For the latest tax developments relating to Kenya, see Deloitte tax@hand.

**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 exceeding 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 a 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 a rate of 37.5%. The rate for newly listed companies is reduced to 25% for a five-year period 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. The corporate tax rate for new assemblers is 15% for the first five years to promote the assembly of motor vehicles in the country, and the 15% rate 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.

As from 1 January 2019, companies working under special agreements with the government will be eligible for special corporation tax rates provided under the agreements.

Surtax – No
Alternative minimum tax – No
Foreign tax credit – Foreign taxes paid are treated as an allowable expense, but a tax credit is granted where a tax treaty applies.
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. A 100% investment deduction also is provided on buildings used for the training of film producers, actors or crew. 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, regardless of whether the enterprise sells its products to markets within Kenya or internationally. 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. 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 made to both residents and nonresidents. However, 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, as well as royalties paid by an SEZ enterprise to a nonresident are subject to a 5% withholding tax. The rate is 20% where paid 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 and where the fees are paid by an SEZ enterprise to a nonresident. The rate is 20% where the service provider is a nonresident, unless otherwise provided in an applicable tax treaty.

Branch remittance tax – No

Other: A 10% withholding tax is levied on the gross proceeds of rental income of nonresidents, but the tax is withheld by agents appointed by the government.

As from 21 September 2018, a 20% withholding tax is levied on demurrage charges paid to nonresident ship operators and a 5% withholding tax is levied on insurance premiums paid to nonresidents, except for insurance premiums paid for aircraft insurance.

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 – Before 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. As 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 Securities Exchange.
Transfer tax – See under “Stamp duty.”
Other – The “compensating tax” that was imposed on dividends declared from profits that were not subject to corporate income tax at the standard rate is repealed as from 1 January 2019. The tax is replaced with corporation tax on distributions from untaxed profits (although guidelines have not yet been issued on the determination of untaxed profits under the new provision).

Fringe benefits tax is chargeable on companies in respect of concessory 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 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 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.

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 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 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 (which still must be filed for periods before 1 January 2019) must be filed within six months of the end of a company's accounting period. The return must be filed electronically 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 files its 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 by an employer in respect of 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 defined broadly 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 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% (subject to a maximum of KES 200 per month) 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** – Late payments of self-assessed tax are subject to a 20% penalty, plus a 1% penalty per month. A late-filing penalty of 5% penalty subject to a minimum of KES 2,000 applies on any amount still owed four months after the year-end.

**Other** – A tax amnesty applies until 30 June 2019, 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 taxable goods and services into Kenya. VAT on imported services in Kenya is operated through the reverse VAT mechanism where VAT is accounted for by the recipient of the service. The reverse VAT so calculated is the liability of the recipient.

**Rates** – The standard VAT rate is 16%, although certain supplies are exempt or zero-rated. As from 21 September 2018, petroleum products are subject to an 8% VAT.

**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** – The VAT return and any related payment are due by the 20th day of the following month. Agents appointed by the tax authorities are required to deduct 6% of the 16% VAT and remit the withheld VAT by the 20th day of the following month.

Late payment of VAT attracts a penalty of 5% of tax outstanding and simple interest at 1% per month. Failure
to submit VAT returns results in a penalty of 5% of the tax due (minimum penalty of KES 10,000).

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

**Tax treaties:** Kenya has concluded 14 tax treaties, although not all of the treaties have been ratified.

For further information on Kenya’s tax treaty network, visit [Deloitte International Tax Source](#).