PKF

Quick Tax Guide 2023/2024

NOTE

This publication includes amendments up to the Finance Act, 2023 as assented on 30 June 2023 and does not include any legilslative changes after that date. We also refer you to the important disclaimer on page 25 of this Tax Guide.

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PERSONAL TAXATION

Income tax is chargeable on any gains or profits from employment or services rendered. Gains or profits from employment are widely defined and include wages, salaries, leave pay, sick pay, payment in lieu of leave, fees, commissions, gratuity, travelling, entertainment or other allowances.

Individual rates of tax

	Annual rates of tax			Monthly rates of tax		
Tax bands	**Taxable Pay (KES)**	**Tax rates**	**Cumulative (KES)**	**Taxable pay(KES)**	**Tax rates**	**Cumulative (KES)**
On the first	288,000	10%	28,800	24,000	10%	2,400
On the next	100,000	25%	53,800	8,333	25%	4,483
On the next	5,612,000	30%	1,737,400	467,667	30%	144,783
On the next	3,600,000	32.5%	2,907,400	300,000	32.5%	242,283
Excess over	9,600,000	35%		800,000	35%	
Personal relief	KES 28,800 (a)			KES 2,400 (a)		
Insurance relief	KES 60,000 (b)			KES 5,000 (b)		
Affordable housing relief	KES 108,000 (c)			KES 9,000 (c)		
Mortgage interest relief	KES 300,000 (d)			KES 25,000 (d)		
Registered Pension/Provident Schemes relief	KES 240,000 (e)			KES 20,000 (e)		

Individual tax reliefs

Tax relief is an amount that is deductible against tax payable.

a) Personal relief is granted to individuals who are residents of Kenya for a year of income. An individual is entitled to personal relief from one employer only.

b) Insurance relief is applicable on premiums paid for a post-retirement medical fund, life, health or education policies for an individual, spouse or dependent children. Education and health policies must have maturity periods of at least 10 years. The insurance relief is 15% of contributions made but capped to KES 60,000 per annum. Statutory contributions made to the National Hospital Insurance Fund are also included.

c) Affordable housing tax relief is applicable for those who qualify to procure a house under the Affordable Housing Scheme. The relief is 15% of the employee’s contribution capped at KES 108,000 per annum or KES 9,000 per month subject to set conditions.

d) Mortgage interest relief for owner occupied property capped to KES 300,000 per annum.

e) The combined employer and employee contributions to a registered fund or scheme on behalf of a member are unlimited. However, the tax allowable amount is limited to the lower of:

- Actual contributions;
- 30% of the employee’s pensionable income; and
- KES 240,000 per annum (KES 20,000 per month).

Employment Benefits

All benefits are taxable at the higher of cost and fair market value except:

a) Tax-free benefits

- The first KES 150,000 per month (KES 1,800,000) of total income for the disabled persons registered with the National Council of Persons with Disability and approved by the Commissioner;
- KES 50,000 for non-reimbursed hospital admission costs, drugs treatment and home care services for disabled persons registered with the National Council of Persons with Disability and approved by the Commissioner;
- Education fees of an employee's dependants or relatives, if taxed on the employer;
- Medical premiums paid for employees, including spouse and dependent children;
- Registered provident/pension contributions (except contributions to non-registered funds or in excess of relief for registered funds) where the employer is tax exempt;
- International passage expenses for non-citizen employees recruited from outside Kenya solely to serve the employer;
- Canteen/cafeteria established/operated by employer or a tax registered third party where value of meals provided to staff does not exceed KES 4,000 per employee per month;
- Gratuity or similar amount in respect of employment up to KES 240,000 paid into a registered pension scheme by an employer per annum;
- Group life premiums that do not confer benefit to the employee or any of his dependants;
- Contributions paid to a registered or unregistered pension scheme, pension fund or individual retirement fund subject to a limit of KES 240,000 per annum;
- Club entrance and subscription fees if disallowed against the employer's income.

b) Non-cash taxable benefits

- Benefit in kind if the aggregate cost exceeds KES 36,000 per annum;
- Medical benefits provided to a non-whole-time service director (owning over 5% shareholding), partners and sole proprietor, including their beneficiaries (spouse and up to 4 children below 21 years), in excess of KES 1 million per annum.

c) Reimbursements

- For employees working out of their workstation the first KES 2,000 per diem is deemed to be reimbursement and not taxable. Reimbursement expenses are generally not taxable but require to be supported.

- Amounts received as mileage/transport claim by employees on official duties shall be pegged to the approved rates by the Automobile Association of Kenya ("AA Kenya"). Any amounts above the approved rates shall be treated as a taxable benefit on the employee.
- Double taxation relief for Kenyan citizen artistic performers and sportsmen against tax charged in Kenya on same income that has been taxed outside Kenya.

d) Housing

- Non-working directors and whole time service directors: higher of 15% of gross emoluments, fair market rental value and rent paid.
- Agricultural employees: 10% of gross emoluments less any rent charged to the employee.
- Other employees: higher of 15% of gross emoluments or rent paid by the employer under an arms-length agreement with a third party.

e) Loans to employees

- Fringe benefit tax is payable by the employer at the rate given by the Commissioner less actual rate paid by employee. The tax rate to be applied is the corporate income tax rate.

f) Other benefits

- In case of employees share ownership plan, the difference between the share offer price at the date option is granted by employer and share market value on the date when employee exercises the option.
- Value of shares allocated to employee in lieu of cash emoluments by an eligible start-up employer under certain conditions.
- Income earned by individuals registered under the Ajira Digital Program for a period of 3 years beginning 1 January 2020, provided qualifying members remit KES 10,000 subscription upon registration.

g) Set-off of tax

- Tax paid in another country on employment income by a Kenyan citizen can be offset against tax payable on that income in Kenya to the maximum of tax payable in Kenya on the said income.

Commissioner`s Prescribed Benefit Rates

All benefits are taxable at higher of cost to the employer of providing the benefit and fair market value.

a) Domestic Benefits

Certain benefits such as water, telephone, furniture, electricity, wages paid to personal staff, security are taxable at the higher of cost or fair market value. In rare cases, where the cost of certain benefits to the employer is difficult to ascertain the Commissioner has prescribed a value. The prescribed rates are:

Service	Reduced rates of benefits
Electricity (Communal or from a generator)	KES 1,500 (KES 900 for agriculture employees)
Water (Communal or from a borehole)	KES 500 (KES 200 for agriculture employees)
Telephone (Landline and mobile phones)	30% of the cost to employer
Provision of Furniture *	1% of the cost to employer

**If leased, the cost of leasing should be brought to charge.*

b) Motor vehicles

The benefit is taxed at the higher of 2% per month of the initial cost of the vehicle or prescribed scale rates shown below:

Motor vehicle type	Engine Capacity	Monthly (KES)	Annual (KES)
Saloon, Hatch Backs & Estates	Up to 1,200 cc.	3,600	43,200
	1,201 to 1,500 cc.	4,200	50,400
	1,501 to 1,750 cc.	5,800	69,600
	1,751 to 2,000 cc.	7,200	86,400
	2,001 to 3,000 cc.	8,600	103,200
	Over 3,000 cc.	14,400	172,800
Pick-ups, Panel Van Unconverted	Up to 1,750 cc.	3,600	43,200
	Over 1,750 cc.	4,200	50,400
Land Rovers/Cruisers		7,200	86,400

NB: Range Rovers/ Double Cabin and vehicles of similar nature are classified as saloon.

- For leased vehicles, the benefit is the cost of leasing;
- Employees with restricted private usage can apply for a lower benefit valuation.

NATIONAL SOCIAL SECURITY FUND (NSSF)

NSSF Act

A new NSSF legislation (the National Social Security Fund Act, 2013 – NSSF Act, 2013) was enacted on 24 December 2013 to replace the NSSF Act, Cap 258. The NSSF Act, 2013 establishes two funds namely, the Pension Fund and the Provident Fund. The new legislation requires the employer and the employee to each contribute 6% of the employee's monthly pensionable earnings subject to prescribed upper and lower earning limits. Currently upper earnings limit is KES 18,000 and lower earnings limit at KES 6,000. Upper earnings limit will move up gradually to the average level of earnings equal to 4 times the National Average Earnings (NAE). Compulsory contributions to NSSF up to 12% of lower earnings limit. Excess contribution over 12% lower earnings limit may be contributed to NSSF or any other registered retirement scheme (w.e.f. 1 February 2023). NSSF is payable by the 9 of the month following the month of deduction.

Contributions not paid after the due date shall attract penalty at 5% per month or part thereof.

Foreign nationals who are members of a social security scheme in their home country and are expected to be in Kenya for less than 3 years at any one time may be exempt from making contributions to the fund, subject to making an application and grant of the same.

Affordable Housing Levy

An employer shall pay a mandatory Affordable Housing Levy (AHL) contribution in respect of each employee. The employer and employee will each contribute 1.5% of the employee's monthly gross salary. AHL will be due by the 9th day of the following month. KRA has given the following clarification;

1. Defined Gross Monthly Salary to constitute basic salary and regular cash allowances. This include housing, travel or commuter, cash allowances and such regular cash payments and exclude those that are non-cash as well as those not paid regularly such as leave allowance, bonus, gratuity, pension, severance pay or any other terminal dues and benefits
2. All employees irrespective of their contract of service shall pay the affordable housing levy
3. Taxpayers paying this levy will not be eligible to Affordable Housing Relief

This move is aimed at increasing funds available for the government to channel to the affordable housing projects and creating employment opportunities for the youth. The effective date will be 1 July 2023.

National Hospital Insurance Fund

Effective 1 July 2023 and subject to implementation of the new NHIF regulations, the standard contributions are as follows:

- Contribution in salaried employment - 2.75% of gross monthly income
- Contribution in self-employment - 2.75% of declared or assessed gross monthly income.

Minimum contribution is KES 300 per month.

NHIF is payable before the 9th of the following month.

Contributions prior to 1 July 2023 and until such time that the regulations are implemented are as follows:

Sr No.	Monthly Income (KES)	Contribution per month (KES)	Sr No.	Monthly Income (KES)	Contribution per month (KES)
1	0 - 5,999	150	10	40,000 - 44,999	1,000
2	6,000 - 7,999	300	11	45,000 - 49,999	1,100
3	8,000 - 11,999	400	12	50,000 - 59,999	1,200
4	12,000 - 14,999	500	13	60,000 - 69,999	1,300
5	15,000 - 19,999	600	14	70,000 - 79,999	1,400
6	20,000 - 24,999	750	15	80,000 - 89,999	1,500
7	25,000 - 29,999	850	16	90,000 - 99,999	1,600
8	30,000 - 34,999	900	17	100,000 over	1,700
9	35,000 - 39,999	950	18	Self-employed (special)	500

National Industrial Training Authority

All employers are required to register with the National Industrial Training Authority and remit to the authority a monthly payment of KES 50 per employee including an apprentice, indentured leaner, other trainee, temporary, seasonal and casual worker per year or on pro rata basis. However, new businesses with less than 100 employees are exempted from registration, making monthly levy contribution and return filing for a period of twelve months from the date of registration of the business.

National Employment Authority (NEA)

All employers are required to register with the National Employment Authority (NEA). NEA requires all employers in Kenya with 25 or more employees to submit returns in relation to their employees for each calendar year ending 31 December.

An employer is required to notify the Director of Employment of any vacancies and/or terminations as well as when vacant posts are filled. An employer who fails to file a return of employees' details with NEA is liable for a fine of up to KES 100,000 and/or a six months jail term.

Pension / Provident Funds

The first KES 60,000 lump sum withdrawals from both registered pension and provident funds for each year of pensionable service is tax exempt, subject to a maximum of KES 600,000.

Withdrawals based on contributions made in 1991 and prior are exempt.

Earnings from non-commuted pensions are exempt up to KES 300,000 per annum.

Lump sum payments and monthly pension payments to persons over 65 years of age are tax-free.

Any surplus refunded to/withdrawn by employer from a registered fund shall be deemed to be the income of the employer.

Withholding tax rates for pension/provident fund withdrawals and lump sum payments beyond exempt limits:

a) Withdrawal before 15 years expire

Tax bands	Taxable amount (KES)	Tax Rate
On the first	288,000	10%
On the next	100,000	25%
Above	388,000	30%

b) **Withdrawal after 15 years, attaining age of 50 years or retirement on health grounds:**

Tax bands	Taxable amount (KES)	Tax Rate
On the first	400,000	10%
On the next	400,000	15%
On the next	400,000	20%
On the next	400,000	25%
Above	1,600,000	30%

- Withholding tax under (b) is final tax.
- Tax free withdrawal under (b) – First KES 300,000 p.a in case of annuity and first KES 600,000 in case of lumpsum withdrawals.

CAPITAL GAINS TAX (CGT)

Self-assessment tax

The tax rate applicable is 15% w.e.f. 1 January 2023 (5% prior to 1 January 2023) and is payable on:

- Gains realised by companies, partnerships and individuals on or after 1 January 2015 on transfer of property situated in Kenya excluding securities listed on the NSE are taxable.
- Gains derived from the alienation of shares or comparable interests, including interests in a partnership or trust, if, at any time during the 365 days preceding the alienation, the shares or comparable interests derived more than 20% of their value directly or indirectly from immovable property situated in Kenya, or
- Gains, other than those to which above applies, derived from the alienation of shares of a company resident in Kenya if the alienator, at any time during the 365 days preceding such alienation, held directly or indirectly at least 20% of the capital of that company. w.e.f 1 July 2023
- Effective 1 July 2023 CGT will also apply where:
  - a non-resident person who holds more than 20% of the share capital of a Kenyan company directly or indirectly disposes of his/her interest
  - gains arising from the sale of shares in a foreign entity which derive more than 20% of their value directly or indirectly from immoveable property situated in Kenya.
- CGT due date - earlier of receipt of full purchase price by the vendor or the date the application for transfer is made. w.e.f. 1 July 2023.
- For gains realised where capital deductions have been claimed, please seek specific advise.

Exemptions

- Transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity, subject to certain conditions; Effective 1 July 2023 groups undergoing internal restructuring will need to have existed for 24 months or more in order to qualify for exemption from CGT;

- Transfer of assets to a company where spouses or a spouse and immediate family hold 100% shareholding;
- Land transfer by an individual value of which is KES 3,000,000 and below;
- Transfer of agricultural land by an individual having an area of 50 acres and below outside municipality;
- Transfer of residential home by an individual (MUST have occupied the house for at least 3 years consecutively prior to transfer);
- Transfer of assets between former spouses or their immediate family as part of divorce settlement or bona fide separation agreement;
- Transfer of assets:
  - between spouses;
  - between former spouses as part of divorce settlement or bona fide separation agreement;
  - to immediate family*; or
  - to immediate family* as part of divorce or bona fide separation agreement.
- Transfer of property within 2 years of issue of probate under estate administration;
- Transfer of listed securities;
- Transfer to registered family trusts.
- Effective 1 July 2023 when a property is transfered in a transaction that is not subject to CGT and the property is subsequently transfered in a transaction subject to CGT within a period of less than 5 years, then the adjusted cost in the subsequent transfer shall be based on the original adjusted cost as determined in the first transfer.

* Immediate family means children of the spouses or former spouses.

BUSINESS INCOME TAXATION

Corporate income tax rates

Resident companies	Rate of Tax
Companies	30%
Permanent establishments of non-resident companies (branches)	37.5% (30% w.e.f. 1 January 2024)
Branch repatriation tax	15% (w.e.f. 1 January 2024)
Residential rental income tax	7.5% (w.e.f. 1 January 2024) 10% prior to 1 January 2024 (a)
Real estate companies	15% (b)
Turnover tax	3% (c)

Resident companies	Rate of Tax
Export processing zones: • First ten years • Next ten years • Thereafter	 Nil 25% 30%
Special Economic Zone (SEZ) enterprises, developers and operators (d) • First ten years • Next ten years • Thereafter	 10% 15% 30%
Companies in local assembling of motor vehicle • First five years • Thereafter	 15% (e) 30%
Companies engaged in business under a special operating framework arrangement with the Government	To the extent provided in the framework arrangement (f)
Dividend distribution tax on untaxed gains or profits	30%
Income of a registered unit trust, collective investment scheme or a Real Estate Investment Trust	Exempt
Investee companies of Real Estate Investment Trusts	Exempt
Resident company operating a carbon markets exchange or emissions trading system certified by the Nairobi International Financial Centre Authority ("NIFCA") (w.e.f. 01 July 2022) • First ten years • Thereafter	 15% 30%
Interest and deemed interest on bearer bonds issued outside Kenya for a period of at least two (2) years and interest, discount or original issue discount	7.5%

a) The residential rental tax regime is applicable for the use or occupation of residential property which does not exceed KES 15 million during any year of income. The tax is paid on a monthly basis.

b) This is applicable where a developer constructs at least one hundred residential units annually subject to certain approvals.

c) Turnover tax applies to any person whose turnover from business is between KES 1 - 25 million in a year of income, subject to being registered under the scheme. Turnover tax does not apply to management, professional or training fees, rental income and any income subject to a final withholding tax. w.e.f. 1 July 2023.

d) The lower corporation tax rate is applicable whether the Special Economic Zone enterprise sells its products within or outside Kenya.

e) The 15% corporate rate of tax can be further extended for additional five years if the local content equivalent to 50% of the ex-factory value of the motor vehicles is achieved.

f) The reduced corporate rates are applicable to companies in a special operating framework arrangement agreed between a company and the Government remain in force until expiry of such arrangements.

* Business expenses are only allowable if are incurred wholly and exclusively to generate income. However w.e.f. 1 January 2024, any expenditure or loss must be supported by an invoice generated from an electronic tax invoice management system (eTIMS) unless the transaction is exempted by the Tax Procedures Act, 2015.

Payment of Taxes

Instalment tax and Balance of Tax payments

Instalment tax where applicable is payable as follows:

	Instalment taxes				Balance of tax payments
	20th day of the fourth month of the financial year	20th day of the sixth month of the financial year	20th day of the ninth month of the financial year	20th day of the twelfth month of the financial year	Last day of the fourth month after the financial year
Agricultural enterprises	-	-	75%	25%	As calculated
All other taxpayers	25%	25%	25%	25%	As calculated

Basis for instalment tax: Preceeding year's tax multiplied by 110% or current year's estimate.

Self-Assessment Returns (SAR)

- SARs for non-individuals fall due six months after the end of the accounting year.
- SARs for all individuals due on or before 30 June of the following year. A spouse's income may be filed and taxed separately.
- SARs must be submitted on the iTax platform.

Application for extension to file returns

- Application for extension to submit monthly and annual returns can be done 15 days and 30 days respectively before the due date for submission of return.

Tax Losses

- Prior to 1 July 2021 tax loss carry forward period was limited to 10 years unless extension sought from Commissioner.
- Currently losses are available to be carried forward for succeeding years of income without seeking an extension approval from the Commissioner (w.e.f. 1 July 2021).

Investment allowance and capital deductions

Investment allowance on Buildings

Capital expenditure incurred on:	Rate from 1 January 2022**
Hotel building	50% in first year of use and residual value 25% in equal instalments
Building used for manufacture	50% in first year of use and residual value 25% in equal instalments

Capital expenditure incurred on:	Rate from 1 January 2022**
Hospital buildings	50% in first year of use and residual value 25% in equal instalments
Petroleum and gas storage facilities	50% in first year of use and residual value 25% in equal instalments
Educational buildings including student hostels	10% per year in equal instalments
Commercial building	10% per year in equal instalments
Industrial building	10% per year in equal instalments
Dock	10% per year in equal instalments

Investment allowance on Machinery

Capital expenditure incurred on:	Rate from 1 January 2022*
Machinery used for manufacture	50% in first year of use and residual value 25% in equal instalments
Hospital equipment	50% in first year of use and residual value 25% in equal instalments
Ships or aircrafts	50% in first year of use and residual value 25% in equal instalments
Motor vehicles * and heavy earth moving equipment	25% per year in equal instalments
Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines	25% per year in equal instalments
Furniture and fittings	10% per year in equal instalments
Telecommunications equipment	10% per year in equal instalments
Filming equipment for local producers subject to CS approval	25% per year in equal instalments
Machinery used to undertake exploration operations (prior to 01/01/2022, restricted to those who have a mining right)	50% in first year of use and residual value 25% in equal instalments
Machinery used to undertake operations under a prospecting right	50% in first year of use and residual value 25% in equal instalments
Other machinery	10% per year in equal instalments

* Subject to a maximum limit of KES 3 million for saloon motor vehicles.

Investment allowance – Other

Capital expenditure incurred on:	Rate from 1 January 2022*
Purchase or acquisition of an indefeasible right to use fibre optic cable by a telecommunications operator	10% per year in equal instalments
Farmworks	50% in first year of use and 25% in equal instalments

* Effective 1 January 2022, investment deduction at rate of 100% in the following circumstances:

- The cumulative investment value in the preceding three years outside Nairobi and Mombasa Counties is at least KES 2 billion; or
- The investment value outside the Counties of Nairobi and Mombasa is at least KES 250 million; or
- The capital investments are made in a Special Economic Zone (SEZ).

Effective 1 July 2022, investment deduction at rate of 150% on investments made outside Nairobi County or Mombasa County if they meet the below criteria;

- That the cumulative investment value for the four years preceding 1 July 2021 is at least KES 2 billion; or
- The cumulative investment for the three years succeeding 1 July 2021 at least KES 2 billion.

Interest and Foreign Exchange Loss Restriction

- A cap on tax deductibility of interest to 30% of Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA). Any interest that exceeds the 30% cap will be disallowed for tax purposes. Interest include payments that are economically equivalent to interest as well as expenses incurred in connection with raising financing (w.e.f. 1 January 2022);
- Effective 1 January 2024, interest to be restricted is in respect of loans received from non-resident person in excess of 30% of EBITDA. The loan from non-resident could either be from related person or third party. Restricted interest will be an allowable deduction in the subsequent 3 years of income to the extent that the deduction does not exceed the 30% of the EBITDA threshhold;
- Tax deductibility of realised foreign exchange losses is deferred to the point when the company meets the 30% EBITDA threshold. (w.e.f. 1 July 2022). Effective 1 July 2023 realised foreign exchange loss shall be deferred and claimed over a period of not more than 5 years from the date the loss was realised.

The following additional categories of persons are exempt from the interest deductibility restriction rule:

- Microfinance institutions licensed and non-deposit taking microfinance businesses under the Microfinance Act, 2006 (w.e.f. 1 July 2022);
- Entities licensed under the Hire Purchase Act (w.e.f. 1 July 2022);
- Non-deposit taking institutions involved in lending and leasing business (w.e.f. 1 July 2022);

- Companies undertaking the manufacture of human vaccines (w.e.f. 1 July 2022);
- Companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least KES 5 billion (w.e.f. 1 July 2022 to 31 December 2023);
- Companies engaged in manufacturing whose cumulative investment is at least KES 5 billion provided that the investment shall have been made outside Nairobi City County and Mombasa County (w.e.f. 1 July 2022 to 31 December 2023); and
- Holding companies that are regulated under the Capital Markets Act (w.e.f. 1 July 2022).

Deemed interest

Deemed interest refers to an amount of interest equal to the average 91 day T-Bill rate, deemed to be payable by a foreign controlled resident person in respect of any outstanding loan provided or secured by the non-resident, where such loans have been provided free of interest. However, deemed interest in respect of an interest free loan advanced to a company undertaking the manufacture of human vaccines is tax exempt.

Digital Service Tax - DST

Digital Service Tax (DST) at a rate of 1.5% is payable by a non-resident person on income accrued in or derived from Kenya from a business carried out over the internet or an electronic network including through a digital marketplace.

The DST return and payment is due on or before the 20th of the month following provision of the service.

Specific exclusions for DST are:

- Transactions carried out by resident persons;
- Payments made to non-resident persons which are subject to withholding tax;
- Income received from transmission of messages by apparatus established in or outside Kenya;
- Non-resident persons with a permanent establishment (PE) in Kenya.

Taxation of gains from Financial Derivatives accruing to non-residents

Effective 1 January 2023, gains accruing to derivative transactions between non-resident persons who have no permanent establishment in Kenya and a resident person in Kenya, excluding financial derivatives traded on the Nairobi Securities Exchange are subject to tax. The gains will be subjected to withholding tax at 15%.

Digital Asset Tax

Effective 1 September 2023, Digital Asset Tax (“DAT”) will be payable by a person on the income derived from the transfer or exchange of digital assets. The tax will be at the rate of 3% of the transfer or exchange value of the digital asset.

A digital asset includes anything of value that is not tangible and cryptocurrencies, token code, number held in digital form and generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically and a non-fungible token or any other token of similar nature.

The income derived from the transfer or exchange of a digital asset will be the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset. DAT will be deducted and remitted to the Commissioner by the owner of the platform or the person who facilitates the exchange or transfer of a digital asset. The tax should be remitted within 5 working days together with a return of the amount of the payment, the amount of tax deducted, and such other information as the Commissioner may require.

Transfer pricing

The Kenya Transfer Pricing (TP) rules, modelled on the OECD Guidelines, were enacted in 2006, require all transactions between related parties (where one party is resident in Kenya and the other outside Kenya), to be documented in accordance with set out guidelines. The rules also apply to transactions between a head office and its branch (or other related branches).

The rules also apply to domestic transactions where one of the parties is operating under a preferential tax regime. A preferential tax regime is one which includes a reduction in the tax rate or the tax base.

All related party transactions are required to adhere to the arm's length principle. Further, appropriate documentation should be maintained in support of the arm's length nature of these transactions.

TP policy documentation is a mandatory requirement and failure to comply is an offence under Section 82 of the Tax Procedures Act (TPA) which attracts a penalty equal to the higher of:

a) 10% of the amount of tax payable by the person under the tax law to which the document relates for the reporting period to which the failure relates; or
b) The penalty shall be KES 100,000 when no tax is payable for the repointing period which the TP policy was required to be maintained.

Country by Country Reporting (CbCR)

Effective 1 July 2021, the ultimate parent entities of multinational companies (MNE) based in Kenya are required to file an annual return within twelve months after the last day of the group's financial reporting year where the entity's group gross turnover exceeds a KES 95 billion.

The information to be included in the return includes: the financial activities of the group in Kenya and other jurisdictions where the group has taxable presence (that is, gross revenue, earnings before income tax, income tax paid and accrued, stated capital and accumulated earnings); number of employees; and tangible assets excluding cash and cash equivalents.

Ultimate parent entity means, "a resident entity that is in Kenya for tax purposes; is not controlled by another entity; and owns or controls directly or indirectly one or more constituent entities of a multinational enterprise group".

Set-off tax rebate for apprenticeships

Any employer who engages at least ten university or technical and vocational educational and training (TVET) graduates as apprentices for a period of six to twelve months during any year of income is eligible for a tax rebate equal to fifty percent of the amount of salaries and wages paid to them in the year of income and the subsequent three years of such engagement. The contracts must be registered with the National Industrial Training Authority (NITA).

Motor vehicle advance tax

For public service vehicles (PSV), pick-ups, vans, lorries and commercial vehicles:

- Higher of KES 2,500 per ton of load capacity per annum or KES 5,000 per annum
- For passenger carrying vehicles: For every driver KES 3,600 and for every conductor KES 1,200 per annum
- For minibuses, station wagons, buses, coaches and saloon cars: Higher of KES 100 per passenger capacity or KES 5,000 per annum whichever is higher
- Payment has to be on or before 20th of the first month of the year.

Residential Rental Income

Rental income received by an individual resident person for the use or occupation of residential property (not exceeding KES 15 million per annum) is subject to tax at a flat rate of 7.5% w.e.f. 1 Jauary 2024 (prior period 10%) on the gross rental income received. Persons earning rental income of less than KES 288,000 per annum are exempt from this tax.

A person who collects rental income on behalf of the owner of the premises will be required to deduct and remit WHT to the Commissioner within 5 working days after the deduction. Only persons appointed as WHT agents for rental income by the Commissioner will be eligible to deduct the WHT.

If a person under residential rental income tax believes his rental income will exceed KES 15 million, he is required to inform the Commissioner before financial year-end. Losses brought forward were deemed to have been extinguished as at 31 December 2015.

STAMP DUTY

Stamp duty is charged on various legal documents and agreements. These include:

Description	Rate
Transfer of immovable property:	
Municipalities (Urban)	4%
Outside municipalities (Rural)	2%

Description	Rate
Securities	
Increase in share capital	1%
Transfer of stock or marketable security (no duty on quoted securities)	1%
Registration of Debentures; mortgages and charges:	
Primary security	0.1%
Auxiliary security	0.1%
Leases:	
1 and 3 years	1% of annual rent
over 3 years	2% of annual rent

Exemptions under Real Estate Investment Trust (REIT)

- Transfer of beneficial interest from one trustee to the other or an additional trustee.
- Transfer of beneficial interest in property from a person or persons for transfer of units REIT.

Other exemptions

- Husband/wife transfers
- Family to family controlled company land transfers
- Transfers between holding and subsidiary companies with shareholdings > than 90%
- Transfer of land for school construction
- Certain exemptions for Islamic related transfers
- Purchase of a house by a first-time home owner under affordable housing scheme
- Transfer under a registered family trust (w.e.f. 1 July 2022).

Withholding taxes

Description		Notes	Residence Status	
			Residents	Non-residents
			%	%
Dividends	Corporate shareholding ≥ 12.5% *	1 (a)	exempt	15%
	Corporate shareholding < 12.5% *		5%	15%
	Individual shareholding		5%	15%
	EAC citizens		-	5%
	Paid by an SEZ	1 (b)	-	-
Interest	Deemed Interest		-	15%
	Bearer instruments other		25%	25%
	Bearer bonds > 2 year maturity		15%	15%
	Bearer bonds > 10 year maturity		10%	-
	Other		15%	15%

Description		Notes	Residence Status	
			Residents	Non-residents
Qualifying interest	Housing bonds	2	10%	
	Bearer instruments		20%	
	Other		15%	
Management, professional & training fees		7		
	< KES 24,000 per month		exempt	20%
	≥ KES 24,000 per month		5%	20%
	EAC countries		-	15%
	Paid by an SEZ		-	5%
Contractual fees (building, civil and engineering)		7		
	< KES 24,000 per month		exempt	20%
	≥ KES 24,000 per month		3%	20%
Rent/leasing	Immovable property		10%	30%
	Others (excl. aircraft, aircraft engines, locomotives and rolling stock)		-	15%
Royalties			5%	20%
Winnings from gaming/betting			20%	20%
Digital content monetisation			5%	20%
Insurance and re-insurance premiums (exc. for aircraft)			-	5
Commissions	Insurance Brokers		5%	Not specified
	Others		10%	Not specified
Oil and Gas	Natural resource Income		5%	20%
	Service fee paid by a contractor/licensee with no PE		-	10
	Dividend		5%	10%
	Interest		15%	15%
	Management and professional fees		5%	10%
Telecommunication service fee			-	5%
Sporting and entertainment		3	-	20%
Sales promotion, marketing, advertising services, and transportation of goods		4	5%	20%
Pension and retirement annuities		5	0-30%	5%
Shipping business income			2.5%	-
Disbursements of deemed income to trustee beneficiaries			25%	-
Payments by SEZs, developers and operator		6	-	10%

* Through a corporate holding company

Non-resident persons without a permanent establishment in Kenya pay tax at the above specified withholding tax rates, which is final tax.

Payment date: Effective 1 July 2023, Withholding Tax shall be due within 5 days after payment.

Payment is deemed to be the earlier of:
i) date of accrual;
ii) date of issuance of invoice; or
iii) date of settlement of the obligation.

Notes

1) Dividends

- 1 (a) Rate for non-residents prior to April 2020 was 10%.
- 1 (b) Payments to non-residents in respect of dividends by Special Economic Zone enterprises, developers and operators exempted from withholding tax.

2) Interest

- Limited to income of KES 300,000 per annum.

3) Sporting and entertainment

- Payments made by non-resident filming agents and filming producers approved by the Kenya Film Commission to actors and crew members are exempted from withholding tax.

4) Sales promotion, marketing, advertising services, and transportation of goods

- East African Community citizens are exempted from withholding tax on transportation of goods. Air and shipping transport services are also exempt from withholding tax.

5) Pension and retirement annuities

- Tax deducted at source on withdrawals from provident and pension schemes in excess of the tax-free amounts made after the expiry of fifteen years, or on the attainment of the age of fifty years, or upon early retirement on health grounds and the withholding tax is not final tax.

6) Payment to a non-resident for royalties, interest, management fees, professional fees, training fees, consultancy fees, agency or contractual fees exempted for the first 10 years of the SEZ's establishment.

7) Payments to non-resident contractor, subcontractor, consultant or employee involved in a project funded under an agreeement wth the Government of Kenya and development partners exempted to the extent provided for in the agreement.

* Lower rates of withholding tax are applicable on some payments to residents of countries that have a Double Tax Agreement (DTA) with Kenya. Please seek specific advise for the same:

* Kenya has included anti-treaty shopping mechanisms in its Income Tax legislation. Therefore, tax benefits included in the various DTA's shall not accrue

to the person if 50% or more of the underlying ownership of the person is held by a person or persons who are not residents of the other contracting state.

* The Tax Appeals Tribunal ruled that withholding tax is not applicable on management and professional fees paid by Kenyan resident persons to non-resident persons whose DTA's do not include articles expressly addressing management and professional fees such as South Africa and France. This matter is under appeal at the High Court of Kenya.

VALUE ADDED TAX (VAT)

Charge to tax

VAT is chargeable on the supply of taxable goods and services as well as on the importation of goods and services into Kenya. The liability to account for the tax is on the supplier. Liability to VAT on imported goods is on the importer and is collected by customs. Liability on imported services is on the importer and the tax is paid directly to the commissioner by the registered importer.

The VAT rates applied are as follows:

Standard rate	16%
Zero rate	0%
Exempt	Exempt

- Registration threshold (turnover per annum) KES 5 million
- Discretionary voluntary registration can be granted
- Group registration is available on application but subject to specified conditions

ETR/ESD

- All VAT registered persons are required to comply with the requirements of the Electronic Tax Invoices pursuant to the Value Added Tax (Electronic Tax Invoice) Regulations, 2020 from 1 August 2022.

Time of supply

- Time of supply is earliest of supply of goods or services, issuance of an invoice, issuance of architect's certificate or payment date.

VAT on Imported Services (Reverse Charge VAT)

- VAT registered taxpayers are required to account for reverse charge VAT only to the extent it relates to exempt supplies. However, this provision does not apply to persons who make supplies over the internet or an electronic network or through a digital marketplace.
- Tax on the supply of imported taxable services is a liability of the person receiving the supply.

Value of supply

- The value for tax is the price paid for local supply of goods or services. The value for imported goods is the value for duty plus duty paid. The price includes any cost of wrapping or packaging (except returnable containers) and all other incidental costs (except hire purchase interest)

Place of supply of services in Kenya

- The VAT Act, 2013 has extensively enlarged provisions on this. Please consult us when necessary.

Input VAT

- Eligibility of claiming input VAT dependent upon corresponding declaration of output tax by supplier or where one holds a valid tax invoice.
- Input tax claimable within 6 months of the date tax became payable.
- Credit notes to be issued within 6 months after issue of invoice or within 30 days of court decision.

VAT withholding

- VAT withholding agent to withhold 2% of taxable value at the time of paying for purchases (taxable supplies for zero-rated supplies and registered manufacturers whose value of investment in the preceding three years from the commencement of this Act is at least three billion excluded).
- A withholding VAT agent is required to remit the withheld VAT within 5 working days after deduction.

VAT refunds

- VAT is refundable where credits arise from: VAT withholding; making zero rated supplies; tax paid in error; tax on debts exceeding three years or company becoming insolvent:

MISCELLANEOUS TAXES

Gaming and Lotteries

- Betting, Lottery, Gaming and Prize Competition tax at 15%.

Standards levy

- Due from manufacturers at the rate of 0.2% of ex-factory price subject to a minimum of KES 1,000 per month and a maximum of KES 400,000 per annum.

Catering levy

- The catering levy is a 2% tax levied on hotels and restaurants.

CUSTOMS DUTIES

- Duties are chargeable on imports, exports and on specified goods and services. Customs duties are charged under the East African Community Common External Tariffs.

Customs duty rates

- Duties range from between 0% to 35% and are dependent on the tariff code clarification in the CET Tariff Handbook
- Export tariffs on certain goods are included in the EACCMA Act.

Export and Investment Promotion Levy (EIPL)

EIPL is levied on all goods imported into the country for home use at 10% to 17.5% of the customs value of the items imported. Please seek specific advise with regard to the goods on which EIPL is applicable.

Goods originating from East Africa Community (EAC) partner states that meet the EAC Rules of Origin are however exempt from EIPL.

Rail Development Levy & Import Declaration Fee:

- Railway Development Levy (RDL) is levied on all goods imported into the country for home use. The standard RDL rate is 1.5% of the customs value of the goods.
- Import Declaration Fee (IDF) is charged at a rate of 2.5% of the Customs Value as per Miscellaneous Fees and Levies Act.

Exemption from RDL and IDF

- Goods imported for official use by international and regional organizations having bilateral and multilateral agreements with Kenya.
- Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya.
- Goods under Chapter 88 being aircraft, spacecraft, and parts thereof.
- Liquefied petroleum gas.

EXCISE DUTIES

- Excise duty is imposed on excisable goods manufactured in Kenya by a licensed manufacturer, excisable services supplied in Kenya by a licensed person or excisable goods imported into Kenya by a registered person.
- Please seek for specific advice on applicable rates since the rates keep on changing from time to time.

TAX PENALTIES

Tax Head	Offense	Penalty/fine *
Income Tax	Late filing of return	Higher of 5% of tax due or KES 2,000 for individuals and KES 20,000 for non-individuals
	Late payment of tax	5% of tax due and an interest of 1% per month
	Underpayment of instalment tax	5% of the difference between the amount of instalment tax payable and the instalment tax actually paid, multiplied by 110% and an interest of 1% per month on unpaid tax
Pay As You Earn (PAYE)	Late filing of return	Higher of 25% of tax due or KES 10,000
	Late payment of tax	5% of tax due and an interest of 1% per month
Value Added Tax	Late filing of return	Higher of 5% of tax due or KES 10,000
	Late payment of tax	5% of tax due and an interest of 1% per month
	Failure to apply for registration or de-registration	Fine not exceeding KES 200,000 or imprisonment not exceeding 2 years or both
	Applying for cancellation when still required to register Fails to display the tax registration certificate at all premises Failure to notify, the commissioner of any changes in name, address, place of business and nature of business with 21 days of change Failure to pay tax due on any trading stock at time of de-registration that input tax was allowed at acquisition or importation Any disclosure that a person is registered on any document while is not registered Failure to issue a tax invoice for non-vatable supply or by all persons Failure to maintain proper records, using of an ETR or provide access to an authorised officer	KES 1 million or imprisonment not exceeding 3 years or both (general penalty)
Excise Duty	Late filing of return	Higher of 5% of tax due or KES 10,000
	Late payment of tax	5% of tax due and an interest of 1% per month
Monthly Rental Income	Late filing of return	Higher of 5% of tax due or KES 2,000 for individuals and KES 20,000 for non-individuals
	Late payment of tax	5% of tax due and an interest of 1% per month
Capital gains tax	Late payment of tax	5% of tax due and an interest of 1% per month
Turn over Tax	Late filing of return	KES 1,000
	Late payment of tax	5% of tax due and an interest of 1% per month
Stamp duty	Late payment of tax	5% of the duty payable
Withholding Tax, Withholding VAT and Withholding Rental Income Tax	Failure to withhold and payment	10% of the amount of the tax involved
	Late payment of tax	5% of the tax due

Tax Head	Offense	Penalty/fine *
General Penalties	Failure to apply for registration or deregistration (excluding VAT)	KES 100,000 for each month or part thereof subject (Max KES 1 million)
	Failure to retain or maintain documents required	Higher of KES 100,000 or 10% of tax payable relating to documents
	A Person knowingly makes a false or misleading statement or omitting from a statement any matter that leads to a shortfall	• 200% of the tax shortfall when the statement or omission was made deliberately • Increased by 10% on second application and 25% on third or subsequent applications • Reduced by 10% on voluntary disclosure
	Tax avoidance or fraudulent claim for a refund	Double the amount of tax avoided/claimed
	Failure to submit a tax return electronically or pay tax due electronically and where the commissioner is not satisfied with the reasons for non-failure.	2 times the tax due
	Non-compliance with common reporting standards	• False statement or omission of information required under a return KES 100,000 or imprisonment not exceeding 2 years or both • When required to file a return by a financial intuition but fails or files a “nil” return, KES 1 million for each failure • In any other case failure to file return KES 20,000 and KES. 20,000 per day (Max of 60 days)
	Failure to honour the commissioner`s summon	KES 10,000 for individuals and KES 100,000 for non-individuals
	Failure to submit return by an EPZ	KES 2,000 per day for as long as the failure continues

* W.e.f. 1 July 2023 the Commissioner no longer has powers to grant waivers of penalties and interest. However, tax payers are allowed to (from 1 September 2023) apply for an amnesty of penalties and interest where principal taxes are settled by 31 December 2022 or payment plan was entered into and principal tax is paid by 30 June 2024.

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