

BRIEF KENYAN TAX GUIDE

PERSONAL TAXATION

INCOME TAX RATES FOR INDIVIDUALS

Taxable income Kshs per annum	Rate %	Cumulative tax payable Kshs per annum
Years 2005-2011		
0 - 121,968	10	12,196
121,969 – 236,880	15	29,432
236,881 – 351,792	20	52,414
351,793 – 466,704	25	81,142
Over 466,704	30	

Personal Allowance	Rate %
Registered Pension/Provident Schemes relief limits	240,000
Personal relief	13,944
• Mortgage interest relief for owner occupied property – maximum	150,000
Home ownership savings plan (for first 10 years)	48,000

Insurance relief (life, health and education) is currently 15% of premiums paid up to a maximum of Kshs 60,000 p.a.

- Mortgage from banks, Insurance Companies, Building Societies and the National Housing Corporation.

EMPLOYMENT BENEFITS

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

a) Tax-free Benefits

- First Kshs 150,000 for the disabled exempt
- Deduction of Kshs 50,000 on drugs treatment and home care service for the disabled allowed as a deduction
- Medical, school fees (if employer taxed), registered provident/pension contributions (except contributions to non-registered funds or in excess of relief for registered funds where the employer is tax exempt)
- Passage for expatriates.
- Employer's canteen meals for staff earning less than Kshs 351,792 p.a
- Gratuity up to Kshs 240,000 p.a paid into a registered pension scheme by an employer.

Non-cash Taxable Benefits

- Exempt if the cost does not exceed Kshs 36,000 p.a.
- Tax-free medical benefits for directors (and their beneficiaries) owning over 5% shareholding limited to Kshs 1 Million.
- Tax free medical benefits for partners and sole proprietors limited to Kshs 1 Million.
- W.e.f. 1st July 2013, Group Life and Group Personal Accident premiums not taxable benefit if such covers do not confer a benefit to the employees.

Reimbursements

- For employees working out of station the first Kshs 2,000 per diem is deemed to be reimbursement and not taxable. Expenses reimbursements are generally not taxable but require to be supported.
- Double taxation for Kenyan citizens artistic performers and sportsmen.

b) Motor Vehicles:

- The benefits are the higher of 20% per month of the initial cost of the vehicle or prescribed scale rates. For leased vehicles the benefits is the cost of leasing. Employees with restricted private usage can apply for a lower benefit valuation.

c) Housing:

Non-working Directors: the higher of 15% of total emoluments, fair market rental value and rent paid.

Whole time service directors: The higher of 15% of emoluments, fair market value and rent paid.

Agricultural employees: 10 % of emoluments less any rent charged to the employee.

Other Employees: the higher of rent paid and 15% of emoluments or rent paid by the employer under an arm-length agreement with a third party

d) Loans to employees:

Fridge 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 rate.

e) Other Benefits

- Furniture 1% of cost p.m.
- Telephone 30% of cost p.m.
- Taxable benefit for employee share ownership plan (ESOPs) is the difference between the market price of shares and option grant price. The benefit accrues at the end of the vesting period.

PENSION / PROVIDENT FUNDS

Tax exempt lump sum withdrawals from both registered and pension and provident funds is Kshs 60,000 for each year of pensionable service, subject to a maximum of Kshs 600,000. Withdrawals based on 1991 and prior contributions are exempt. Earnings from non-commuted pensions are exempt up to Kshs 300,000 p.a. Lump sum payments and monthly pension payments to persons over 65 years of age are tax-free. Withholding tax rates for pension/provident fund withdrawals and lump sum payments beyond exempt limits:

a) Withdrawal before 15 years expires

		Kshs
10%	On the first	121,968
15%	On the next	114,912
20%	On the next	114,912
25%	On the next	114,912

30%	On amounts over	466,704
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- b) Withdrawals after 15 years, attaining age of 50 years of retirement on health grounds

10%	On the first	400,000
15%	On the next	400,000
20%	On the next	400,000
25%	On the next	400,000
30%	On amounts over	1,600,000

- Employees are not entitled to employer's contribution before the retirement age.
- Any surplus refunded to/withdrawn by employer from registered fund shall be deemed to be the income of the employer.
- Withholding tax under (b) is final tax.

BUSINESS INCOME TAXATION

Corporate Tax Rates

Resident companies	30%
Non-resident companies	37.5%
Export Processing Zone Enterprises	
First ten years	NIL
Next ten years	25%
Newly listed companies over 20% capital listed (3 years)	27%
Newly listed companies over 30% capital listed (5 years)	25%
Newly listed companies over 40% capital listed (5 years)	20%

Turnover tax (TOT) is applicable to small businesses with a turnover per annum of up to Kshs 5 Million at the rate of 3% of turnover. This is final tax. TOT excludes turnover from rental, management, professional, training, limited companies, dividends and interest.

The above corporation rates of tax also apply to petroleum companies i.e. 30% for resident companies and 37.5% for non-resident companies.

	Fourth Month	Sixth Month	Ninth Month	Twelve Month
Agricultural enterprises	-	-	75%	25%
All other taxpayers	25%	25%	25%	25%

Instalments are payable on or before the 20th of the month they fall due. Basis for instalment tax: lower of preceding year's tax multiplied by 110% and current year's estimate.

Self Assessment Returns (SAR)

- SARs for non-individuals fall due six months after the end of the accounting year. The balance of tax due is however payable by the end of the fourth month. A spouse's income may be filed and taxed separately.
- SARs have been abolished for individuals whose only source of income is one employment income.

- Quarterly PAYE returns are still required although tax payers filing monthly online returns are exempt from filing them.

Deductible Business Expenses

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

Losses will be carried forward for five years including the year they were incurred w.e.f. 01.10.2010.

Thin Capitalisation: Deemed interest is to be calculated in the form and manner prescribed by the Commissioner.

Transfer pricing between related parties should be used on arms length prices. Where this is not possible any one of the following methods may be used:

- Comparable uncontrolled price method
- Cost plus method
- Resale price method
- Profit split method
- Transaction net margin method
- Other prescribed method

Capital Allowances Wear and Tear allowances:

Tractors, lorries over 3 tonnes, heavy self-propelled vehicles	30%
Computer hardware, calculators, copiers and duplicating machines	30%
Motor vehicles and aircrafts (saloon cars qualifying value limited to Kshs 2 Million)	25%
Ships, plant, machinery, furniture and equipment	12.5%
Loose-tools and implements (straight-line)	33.3%
Telecommunication equipment used by telecommunication Operator (straight-line)	20%
Machinery, roads, bridges under concession airing agreement straight line basis	

Industrial Building Allowances Dec 2012

Factories	10%
Commercial buildings places (up to 31.12.12)	10%
Commercial buildings with services (w.e.f. 01.01.2010)	25%
Prescribed low-cost residential	
House developments	12.5%
Prescribed hotels – up to 2006	5%
Prescribed hotels – from 2007	4%
Hostels and approved educational buildings – from 2007	10%
Hostels education buildings (w.e.f 01.01.2010)	50%
Rental residential buildings with services (w.e.f 01.01.2010)	25%

Farm Works Deductions (w.e.f 01.01.2010)	100%
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Investment Deduction Allowances

Qualifying investment exceeding Kshs 200	
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Million outside Nairobi Mombasa or Kisumu	150%
Other qualifying investment	100%
Mining capital expenditure – year 1	40%
Year 2-7	10%

Specified Expenditure on Intangible Assets

Software rights	20%
Right to fibre optic cable by a telecommunication operator	5%

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.
- Any tax or duty payable to Kenya Revenue Authority (except VAT and duty on imports) may be offset against any refund of tax or duty confirmed by the Kenya Revenue Authority on request. The request should be made 30 days before the tax is due.

MOTOR VEHICLE ADVANCE TAX

Motor vehicle advance tax is payable for public service vehicle (PSV), pick-ups, vans, lorries and commercial vehicles:

- Higher of Kshs 1,500 per ton of load capacity per annum or Kshs 2,400 per annum.
- For passenger carrying vehicles: for every driver Kshs 3,600 and for every conductor Kshs 1,200
- For minibus, station wagons and saloon cars: Higher of Kshs 60 per passenger capacity or Kshs 2,400 per year whichever is higher
- Payment has to be on or before 20th of the first month of the year.

WITHHOLDING TAX RATES

Withholding tax is deductible and payable by the payer to KRA on all payments made, on or before the 20th day of the month following the month in which the deduction is made at the following rates:

	Resident	**Non-Residents
Investment Income:		
Qualifying dividends (for EAC citizens, the residents rate is applied)	5%	10%
Subsidiary and associated company dividends (with >12.5% shareholding)	N/A	10%
Interest (including deemed interest)	15%	15%
Qualifying interest on –housing bonds	10%	N/A
- Bearer instruments	20%	N/A
- Any other	15%	N/A
Two year government bearer bonds	15%	15%
Other bearer bonds	25%	25%
Ten year bearer	10%	15%
Rent-Buildings (immovable)	N/A	30%
Others (except aircraft, aircraft engine, locomotives and rolling stocks)	N/A	15%
Service Payments		
Royalties	5%	20%
Insurance commission paid to brokers	5%	20%
- Others	10%	20%

Building, civil and engineering contractual fees (for local payments, this applies for payments of/on more than Kshs 24,000 p.m)	3%	20%
*Management, consultancy, agency professional and training fees (for local payments, this applies for payments of/on more than Kshs 24,000 p.m.)	5%	20%
(For EAC residents the rate is 15%)		
Telecommunication service/messages	N/A	5%
Shipping gains/profits	N/A	2.5%
Entertainment and Sports fees	N/A	20%
Winnings from betting and gaming (shall be final tax w.e.f 01.01.2014)	20%	20%
Pensions	10-30%	5%
Pension withdrawals (graduated rates)		

*Excludes commission paid to non-residents for international travel air tickets.

**Rate may be less for countries with double tax treaty with Kenya.

Under the 9th Schedule to the Income Tax Act, a Petroleum Company is required to withhold 37.5% of **deemed profit**, i.e. 15% of the Taxable Service Fee payable to a non-resident sub-contractor. The amount of tax so charged is a final tax.

VAT ADDED TAX (VAT)

New VAT Act to be enacted

The new VAT Act is expected to be enacted. The Bill was rejected by parliament on 14.06.2012, and the same will be table again to parliament soon.

Charge to Tax

Value added tax is chargeable on the supply of taxable goods and services as well as on the importation of goods and services into Kenya by a taxable person. The 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.

Standard Rates

Applicable on taxable goods and services	16%
Residual oil and electricity	12%

Zero Rated Supply

Applicable on exports and specified Zero-rated goods and services	0%
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Registration

- The registration threshold (turnover per annum) is Kshs 5 Million.
- Discretionary voluntary registration can be granted.
- The commissioner must be notified of any changes affecting registration.
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- Group registration is available on application but subject to specified conditions.

- VAT incurred on inventory and assets held on the date of registration or when exempt goods become taxable may be claimed with 24 months upon the approval of the commissioner.

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.

Value of Supply

The value of supply 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 if:

- The supplier has a place of business or fixed establishment and services are used/consumed in Kenya
- In connection with immovable property, if the property is in Kenya.
- Radio/TV, telecommunication signals are terminated in Kenya.
- Transport services end in a place in Kenya.

VAT Refunds

VAT is refundable where credits arise from: making zero-rated supplies; tax paid in error; tax on debts exceeding three years.

CAPITAL GAINS TAX

Capital gains tax was revived in the 2013 Finance Bill. KRA will formulate and issue the implementation modalities.

MISCELLANEOUS TAXES

Railway Development Levy

Railway development levy has been developed at the rate of 1.5% of the custom value of the goods payable by the importer of such goods at the time of entering the goods for home use. Effective date is 1st July 2013.

Training Levy

The Directorate of Industrial Training levies administer the Industrial Training Levy. The Levy is Kshs 50 per employee per month. Contributing employers qualify for reimbursement of approved training expenses.

Standard Levy

The levy is due from manufacturers at the rate of 0.2% of ex-factory price subject to a minimum of Kshs 1,000 per month and a maximum of Kshs 400,000 per annum.

Catering Levy

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

CUSTOMS AND EXCISE DUTIES

Custom 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**.

Custom Duty rates

Raw materials	0%
Semi-finished goods	10%
Finished goods	25%
IDF fees (exempt for EAC)	2.25%
Export duties - Lead acid batteries	20%
• Raw hides and skins	40%

Internal tariffs for Kenyan exports to Uganda, Tanzania, Burundi and Rwanda have now been eliminated as a result of the fully fledged customs, union.

Excise Duties

Excise duties are charged on a variety of locally produced products:

Beer	Kshs 70 per litre or 40% of RSP	
Wines and spirits	as valorem/specific	
Cigarettes	Kshs 1,200 per mille or 35% of RSP	
Petroleum	ad valorem	
Vehicles – locally assembled		0%
• imported		20%
Used motor vehicle spare parts		20%
Mobile phones services		10%
Money transfer services		10%
Carbonated drinks and juices		7%
Bottled water		
• free from added sugar/flavour – higher of		5%
• kshs 3 per litre		
• containing added sugar/flavor		7%

A 50% excise duty remission on beer made from millet, sorghum and cassava introduced with effect from 1st July 2013.

Excise duty on senator keg reduced from 100% to 50% for a transitional period of three years with effect from 1st July 2013.

NATIONAL SOCIAL SECURITY FUND

NSSF contributions are set at 10% of monthly income up to a maximum of Kshs 400 per month; half paid by employer and half paid by employee. In case of casual employee, say 5% of gross wages. This is payable even for one employee.

NATIONAL HOSPITAL INSURANCE FUND

NHIF payments are set and graduated scale rates starting at Kshs 30 to a maximum of Kshs 320 on salaries of Kshs 15,000 and above.

STAMP DUTY

Increase in share capital 1%
Transfer of stock or marketable security (no duty on quoted securities) 1%

Transfer of immovable property in:

- Municipalities 4%
- Outside municipalities 2%

Debenture or mortgage

- Primary security 0.1%
- Auxiliary security 0.1%

Lease 1 and 2 years 1% of annual rent
Lease over 2 years 2% of annual rent
Lease over 2 years 0.1%

Exemptions

- Husbands/wife transfers
- Family to family controlled company land transfers
- Transfer between holding and subsidiary companies with shareholdings > than 90%
- Transfer of land for school construction
- Revenue stamps abolished.

PENALTIES

Offense	Penalty
Failure to furnish returns	5% of tax due
Penalty on unpaid tax	20% of unpaid tax
Interest on unpaid tax	2% per month compounded
Fraud or wilful omission	Double the amount of tax in a return underpaid Fine not exceeding Kshs 200,000 Imprisonment not exceeding 2 years
Failure to deduct or remit PAYE	25% of the amount of tax involved (min. Kshs 10,000)
Failure to pay w/tax	10% of amount involved
VAT operations failure	Fines ranging from Kshs 10,000 to Kshs 500,000

The interest under all Acts shall not exceed 100% of basic tax and to cease once waiver mitigations are done. Interest shall not be charged on penalties.

EAC TAX RATES

Corporate Tax Rates

	Resident companies	Non-resident companies
Kenya	30%	37.5%
Uganda	30%	30%
Tanzania	30%	30%
Rwanda	30%	-
Burundi	35%	-

VAT Standard Rates

Kenya	16%
Uganda – standard	18%
- On residential property	5%
Tanzania	18%
Rwanda	18%
Burundi (Sales tax)	17%