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# International Tax
## Kenya Highlights 2023

Updated February 2023

## Recent developments

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

## Investment basics

**Currency:** Kenyan Shilling (KES)

**Foreign exchange control:** There are no foreign exchange controls, but banks must report any transactions above USD 10,000 or equivalent to the Central Bank.

**Accounting principles/financial statements:** IFRS apply. Financial statements must be prepared annually.

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

## Corporate taxation

| Rates | |
|---|---|
| **Corporate income tax rate** | 30% (in general) |
| **Branch tax rate** | 37.5% |
| **Capital gains tax rate** | 15% |

**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 cabinet secretary responsible for 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. The determination of the taxable income of a branch generally is similar to that of a subsidiary. However, unless an applicable tax treaty provides otherwise, a branch is not allowed to claim the following expenses as deductions:

- Interest, royalties, and management or professional fees paid or claimed to be paid by the branch to the head office;
- Remuneration to nonresident directors of the parent company, other than full-time service directors, in excess of the lower of 5% of total income or KES 150,000;

- Exchange differences (losses or gains) arising from dealings with the head office; and
- Certain executive and general administrative expenses recharged by the head office.

**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 should 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 from immovable property, and income from agriculture are assessed separately.

**Rate:** The general corporate income tax rate is 30%, with branches of foreign companies taxed at a rate of 37.5%.

To boost the housing development sector, the corporate tax rate for a year of income for companies that construct at least 100 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 motor vehicle assemblers is 15% for the first five years, to promote the assembly of motor vehicles in the country; 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.

Companies working under special agreements with the government are eligible for special corporate tax rates provided under such agreements.

As from 1 July 2022, companies that manufacture human vaccines in Kenya are exempt from income tax while those that operate a shipping business in Kenya or a carbon market exchange or emissions trading system certified by the Nairobi International Financial Center Authority are taxable at 15% for the first 10 years of operation.

**Surtax:** There is no surtax.

**Alternative minimum tax**: Kenya introduced a minimum tax at the rate of 1% of gross taxable income effective 1 January 2021. Based on the law, minimum tax must be paid in quarterly installments by the 20th day of the fourth, sixth, ninth, and 12th months of the year. The tax is only payable if it exceeds the estimated income tax for the year, which is also payable in installments. Although the law still provides for the minimum tax regime, the High Court ruled in September 2021 that it is unconstitutional. The Kenya Revenue Authority appealed the ruling to the Court of Appeal but the court dismissed the appeal in December 2022. Therefore, currently, the tax is not applicable, but the Kenya Revenue Authority has appealed the ruling to the Supreme Court.

**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 15% of the net gain (increased from 5% as from 1 January 2023), which is a final tax. The capital gains tax rate for firms certified by the Nairobi International Financial Center Authority that invest at least KES 5 billion (approximately USD 41.67 million) in Kenya and transfer this investment after five years is the rate that was prevailing at the time the investments were made. 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. Capital gains that arise due to an internal reorganization within a group are exempt from capital gains tax.

**Losses:** Losses may be carried forward indefinitely but 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.

**Foreign tax relief:** Foreign taxes paid are treated as allowable expenses, but a tax credit is granted where a tax treaty applies.

**Participation exemption:** A participation exemption exists only where a resident company holds 12.5% or more of the shares of another resident company. The participation exemption in Kenya applies only to dividends.

**Holding company regime:** There is no holding company regime.

**Incentives:** Kenya provides for a 100% investment allowance on capital expenditure where the cumulative investment in the preceding three years outside Nairobi City County or Mombasa County is at least KES 2 billion (approximately USD 16 million), where the investment value outside Nairobi City County or Mombasa County in the current year is at least KES 250 million (approximately USD 2 million), or where the investment is incurred in a special economic zone (SEZ). Effective 1 July 2022, a 150% investment allowance was introduced where the cumulative investment value for the four years preceding 1 July 2022 or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least KES 2 billion (approximately USD 16 million).

Enterprises in export processing zones enjoy a 10-year tax holiday after which their income is taxable at 25% for the next 10 years.

Enterprises located in SEZs 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 allowance on their capital expenditure. Entities that operate within SEZs are also exempt from the minimum tax regime. Reduced withholding tax rates apply to certain payments made by an SEZ enterprise to a nonresident (see “Withholding tax,” below).

## 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. Where a company prepares accounts for a period other than 12 months, the period for which accounts are prepared will be the tax year for tax assessment purposes. 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 and payment:** The self-assessment return 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 is payable in four equal installments, which are due on the 20th day of the fourth, sixth, ninth, and 12th months. The installment tax payable is 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 at the end of the fourth month after the company's year end. Agricultural companies pay their taxes in two installments. Their first installment payment accounts for 75% of the total tax payable and is due 20 days after the end of the third quarter. The second installment is due on the 20th day of the last month of the fourth quarter.

An employer must file its monthly returns in respect of employment income electronically.

**Penalties:** Late payments of self-assessed tax are subject to a 5% penalty, plus 1% interest 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% late filing 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 binding interpretation from the Kenya Revenue Authority on the tax legislation as it applies to specific situations.

## Individual taxation

| Rates | | |
|---|---|---|
| **Individual income tax rate** | **Taxable income (KES)** | **Rate** |
| | Up to 288,000 | 10% |
| | 288,001—388,000 | 25% |
| | Over 388,000 | 30% |
| **Capital gains tax rate** | | 15% |

**Residence:** Individuals are resident in Kenya if they have a permanent home in Kenya and are present in Kenya at any time during the year. Individuals who do not have a permanent home in Kenya are tax resident in a tax year if they are present in Kenya for at least 183 days in the tax year, or if they have averaged 122 days in the country in the tax year and the previous two tax years.

**Basis:** All income accruing in or derived from Kenya is subject to tax in Kenya. Kenyan residents are taxable on their worldwide employment income; nonresidents are 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. Non-citizen residents must include their after-tax foreign-source employment income in their Kenya taxable 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.

**Rates:** Progressive rates of 10% and 25% are imposed on taxable income up to KES 288,000 and KES 388,000, respectively. The rate is 30% on amounts exceeding KES 388,000.

**Capital gains**: The capital gains tax rate is 15% of the net gain (increased from 5% as from 1 January 2023), which is a final tax. Gains arising from the transfer of shares traded on a securities exchange licensed by the Capital Markets Authority are exempt from capital gains tax.

**Deductions and allowances:** Personal relief is KES 28,800 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 also is not taxable.

**Foreign tax relief:** See "Basis," above. Foreign taxes paid are treated as allowable expenses, but a tax credit is granted to Kenyan citizens and non-citizen residents where a tax treaty applies.

## Compliance for individuals

**Tax year:** The tax year is the calendar year.

**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.

**Filing and payment:** Individual 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 Pay-As-You-Earn (PAYE) system by the employer), with any balance of tax due by 30 April. Electronic filing via iTax is mandatory.

**Penalties:** Late payments of self-assessed tax are subject to a 5% penalty, plus 1% interest per month. A late filing penalty of 5% (subject to a minimum of KES 2,000) applies on any amount still owed on the return filing due date.

**Rulings:** An individual may request a binding interpretation from the Kenya Revenue Authority on the tax legislation as it applies to specific situations.

## Withholding tax

**Rates**

| Type of payment | Residents | | Nonresidents | |
|---|---|---|---|---|
| | Company | Individual | Company | Individual |
| **Dividends** | 0%/5% | 5% | 0%/15% | 0%/5%/15% |
| **Interest** | 10%/15%/25% | 10%/15%/25% | 5%/7.5%/10%/15%/25% | 5%/7.5%/10%/15%/25% |
| **Royalties** | 5% | 5% | 5%/20% | 5%/20% |
| **Fees for technical services** | 3%/5% | 3%/5% | 5%/20% | 5%/20% |

**Dividends:** No withholding tax is imposed if the dividend recipient is a qualifying Kenyan financial institution or if the resident recipient company controls 12.5% or more of the capital of the payer company. The rate is 5% for dividends paid to other residents of Kenya and citizens of the East African Community partner states; the rate is 15% for other nonresidents. No withholding tax is imposed on dividends paid by an SEZ enterprise to a nonresident. The rates for nonresidents may be reduced under an applicable tax treaty.

**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. The withholding tax rate on interest and deemed interest arising from a bearer bond issued outside Kenya with a term of at least two years was reduced to 7.5% as from 1 July 2022. A reduced withholding tax rate of 5% applies to interest paid by an SEZ enterprise to a nonresident. The rates for nonresidents may be reduced under an applicable tax treaty.

**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 general rate is 20% where royalties are paid to a nonresident. The rates for nonresidents may be reduced under an applicable tax treaty.

**Fees for technical services:** A 5% withholding tax applies to the payment of technical service fees (as well as professional and management fees other than contractual fees) where the services are provided by a resident and where the fees are paid by an SEZ enterprise to a nonresident. Contractual fees are liable to a withholding tax of 3% if payment is made to a resident person. The general withholding tax rate in respect of technical service fees is 20% where the service provider is a nonresident, unless otherwise provided in an applicable tax treaty.

**Branch remittance tax:** There is no branch remittance tax.

**Other:** A 10% withholding tax applies to gross rent in respect of immovable property payable to residents, but the tax can be withheld only by agents appointed by the Kenya Revenue Authority. Rent for immovable property paid to a nonresident is liable to withholding tax in Kenya at 30%. The rate applicable to rent for the use of movable assets is nil if paid to residents and 15% if paid to nonresidents.

A 5% withholding tax applies to insurance and reinsurance premiums paid to nonresidents, except for insurance or reinsurance premiums paid for aircraft insurance.

## 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. Kenya also has introduced country-by-country reporting requirements for multinationals with gross turnover of at least KES 95 billion (approximately EUR 750 million).

Effective 1 January 2023, the scope of transfer pricing was expanded to include transactions with unrelated nonresidents located in jurisdictions with a preferential tax regime, their associated enterprises, and their permanent establishments in Kenya. A preferential tax regime is defined as including:

- Any Kenyan legislation, regulation, or administrative practice that provides a preferential rate of tax on income or profit, including reductions in the tax rate or the tax base; or
- The tax regime of a foreign jurisdiction that does not tax income, taxes income at a rate that is less than 20%, does not have a framework for the exchange of information, or lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure, or regulatory supervision.

**Interest deduction limitations:** Save for certain excluded entities, interest expense in excess of 30% of EBITDA (earnings before interest, taxes, depreciation, and amortization) is not allowed as a deduction. The entities excluded from this interest limitation rule are:

- Banks and financial institutions licensed under the Banking Act;
- Micro and small enterprises registered under the Micro and Small Enterprises Act, 2012;
- Microfinance institutions;
- Hire purchase institutions;
- Institutions involved in a lending and leasing business;
- Companies manufacturing human vaccines;
- Companies engaged in manufacturing whose cumulative investment in the five years prior to enactment (1 January 2022) is at least KES 5 billion (approximately USD 40 million);
- Companies engaged in manufacturing whose cumulative investment is at least KES 5 billion (approximately USD 40 million) for investments made outside Nairobi City County and Mombasa County; and
- Holding companies that are regulated under the Capital Markets Act.

Deemed interest is imposed on 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 (or reduced rates under applicable tax treaties).

**Controlled foreign companies:** There are no controlled foreign company rules.

**Hybrids:** There are no anti-hybrid rules.

**Economic substance requirements:** There are no economic substance requirements.

**Disclosure requirements:** The tax authorities have the statutory right to require a taxpayer to provide information concerning its own tax affairs and may require banks to provide information about payments of interest.

**Exit tax:** There are no additional exit taxes in Kenya. The taxes that may apply on exit include capital gains tax, business tax, and VAT.

**General anti-avoidance rule:** Kenya has anti-tax avoidance rules, which empower the Kenya Revenue Authority to counter an arrangement if the main purpose or one of the main purposes is the avoidance or reduction of tax liability. Where the Kenya Revenue Authority invokes the anti-avoidance provisions, the tax that would have applied had the arrangement not been in place will be assessed.

## Value added tax

| Rates | |
|---|---|
| **Standard rate** | 16% |
| **Reduced rate** | 0%/8% |

**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 calculated is the liability of the recipient.

**Rates:** The standard VAT rate is 16%, although certain supplies are exempt or zero-rated. Petroleum products and liquified petroleum gas (LPG) are subject to VAT at a rate of 8%.

**Registration:** Registration is mandatory where the turnover of taxable supplies is, or is expected to be, at least KES 5 million (approximately USD 40,000) in a 12-month period. Nonresident suppliers of electronic services or services provided through a digital marketplace must register even if their annual turnover is less than KES 5 million.

**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 withhold a prescribed portion of the VAT amount and remit the withheld VAT by the 20th day of the following month.

Late payment of VAT attracts a penalty of 5% of the tax outstanding and simple interest at 1% per month. Failure to submit VAT returns results in a penalty of 5% of the tax due, subject to a minimum penalty of KES 10,000 (approximately USD 80).

## Other taxes on corporations and individuals

Unless otherwise stated, the taxes in this section apply both to companies and individuals and are imposed at the national level.

**Social security contributions:** An employee must contribute to the National Social Security Fund (NSSF) and the National Hospital Insurance Fund (NHIF); an employer contributes only to 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.

**Payroll tax:** Employment income is taxable in Kenya at the progressive individual income tax rates (see “Individual tax,” above) through an employer withholding tax mechanism (Pay-As-You-Earn (PAYE)). An employer has an obligation to deduct PAYE at the appropriate monthly graduated rates of tax upon payment of emoluments to an employee.

The tax deducted is payable to the Kenya Revenue Authority by the ninth day of the month following the payroll month. There is also a requirement for a monthly return to be filed electronically with the Kenya Revenue Authority, which is due on the ninth day of the month following the payroll month and essentially includes details of emoluments paid to employees in the given month and the corresponding taxes.

**Capital duty:** See “Stamp duty,” below.

**Real property tax:** Land rates are assessed by local county governments (see also "Stamp duty," below).

**Transfer tax:** See “Stamp duty,” below. Capital gains tax also may apply on property transfers.

**Stamp duty:** Stamp duty is charged at nominal or ad valorem rates on certain financial instruments and transactions. A 1% stamp duty is imposed on a subsequent increase of authorized share capital. Stamp duty is imposed at a rate of 4% on immovable property (2% if imposed 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.

**Net wealth/worth tax:** There is no net wealth tax or net worth tax.

**Inheritance/estate tax:** There is no inheritance tax or estate tax.

**Other**

### Digital service tax

A digital service tax (DST) was introduced in Kenya as from 1 January 2021. It applies on the income of a nonresident person from the provision of services derived from or accrued in Kenya through a business carried out over the internet or an electronic network, including through a digital marketplace.

The Income Tax Act defines a “digital marketplace” as an online or electronic platform that enables users to sell or provide services, goods, or other property to other users.

The Income Tax (Digital Service Tax) Regulations, 2020 provide more information on the DST regime, including the scope of services that qualify for DST and those that are specifically excluded from DST even if they are digital services.

Income derived from a digital marketplace is exempt from DST if it is taxed under section 9(2) or section 35 of the Income Tax Act. Section 9(2) charges tax at a rate of 5% on the income of a nonresident person who carries on the business of transmitting messages by cable or radio communication, optical fiber, television broadcasting, very small aperture terminal (VSAT), the internet, or any other similar means of communication. Section 35 lists the income that is subject to withholding tax in Kenya. This exemption was already anchored in the Income Tax (Digital Service Tax) Regulations, 2020, but was introduced in the main legislation to resolve any contradictions.

DST is applicable at 1.5% on the gross transaction value (excluding the VAT charged, if any). The gross transaction value is:

- For the provision of digital services: the payment received as consideration for the services; and
- For a digital marketplace: the commission or fee paid to the digital marketplace provider for the use of the platform.

Persons who are liable to DST must register for DST in Kenya through a simplified registration framework and must pay the tax monthly.

### Compensating tax

A rate of 30% applies on distributions from untaxed profits (although guidelines have not yet been issued on the determination of untaxed profits). Compensating tax is not applicable on any income that is exempt under the Kenya Income Tax Act.

### Fringe benefits tax

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

The residential rental income of a person (entity or individual) in excess of KES 288,000 (approximately USD 2,304) per year but not greater than KES 15 million (approximately USD 120,000) per year is taxed at a rate of 10% on 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 15 million per year are taxed on a net income basis.

### Turnover tax

Turnover tax at a rate of 1% of gross business receipts may be payable by resident businesses. The tax applies to the business income of both incorporated and unincorporated persons if the income ranges from KES 1 million to KES 50 million per year. The tax is accounted for monthly, with the return and payment due on or before the 20th day of the month following the tax period.

A person eligible to pay turnover tax may elect not to be subject to turnover tax by providing notice to the commissioner of domestic taxes, in which case the person will be subject to the regular income tax rates on business profits, among other income.

Turnover tax does not apply to rental income; management, professional, or training fees; and any income that is subject to a final withholding tax.

**Tax treaties:** Kenya has concluded around 30 tax treaties. Kenya signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 26 November 2019. For further information on Kenya's tax treaty network, visit Deloitte International Tax Source.

**Tax authorities:** Kenya Revenue Authority

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