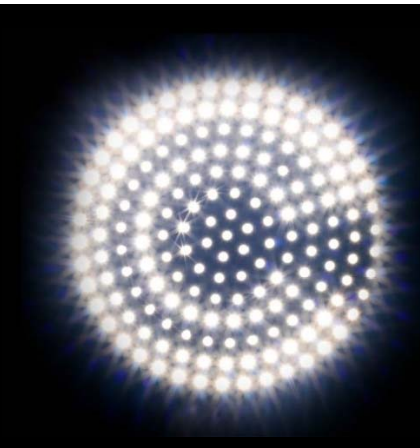
International Tax
Kenya Highlights 2018



Investment basics:

Currency – Kenyan Shilling (KES)

Foreign exchange control – No, but banks must report significant foreign exchange transactions to the central bank (i.e. all transactions in excess of USD 10,000 must be reported).

Accounting principles/financial statements – IFRS. Financial statements must be prepared annually.

Principal business entities – These are the public/private limited liability company, company limited by guarantee, sole proprietorship, partnership, cooperative society and branch of a local or foreign company.

Corporate taxation:

Residence – A company or similar corporate entity is tax resident if it is incorporated under Kenyan law, if management and control of its affairs are exercised in Kenya or if the Secretary of Finance declares the entity to be tax resident in a notice published in the *Kenya Gazette*.

Basis – Resident and nonresident corporate entities are subject to tax on all income accruing in or derived from Kenya.

Taxable income – Income tax is imposed on a company's gross income, less allowable deductions. In general, expenses must be incurred wholly and exclusively in the production of income and not be capital in nature to be deductible for tax purposes. Business income, investment income (other than for financial institutions, for which investment income is considered business income), rental income and income from agriculture are assessed separately.

Taxation of dividends – Dividends from a Kenyan company are not subject to additional tax other than what is deducted at source (see "Withholding tax," below). Dividends from a foreign company are not taxable in Kenya.

Capital gains – The capital gains tax rate is 5% of the net gain, which is a final tax. Gains arising from the transfer of shares traded on any securities exchange licensed by the Capital Markets Authority are not subject to capital gains tax.

Losses – Losses may be deducted in the year in which they arise and the 10 following years. Where the losses are not utilized within this period, an extension may be granted upon application; however, no guidance has been issued to set forth the circumstances under which this approval would be granted. Losses may not be carried back, other than by oil and gas companies. Losses may be set off only against income from the same source, and capital losses are not deductible.

Rate – The general corporate income tax rate is 30%, with branches of foreign companies taxed at 37.5%. The rate for newly listed companies is reduced to 25% for a period of five years commencing from the year of income following the year of listing. To boost the housing development sector, the corporate tax rate for companies that construct at least 400 residential units annually is reduced from 30% to 15%, subject to approval by the Cabinet Secretary responsible for housing and restricted to the proportion of turnover relating to housing activity. As from 1 January 2018, the corporate tax rate for new assemblers is 15% for the first five year to promote the assembly of motor vehicles in Kenya. The reduced rate of 15% is extended for an additional five years where at least 50% of the ex-factory value of the motor vehicles is attributable to local materials.

Surtax – No

Alternative minimum tax – No

Foreign tax credit – Foreign taxes paid are treated as an allowable expense, except where a tax treaty applies, in which case a tax credit is granted.

Participation exemption – No

Holding company regime – No

Incentives – Kenya provides for a 100% investment deduction on hotel buildings and on buildings and machinery used in manufacturing. Manufacturing investment in buildings and machinery situated outside the municipalities of Kisumu, Mombasa and Nairobi attracts an investment allowance of 150%. Enterprises in export processing zones enjoy a 10-year tax holiday.

Enterprises located in Special Economic Zones (SEZ) are subject to corporate tax at a reduced rate of 10% for the first 10 years and 15% for the next 10 years. The reduced tax rates will apply regardless of whether the enterprise sells its products to markets within Kenya or internationally. Effective 1 January 2018, SEZ enterprises also are eligible for a 100% investment deduction on buildings, plant and machinery used in manufacturing (150% where the investment is located outside the municipalities of Kisumu, Mombasa or Nairobi). Reduced withholding tax rates apply to certain payments made by an SEZ enterprise to a nonresident, see "Withholding tax," below).

Withholding tax:

Dividends – No withholding tax is imposed if the recipient is a qualifying Kenyan financial institution or if the resident recipient company controls 12.5% or more of the capital of the payer. The rate is 5% for dividends paid to residents of Kenya and on listed shares for citizens of the East African Community; the rate is 10% for other nonresidents. As from 1 January 2018, no withholding tax is imposed on dividends paid by an SEZ enterprise to a nonresident.

Interest – Interest paid by financial institutions is subject to a 15% withholding tax. The rate is 25% for interest paid on bearer certificates and 10% for interest paid on bearer bonds. These rates apply to payments to both residents and nonresidents. As from 1 January 2018, a reduced withholding tax rate of 5% applies to interest paid by an SEZ enterprise to a nonresident.

Royalties – Royalties (and natural resource income) paid to a resident are subject to a 5% withholding tax; the rate is 20% if paid to a nonresident. As from 1 January 2018, a reduced withholding tax rate of 5% applies to royalties paid by an SEZ enterprise to a nonresident.

Technical service fees – A 5% withholding tax is levied on the payment of technical service fees (as well as professional and management fees) where the services are provided by a resident. The rate is 20% where the service provider is a nonresident, unless an applicable tax treaty provides otherwise. As from 1 January 2018, a reduced withholding tax rate of 5% applies to technical services (and professional) fees paid by an SEZ enterprise to a nonresident.

Branch remittance tax – No

Other – For nonresidential rental income, a 10% withholding tax on gross proceeds, but this tax is withheld only by agents appointed by the government.

Other taxes on corporations:

Capital duty – See under "Stamp duty."

Payroll tax – No

Real property tax – Land rates are assessed by local county governments. (See also "Stamp duty.")

Social security – Prior to June 2014, an employer was required to contribute 5% of payroll to the National Social Security Fund (NSSF), up to an annual maximum of KES 2,400 per employee. From June 2014, the contribution is 6% of emoluments for employees, with the same amount contributed by employers, subject to an upper earnings limit. However, an injunction currently is in place, pending the outcome of a High Court case rejecting the changes to the NSSF. Thus, the former rate temporarily continues to be applied.

Stamp duty – Stamp duty is charged at nominal or *ad valorem* rates on certain financial instruments and transactions. A 1% stamp duty is levied on a subsequent increase of authorized share capital. Stamp duty is levied at a rate of 4% on immovable property (2% if levied outside the municipalities), and at a rate of 1% on the transfer of shares and other securities. An exemption applies if the shares/securities are listed on the Nairobi stock exchange.

Transfer tax – See under "Stamp duty."

Other – "Compensating tax" is imposed on dividends declared from profits that have not been subject to corporate income tax at the standard rate. The compensating tax rate is 42.8%.

Fringe benefits tax is chargeable on companies in respect of concessionary rate loans granted to employees. All other benefits are taxable to the employee.

Residential rental income tax applies, under which the residential rental income of a person (an entity or an individual) in excess of KES 144,000 per year, but that does not exceed KES 10 million per year, is taxed at a rate of 10% of the gross proceeds. Taxpayers have the option to continue to be taxed on a net income basis, by filing a written election with the Commissioner of Domestic Taxes. Taxpayers earning residential rental income exceeding KES 10 million per annum are taxed on a net income basis. For other rental income, a withholding tax rate of 10% of gross proceeds applies, but this tax is withheld only by agents appointed by the government.

Anti-avoidance rules:

Transfer pricing – Kenyan law requires arm's length pricing between related enterprises. Compliance with the OECD guidelines generally ensures compliance with Kenyan law, although domestic transfer pricing rules also are in place.

Thin capitalization – Interest expense is proportionately restricted for foreign controlled companies (other than licensed financial institutions) when the ratio of all liabilities on which interest is charged exceeds three times the payer's issued and paid-up capital and revenue reserves/accumulated losses. The debt-to-equity ratio for thin capitalization purposes for companies in the extractive industry (i.e. mining, geothermal, petroleum) is 2:1. For these purposes, foreign controlled companies include participations of at least 25%.

Deemed interest is imposed on thinly capitalized companies that receive interest-free loans from nonresident related companies. The tax authorities prescribe the deemed interest rate each quarter, based on the average 91-day treasury bill rate. This rate is applied to the interest-free loan balance during the quarter. The deemed interest amount is not deductible for tax purposes and it is subject to a 15% withholding tax.

Controlled foreign companies – No

Disclosure requirements – The tax authorities have the statutory right to require information from a taxpayer concerning its own tax affairs, and also may require information from banks about payments of interest.

Compliance for corporations:

Tax year – The tax year is the calendar year, although a company (other than a financial institution) may adopt any year-end. All taxable income is assessed in the fiscal year in which the company’s accounting year ends.

Consolidated returns – Consolidated returns are not permitted; each company must file a separate return.

Filing requirements – The self-assessment and compensating tax returns must be filed within six months of the end of a company's accounting period. The return must be filed using the online system (iTax). Tax installment payments are due within 20 days of the end of each quarter (except the first installment, which is due in the fourth month of the period), based on the relevant proportion of the estimated current tax or 110% of the tax for the previous year, less previous installments paid and withholding tax deducted at source. The balance of tax, if any, is due four months after the company's year-end. Agricultural companies make their first installment payment 20 days after the end of the third quarter.

An employer is required to submit quarterly Pay-As-You-Earn (PAYE) returns before the 10th day of the month following the end of each quarter. Alternatively, an employer may file monthly returns electronically.

Penalties – Late payments of self-assessed tax are subject to a 20% penalty, plus a 1% penalty per month. A late-filing penalty of 25% of the tax due (subject to a minimum of KES 10,000) applies to a return required to be submitted because employment income. Otherwise, a 5% penalty (subject to a minimum of KES 20,000) applies on any amount still owed four months after the year-end.

Rulings – A taxpayer may request a nonbinding interpretation from the Kenya Revenue Authority on the tax legislation as it applies in general, or to specific situations.

Personal taxation:

Basis – All income accruing in or derived from Kenya is subject to tax in Kenya. A Kenyan resident is taxable on his/her worldwide employment income; a nonresident is taxable only on Kenyan-source employment income. Only Kenyan citizens may offset tax on foreign employment income against the tax charged in Kenya on such income. Noncitizen residents must include their after-tax foreign-source employment income in their Kenya taxable income.

Residence – An individual is resident in Kenya if he/she has a permanent home in Kenya and is present in Kenya for any time during the year. An individual present in Kenya for at least 183 days in the tax year is resident, as is any person who has averaged 122 days in the country in the tax year and the previous two tax years.

Filing status – A married couple living together may elect to file separate returns. Otherwise (unless they are living apart), the tax on their combined income is assessed on them proportionately, with the tax on the wife's earned and investment income calculated as if it were the sole source of joint income.

Taxable income – Income tax is imposed on all income accruing in or derived from Kenya. Employment income is broadly defined and includes amounts paid outside Kenya. Fringe benefits are taxable to the employee, at either actual or deemed cost.

Capital gains – See under “Corporate taxation.”

Deductions and allowances – Personal relief is KES 16,896 per year. The following may be deducted from taxable income: up to KES 300,000 annually in mortgage interest for owner-occupied property; contributions to a registered pension or provident fund up to KES 240,000 annually (the deduction may not exceed 30% of employment income); and 15% of health or life insurance premium payments (up to KES 60,000 annually). The daily subsistence allowance up to KES 2,000 paid when working away from the normal place of duty is not taxable.

Rates – Progressive rates of 10%, 15%, 20% and 25% are levied on the first KES 564,709 in approximately equal bands; the rate is 30% on the amount exceeding KES 564,709.

Other taxes on individuals:

Capital duty – No

Stamp duty – Stamp duty is charged at nominal or *ad valorem* rates on certain financial instruments and transactions.

Capital acquisitions tax – No

Real property tax – Yes, at a percentage of the land held value.

Inheritance/estate tax – No

Net wealth/net worth tax – No

Social security – An employee must contribute to the NSSF and the National Hospital Insurance Fund (NHIF); an employer contributes to only the NSSF. An employee is required to contribute to the NHIF on a graduated scale at KES 150 on KES 5,999 salary per month up to a maximum of KES 1,700 for salaries of KES 100,000 and above. The NSSF contribution is 6% of compensation for employees, with the same amount contributed by the employer, subject to an upper earnings limit. However, an injunction currently is in place, pending the outcome of a High Court case rejecting the changes to the NSSF. Thus, the former rate of 5% continues to apply.

Other – See “Other,” under “Other taxes on corporations,” above, for tax on rental income.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – Personal income tax returns are due by 30 June following the end of the tax year (even where the individual has a single employment and the tax payable on that compensation has been deducted under the PAYE system by the employer), with any balance of tax due by 30 April. As in the case for corporate entities, electronic filing via iTax is mandatory.

Penalties – See under "Corporate taxation."

Other – A tax amnesty applies until 30 June 2018, under which taxes, penalties and interest for taxpayers with foreign-earned taxable income may be avoided if certain requirements are met

Value added tax:

Taxable transactions – VAT is imposed on the supply of taxable goods and services made or provided in Kenya by a taxable person in the course of, or in furtherance of, a business carried on by that person and on the import of goods and services into Kenya.

Rates – The standard VAT rate is 16%, although certain supplies are exempt or zero-rated. Certain categories of oil and fuels are exempt from VAT for three years, after which they are zero-rated.

Registration – Registration is mandatory where the turnover of taxable supplies is, or is expected to be, KES 5 million or more in a 12-month period.

Filing and payment – VAT returns and any related payments are due by the 20th day of the following month.

Late payment of VAT results in a penalty of 1%, compounded monthly. Failure to submit VAT returns results in a penalty of 5% of the tax due (minimum penalty of KES 10,000), while failure to apply for VAT registration results in a fine of KES 100,000.

Source of tax law: Income Tax Act; Value Added Tax Act and the Tax Procedures Act

Tax treaties: Kenya has concluded 10 tax treaties.

Tax authorities: Kenya Revenue Authority

Contact:

Nikhil Hira (nhira@deloitte.com)