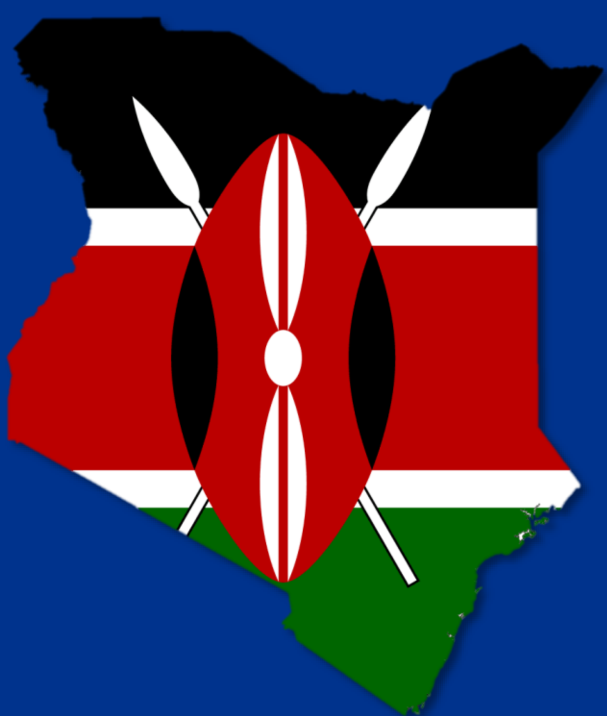
Kenya

Fiscal Guide 2015/2016

Tax



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INTRODUCTION

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Income tax

Business income

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

Resident companies			
Corporation tax			
Standard rate	30%		37.5% (branch)
	Newly listed companies:	Number of years	
— at least 20% of issued share capital listed	27%[1]	3 Years	-
— at least 30% of issued share capital listed	25%[2]	5 Years	-
— at least 40% of issued share capital listed	20%[3]	5 Years	-
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*	**Resident**	**Non-resident**
Dividends	5%[4]	10%[5]
Interest	15%	15%
Interest on Government security[6]	15%	15%
Interest on bearer instrument[7]	25%	25%
Interest on housing bonds[8]	10%	15%
Royalties	5%	20%

Preferential rate applies for three years following year of issue of shares to the public.
2 Preferential rate applies for five 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 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.
5 East African Community citizens enjoy a preferential rate of 5%
6 Includes interest on Government bearer bonds of at least two years and treasury bills and bonds.
7 Interest on Bearer bonds with a maturity of 10 years and above is 10%.
8 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.

Withholding tax*	Resident	Non-resident
Commissions paid by insurance companies to brokers	5%	20%
Commissions paid by insurance companies to agents and other persons	10%	20%
Management, technical and professional fees, including training fees	5%	20%9
Contractual fees – building, civil and engineering works	3%	20%
Interest paid to petroleum/mining companies	-	15%
Natural Resource income	20%	20%
Rent on immovable property	12%	30%
Rent on lease equipment	-	15%
Pensions or annuities	10 – 30%**	5%
Deemed interest	15%	15%
Gains on transmission of messages by cable, VSAT, television, radio	-	5%
Winnings from bookmakers	7.5%	7.5%
Employee taxes	10 – 30%**	10 – 30%**

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.

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

Annual Taxable income (KES)	Rate of tax (%)
Up to 121 968	10
Next 114,912	15
Next 114,912	20
Next 114,912	25
Over 466 704	30

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 with effect from 1 January 2015.

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 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 substitution 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. Under the Finance Act 2014 the debt/equity ratio for Petroleum Contractors and Mining Licensees has been set at 2:1 from 1 January 2015.

In calculating thin capitalisation, negative reserves are taken into account with effect from 13 June 2008.

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 provision came into effect in June 2010 through the 2010 Finance Act.

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).

With effect from July 2011, the deemed interest is based on the Commissioner of Domestic Taxes' prescribed rates.

Windfall gains

Withholding tax on windfall gains from winnings payable to punters (players) by bookmakers are now subject to tax at the rate of 7.5% for both resident and non-resident persons. The withholding tax is on the gross profit.

Inheritance, Gifts and donations

The transfer of property by way of gifting is chargeable to capital gains tax from 1 January 2015 according to the Finance Act 2014.

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 which came into effect on 2 September 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 non-residential (commercial) buildings at the standard rate of 16%.

Withholding VAT

Withholding VAT which shall be withheld 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 tax as per the VAT Act, 2013.

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

Transfers of securities not listed on the stock exchange	1%
Transfer of securities listed on the stock exchange	Nil
Immovable property situated in any municipality	4%
Immovable property situated outside municipalities	2%
Creation or increase of share capital	1%
Lease with a period of 0 to 3 years	1%
Lease with a period over 3 years	2%

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

- Railway 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.

Double tax treaties and reduced withholding tax rates

Country	Management and professional fees %	Royalties %	Rent: Real estate/Others %	Dividends %	Interest %	Pension and retirement annuities %	Entertainment sport and promotion %
United Kingdom	12 ½	15	30/15	10	15	5	20
Germany	15	15	30/15	10	15	5	20
Canada	15	15	30/15	10	15	5	20
Denmark	20	20	30/15	10	15	5	20
Norway	20	20	30/15	10	15	5	20
Sweden	20	20	30/15	10	15	5	20
Zambia	20	20	30/15	10	15	5	20
India	17 ½	20	30/15	10	15	5	20
France	As business profits	10	30/15	10	12	5	20
South Africa*	As business profits	10	-/-	10	10	-	-

*The Kenya - South Africa DTA is effective as from 1st January 2016.

Treaties with 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) have been introduced with effect from 1 January 2012.

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.

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 registration under the VAT Act, 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, effective 12 June 2009.

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

The Tax Procedures Act which is effective 19 January 2016 has been introduced to streamline and simplify the administration of tax laws in Kenya.

Some of the changes that the Act has introduced include a reduction from the current late payment interest rate of 2% per month to 1% per month (simple interest) on the amount of tax remaining outstanding.

Also, the Act has taken away the Commissioner's power to waive interest and also the power to make recommendations for waiver of interest to the Cabinet Secretary to the National Treasury. This means that going forward, any tax exposures occasioned by non-compliance shall be payable in full inclusive of interest. Application for waiver of penalties can be done under Section 89 (6 & 7) of the Tax Procedures Act.

Excise Duty Act

The Excise Duty Act, 2015 came into effect from **1 December 2015**. The new Act provides for the management, administration, charging, assessment and collection of excise duty in Kenya.

For the insurance industry, it is important to note that the definition for "other fees" has now been revised to "*includes any fees, charges or commissions charged by financial institutions relating to their licensed financial institutions, but does not include interest on loan or return on loan or an insurance premium or premium based or related commissions*"

This is a welcome move for the insurance industry as insurance premiums are now expressly excluded. In addition, premium based or premium related commissions have also been expressly excluded from excise duty. This therefore means that re-insurance commissions as well as insurance agents' commissions would be excluded from excise duty as this can be classified as premium based.

Taxation of rent on residential property

Effective 1st January 2016, a tax to be referred to as residential rental income tax is now payable by any resident person, on the income which is accrued in or derived from Kenya for the use or occupation of residential property, and which does not exceed KES 10 million during any year of income.
The tax is payable at 12% on the gross rental receipts.

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.

Trade and bilateral agreements

Membership – WTO, ACP-EU Partnership Agreement, COMESA and EAC.
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.

Economic statistics

Prime Interest Rate (January 2016)	11.50.%
US$ Exchange Rate (9 February 2016)	KES 101.94
Inflation (January 2016)	7.8%
GDP (September 2015)	5.8%

Travel information

Visa requirements	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.
Flights	Direct international flights to Nairobi from other regional and international hubs are available on a daily basis, except from the US (expected to be launched sometime this year).
Inoculations	Standard requirements

Currency

The Kenya Shilling (KES).

Languages

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

Official holidays

- 1 January (New Year's Day)
- 25 March (Good Friday)
- 28 March (Easter Monday)
- 1 May (Labour Day)
- 1 June (Madaraka Day)
- 7 July (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

Note: The Public Holidays Act (Act No 36 of 1994) determines whenever any public holiday falls on a Sunday, the Monday following on it shall be a public holiday.

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