OVERVIEW OF TAXES IN KENYA

Kenya Revenue Authority (KRA) is vested with the right of collecting, assessing and accounting for taxes in Kenya. Taxes in Kenya are mainly categorised under two main heads; direct and indirect taxes.

A direct tax is a tax you directly pay to the government (Kenya Revenue Authority). Income tax is a direct tax that is imposed on income derived from Business, Employment, Rent, Dividends, Interests, Pensions among others. Examples include PAYE, withholding tax, instalment tax, advance tax etc.

Indirect taxes in Kenya applies when the purchase of goods and services are made and include V.A.T, excise duty, and custom duty and levies.

1. Income Tax

Income tax is a tax charged for each year of income (YOI), upon all the income of a person whether resident or non-resident, which is accrued in or was derived from Kenya. Income Tax is imposed on;

- Business income from any trade or profession
- Employment income
- Rent income
- Dividend and Interests
- Pension income
- Income from a Digital Marketplace
- Natural resource income among others

There are different methods of collecting income tax from companies & partnerships, based on their sources of income. These methods include:

a. Corporation Tax

This is a form of Income Tax that is levied on corporate bodies such as Limited companies, Trusts, and Co-operatives, on their annual income.

Companies that are based outside Kenya but operate in Kenya or have a branch in Kenya pay Corporation Tax on income accrued within Kenya only.

The corporate income tax rate for resident companies, including subsidiary companies of foreign parent companies is 30%. The rate for branches of foreign companies and permanent establishments is 37.5%.

Expenses incurred wholly and exclusively to produce income tax are deductible. Capital expenditure are generally disallowed with certain exceptions. Charitable donations and social project cost are deductible subject to the charity being registered as tax exempt and the donor providing proof of donation.

b. Pay As You Earn (PAYE)

This is a method of collecting tax at source from individuals in gainful employment. Gains or profits includes wages, casual wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, or subsistence, travelling, entertainment or other allowance received in respect of employment or services rendered.

Companies and Partnerships with employees are required to register for this obligation and deduct tax according to the prevailing tax rates from their employees' salaries or wages on each payday for a month and remit the same to KRA on or before the 9th of the following month. PAYE is chargeable to persons of employment income of Kshs. 24,000 and above per month.

PAYE tax bands

Tax band (annual) Kshs.	Applicable tax rate (%) Rate
On the first 288,000	10
On the next 100,000	25
Income above 388,000	30

Benefits chargeable to PAYE

- Fringe Benefit Tax (FBT)
- Non-Cash Benefit above 3,000 pm e.g. airtime
- Car Benefit
- Value of Premises provide by Employer

What incomes are not chargeable to PAYE?

- Employment income less than Kshs. 24,000 per month.
- Meals provided by employer whose total value does not exceed Kshs. 4,000 per month (48,000 in a year).
- Earnings not exceeding Kshs. 150,000 per month for a person with disability having a valid tax exemption certificate.
- Benefit in kind whose value does not exceed kshs. 3,000 in a month (36,000 in a year)
- Medical cover provided to all employees.
- Upon retirement kshs. 60,000 per pensionable year worked to a maximum of kshs. 600,000. (lumpsum) received from a registered pension or individual retirement fund
- Pension income less than Kshs. 25,000 per month (300,000 per annum) (annuities) received by a resident individual from a registered pension fund or the National Social Security Fund.
- Monthly pension Income of persons aged 65 years and above.
- Subsistence, Night-out of Kshs. 2,000 per day
- Pension Contribution made by employer

c. Withholding Tax (WHT)

This is a tax that is deductible from certain classes of income at the point of making a payment, to non-employees.

WHT is deducted at source from the following sources of income:

- Interest
- Dividends
- Royalties
- Management or professional fees (including consultancy, agency or contractual fees)
- Commissions
- Pensions
- Rent received by non-residents
- Other payments specified

Companies and partnerships making the payment, are responsible for deducting and remitting the tax to the Commissioner of Domestic Taxes.

Withholding tax rates		
Description	**Resident**	**Non Resident**
Artists and entertainers	-	-
Management fees	5%	20%
Professional fees	5%	20%
Training fess (inclusive of incidental costs)	5%	20%
Winnings from betting and gaming (w.e.f. 1 Jan 2014)	20%	20%
Royalties	5%	20%
Dividends (nil for resident shareholders with>12.5%)	5%	15%
Equipment (movable) Leasing	N/A	5%
Interest (Bank)	15%	15%
Interest (Housing Bond - HBI)	10%	15%
Interest on two year government bearer bonds	15%	15%
Other bearer bonds interest	25%	25%
Rent - buildings (immovable)	12%	30%
Rent - others (except aircraft)	N/A	15%
Pensions/provident schemes (withdrawal)	10 - 30%	5%
Insurance Commissions	10%	20%
Consultancy and agency(from 1 July 2003)	5%	20%
Contractual and agency (from 1 July 2003)	3%	20%
Telecommunication services/Message transmission	-	5%
Natural Resource Income (w.e.f. 01/01/2015)	5%	20%
Source: (https://kra.go.ke/en/helping-tax-payers/faqs/more-about-withholding-tax)		

d. Advance Tax

This is a tax paid in advance before a public service vehicle or a commercial vehicle goes for the annual inspection. It is due on 20th of January or before transfer of ownership of vehicle.

For vans, pick-ups, trucks, prime movers, trailers and lorries; Kshs. 1,500 per ton of load capacity subject to a minimum of Kshs. 2,400 per year of income. For saloons, station-wagons, mini-buses, buses and coaches; Kshs. 60 per passenger capacity per month subject to a minimum of Kshs. 2,400 per year of income.

Advance tax is not a final tax. Taxpayers who have paid any advance tax are required to declare the same in their income tax returns submitted yearly and pay any additional tax due.

e. Instalment Tax

Instalment tax is paid by persons who have tax payable for any year that amounts to Kshs. 40,000 and above.

Instalment tax payments must be made during the year based on the lower of 110% of the previous year's liability or an estimate of the current year's liability. Instalment tax payments are due on the 20th of the 4th, 6th, 9th and 12th month of a company's financial year.

Agricultural companies are required to pay estimated tax in two instalments of 75% in the 9^{th} month and 25% in the 12^{th} month during the year. Any balance of tax at the end of the year must be paid within four months of the financial year-end.

2. Rental Income Tax

This is a tax charged on rental income received from renting out property. Taxation of rental income depends on how the rented property was used for residential or commercial purposes.

Individuals, partnerships and companies that rent out property to other persons for either residential or commercial use are required to pay Rental Income Tax on rent received. With effect from 01/01/2021, Rental Income Tax on gross residential income earned by resident persons at a tax rate of 10%, where the rental income is up to Kshs15,000,000 per annum and no tax is due where annual residential rent does not exceed Kshs. 288,000 per annum. One may elect, in writing, to pay on net profits under the self-assessment regime. Commercial and Residential rent Appointed Agents to withhold 10% of gross rent paid.

3. Value Added Tax (VAT)

Value Added Tax is charged on supply of taxable goods or services made or provided in Kenya and on importation of taxable goods or services into Kenya.

While companies & partnerships can voluntarily register for VAT they MUST register if their annual revenue exceeds Kshs. 5,000, 000. Registration is done online via iTax system.

To facilitate compliance, KRA appoints agents to withhold and pay VAT on supplies made. These agents can be verified via the agent checker on iTax.

There are 3 types of tax rates;

- 0% - for Zero rated supplies. Goods listed in the 2nd Schedule to the VAT Act e.g. Exportation of goods/services, goods supplied to EPZ, Privileged persons and Public bodies etc.

- 8% - Petroleum oils obtained from bituminous, Motor Spirits
- 16% - General rate for other Goods and Services

When is VAT payable?

It is important to note that tax is due and payable (earlier of) when;

- Goods or services are supplied to the purchaser
- An invoice is issued in respect of the supply
- Payment is received for all or part of the supply
- A certificate is issued by an architect, surveyor or any person acting as consultant or in a supervisory capacity in respect of the service

4. Excise Duty

This is a duty of excise imposed on; goods manufactured in Kenya, or; imported into Kenya and specified in the 1st schedule to Excise Duty Act, 2015.

Companies and Partnerships dealing in excisable good and services are required to pay excise duty.

The List and types of Excisable goods and services are listed in the 5th Schedule as read together with Section 117 (1) (d) of the Customs and Excise Act, CAP 472 Laws of Kenya.

They includes;

- Mineral water
- Juices, soft drinks
- Cosmetics and Preparations for use on hair
- Other beer made from malt
- Opaque beer
- Mobile cellular phone services
- Fees charged for money transfer among others

5. Capital Gains Tax (CGT)

This is a tax chargeable on the net gain which accrues to a company or an individual upon transfer of property situated in Kenya, whether or not the property was acquired before 1st January, 2015.

The rate of tax is 5% of the net gain. Net Gain is Sales Proceeds minus the Acquisition and Incidental cost. It is a final tax i.e. the Capital Gain is not subject to further taxation after payment of the 5% rate of tax.

6. Agency Revenue

This is a type of payment that KRA collects on behalf of various revenue collection agencies in Kenya. The two types of Agency Revenue include;

a. Stamp Duty
b. Betting and Pool Tax

a. Stamp Duty

Stamp duty is a tax charged on transfer of properties, shares and stock.

It is collected by the Ministry of Lands, which has seconded the function to Kenya Revenue Authority (KRA).

b. Betting Tax

Betting Tax is chargeable on the gross gaming revenue (GGR) of a bookmaker at the rate of 15% as provided by Section 29A of the Betting, Lotteries and Gaming Act, 1966.

Betting, gaming and Lottery businesses are required to withhold as tax and remit to KRA 20% of the winnings being paid out to winners.

Excise Duty on Betting is chargeable at the rate of 20% of the amount wagered or staked, commencing 7th November, 2019.

7. Penalties

Non-payment or delayed payment of taxes comes hand-tied with a penalty of 2 percent per month compounded for the non-paid period of tax.

Fines and penalties are not deductible as they are not considered to be expenses incurred for producing profits chargeable to tax.

TAX INCENTIVES

1. **Investment allowances**

The Tax Law Amendment Act (No. 2) of 2020 repealed the Second Schedule to the Income Tax Act (ITA) and replaced it with a new schedule. The following investment allowances are available:

Type of asset	**New rate (%)**	**Basis**
Hotel building	50	Residual value to be claimed at 25% on reducing balance in the subsequent years. Hotel building is required to be licensed by the competent authority.
Building used for manufacture	50	Residual value to be claimed at 25% on reducing balance in the subsequent years Building used for manufacture includes any structure or civil works deemed to be part of a building where the

		structure or civil works relates or contributes to the use of the building
Hospital buildings	50	Residual value to be claimed at 25% on reducing balance in the subsequent years Hospital building is required to be licensed by the competent authority
Educational buildings including student hostels	10	Claimable on reducing balance Educational building is required to be licensed by the competent authority
Commercial building	10	Claimable on reducing balance Commercial building includes: A building used as an office, shop, showroom, go-down (warehouse), storehouse, or warehouse used for storage of raw materials for manufacture of finished or semi-finished goods Civil works relating to water or electric power undertaking, but does not include an undertaking not carried on by way of trade
Machinery used for manufacture	50	Residual value to be claimed at 25% on reducing balance in the subsequent years This also includes machinery used for: Generation, transformation and distribution of electricity Clean-up and disposal of effluents and other waste products Reduction of environmental damage Water supply or disposal Maintenance of the machinery Scientific research and development Manufacture means the making, including packaging, of goods from raw or semi-finished goods, or the generation of electrical energy for supply to the national grid, or the transformation and distribution of electricity through the national grid, but does not include design, storage, transport, administration or any other ancillary activity
Motor vehicles and heavy earth moving equipment	25	Claimable on reducing balance Claimable value restricted to KES3 million except for commercial vehicles which have no restriction
Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines	25	Claimable on reducing balance
Furniture and fittings	10	Claimable on reducing balance

Telecommunications Equipment	10	Claimable on reducing balance
Farm works	50	Residual value to be claimed at 25% on reducing balance in the subsequent years The Act has however not defined farm works and this could provide an avenue for the misinterpretation of the term by both taxpayers and Kenya Revenue Authority (KRA)
Other machinery	10	Claimable on reducing balance

2. **Special economic zones (SEZs)**

SEZ enterprises are not required to register for VAT. The supply of goods or taxable services to an SEZ is subject to VAT at 0% (zero rated).

3. **Export processing zone (EPZ)**

Companies located in an approved EPZ, principally to export goods, are taxed at a 0% Corporate income tax rate for ten years from commencement is at a rate of 25% for the next ten years.

TAX DEVELOPMENTS

Minimum tax based on turnover

The Finance Act, 2020 introduced a minimum tax of 1% on gross turnover. This tax was not applicable to exempt income, employment income, residential rental income, capital gains, persons undertaking mining or upstream oil and gas activities, persons subject to turnover tax, insurance business and any business whose retail price is regulated by the Government.

The High Court declared minimum tax unconstitutional, on 20 September 2021. The Kenya Revenue Authority has since appealed against the Court's decision to the Court of Appeal. Minimum tax was intended for taxpayers who are carrying out business and thus earning revenue, but their tax payable is lower than 1% and was to be a final tax.

Turnover tax

The rate of turnover tax has been lowered from 3% to 1%. This is applicable to micro, small, and medium enterprises (MSMEs).

MSMEs earning below 1 million Kenya shillings (KES) are exempt from turnover tax to cushion them against the negative impact of the COVID-19 pandemic. However, MSMEs exempted from turnover tax will still be required to declare and file their corporate tax returns.

The upper threshold in respect of the turnover tax was increased from KES 5 million to KES 50 million.

Digital services tax (DST)

The Finance Act 2020 introduced a digital services tax (DST) on income from services provided through a digital marketplace in Kenya at the rate of 1.5% on the gross transactional value. This was followed by the issuance of the Income Tax (Digital Service Tax) Regulations, 2020 which became effective on 2 January 2021.

The DST shall be payable by the digital service provider or the digital marketplace provider or the tax representative. A per son liable to pay DST must submit a return in the prescribed form and remit the tax due by the 20th day of the month following the end of the month in which the digital service was offered. The Commissioner may appoint a taxpayer as a DST agent to withhold and remit the tax to the KRA.

DST paid by a non-resident person without a permanent establishment in Kenya is a final tax. On the other hand, tax paid under this regime by a resident person or a permanent establishment of a non-resident person, shall be offset against the income tax payable for that year of income.

The National Treasury issued DST regulations in December 2020 which extended the application of the DST to include:

- downloadable digital content, such as mobile applications
- over-the-top services, including streaming television shows, music, or podcasts
- sale or licensing of, or any other form of, monetising data collected about Kenyan users
- provision of a digital marketplace
- subscription-based media, including news
- electronic data management, including website hosting and cloud storage services
- electronic booking or ticketing services
- provision of search engine services
- online distance training or e-learning, and
- any other service provided through a digital marketplace.