excisable goods imported for direct use in the manufacture of sanitary towels and goods for the official use by the Kenya Defence Forces and the National Police Service. This is in addition to the goods already exempted under Part A of the Second Schedule to the Excise Duty Act, 2015.

Taxation of rent on residential property

Any resident person accruing or deriving income from Kenya for the use or occupation of residential property is expected to pay monthly residential rental income tax at the rate of 10% of the gross rental income if it does not exceed KES 10 million during any year of income.

Betting, Lotteries and Gaming Act

The amendment introduces specific taxes to gaming revenue, lottery turnover and on the cost of entry to a premium rated prize competition.

The specific taxes are as follows:
- Betting tax - chargeable at 12.5% of the gaming revenue;
- Lottery tax – chargeable at 5% of the lottery turnover;
- Gaming tax – chargeable at 12.5% of the gaming revenue; and
- Prize Competition Tax – chargeable at 15% of the total gross turnover of the competition.

This shall be an additional tax to the corporation tax already charged to these companies at the corporate tax rate of 30%.
Exchange control
There are no exchange controls after the 1994 liberalisation which removed all restrictions. However, the Proceeds of Crime and Anti-money Laundering Act of 2009 requires a reporting institution to file reports of all cash transactions exceeding US$10,000 or its equivalent in any other currency carried out by it to the Financial Reporting Centre.

Residence and work permits
All foreign citizens are required to obtain work permits, which will only be granted if it can be demonstrated that a citizen is unable to perform the job.

Annual budget announcement
The Cabinet Secretary to the National Treasury announces the annual Budget and Taxation Proposals in June each year. Some taxation proposals are effective from the Budget day. This year though, the annual budget will be presented in April before the National Assembly dissolves to pave way for the general election that is scheduled in August.

Trade and bilateral agreements
Membership – WTO, ACP-EU Partnership Agreement, COMESA, EAC, and AGOA. Trade Agreements concluded with Argentina, Bulgaria, China, Czechoslovakia, Ethiopia, Germany, Hungary, India, Iraq, Lesotho, Liberia, Poland, Romania, Rwanda, Sudan, Swaziland, Russia, DRC, Bangladesh, Comoros, Djibouti, The Netherlands, Egypt, Nigeria, South Korea, Romania and Thailand.

The East African Community
The East African Community (EAC) is moving towards becoming a fully integrated economic community. The Common Market Protocol which was signed in November 2009 commenced in 1 July 2010, making the EAC a fully-fledged customs union under a common external tariff.

Import duty is levied under the EAC Customs Management Act. Imported goods are generally subject to import duty at varied rates, including 0% for raw materials and capital goods (also exempt from VAT), 10% for intermediate goods, and 25% for finished goods. However, a different rate of duty can be prescribed by the Council of Ministers of the EAC partner states.

Goods moving freely within the EAC partner states must comply with the EAC Rules of Origin and with certain provisions of the Protocol for the Establishment of the EAC Customs Union for them to enjoy exemption from import taxes. The EAC rules of origin provide that goods shall be accepted as originating in a Partner State where the goods are:

a. wholly produced in the Partner State; or
b. Produced in the Partner State incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the Partner State and:
   i. The goods are classifiable under a tariff heading other than the tariff heading of the non-originating materials used in their production; or
   ii. The total value of the refrigerators does not exceed 15% of the ex-works price of the refrigerators.

Simple assembly of components and parts imported from outside the Partner State to constitute a complete product shall not support a claim that goods originate from a Partner State. Further, all the operations carried out in a Partner State on a given product shall be taken into account to determine whether the working or processing undergone by that product is to be regarded as insufficient as thus not conferring originality.
Economic statistics

<table>
<thead>
<tr>
<th>Economic statistic</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime Interest Rate (January 2017)</td>
<td>14%</td>
</tr>
<tr>
<td>US$ Exchange Rate (9 February 2017)</td>
<td>KES 103.6994</td>
</tr>
<tr>
<td>Inflation (January 2017)</td>
<td>6.35 %</td>
</tr>
<tr>
<td>GDP (September 2016)</td>
<td>5.7%</td>
</tr>
</tbody>
</table>

Travel information

<table>
<thead>
<tr>
<th>Travel Information</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Visa requirements</td>
<td>South Africans are now required to apply for visas to travel to Kenya and pay R750 (approx. USD 68) and no visa will be issued on arrival in Kenya. Most other EU and USA passport holders also require visas.</td>
</tr>
<tr>
<td>Flights</td>
<td>Direct international flights to Nairobi from other regional and international hubs are available on a daily basis, except from the US.</td>
</tr>
<tr>
<td>Inoculations</td>
<td>Standard requirements</td>
</tr>
</tbody>
</table>

Currency
The Kenya Shilling (KES).

Languages
English and Kiswahili are the official and business languages, while Kiswahili is the national language in Kenya.

Official holidays
- 1 January (New Year’s Day)
- 14 April (Good Friday)
- 16 April (Easter Monday)
- 1 May (Labour Day)
- 1 June (Madaraka Day)
- 26 June (Eid-al-Fitr)*
- 20 October (Mashujaa Day)
- 12 December (Jamhuri Day)
- 25 December (Christmas Day)
- 26 December (Boxing Day)

*To be confirmed depending on the sighting of the moon.
Thank you

Contact us

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