

2019

Kenya Tax Guide



EY

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working world



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This booklet is a guide on the taxation regime in Kenya.

The booklet is for use by our clients and staff and it is intended as a guide only and not a comprehensive summary of Kenyan Tax Laws and practice. Application of its contents to specific situations would require the assistance of professional advisors. While all reasonable care has been taken in the preparation of this guide, EY accepts no responsibility for any errors it may contain.

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EY is a global leader in Assurance, Advisory, Tax, and Transaction Advisory Services (TAS). We are 230,000 people based in 728 offices in 150 countries, organized into 28 Regions and four Areas. At EY, we are committed to doing our part in building a better working world. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies world-over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

Our values define who we are. They influence the way we work with each other, our clients and regulators, and our communities, where we use professional skills to create positive change close to home and around the world.

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Our talented people, consistent methodologies and unwavering commitment to doing our part in building a better working world, help you to build the strong compliance and reporting foundations and sustainable tax strategies that help your business achieve its ambitions.

EY has been in Eastern Africa for over 89 years and has acquired a unique perspective and experience on the region's business practice. This experience, pooled with our global resources, adds immense value to our clients.

What we stand for

Our positioning, the difference to which we aspire, is to be known for having the highest performing teams, and delivering exceptional client services, worldwide.

Our positioning	Our values	Quality as a constant
What we stand for	Who we are	Building a better working world
<p>At EY we are committed to helping our people our clients, and our wider communities achieve their potential. It's how we make a difference.</p> <p>It's about 230,000 people working together to help each other develop and succeed professionally and personally. It's about helping our clients deliver on their promises to their markets and shareholders. And it's about making a difference in the communities in which we live and work.</p>	<p>People who demonstrate integrity, respect and teaming.</p> <p>People with energy, enthusiasm and the courage to lead.</p> <p>People who build relationships based on doing the right thing.</p>	<p>Every day, every EY person is part of building a better working world - for their clients, their families, their communities and themselves. Everything they do - every audit, every tax return, every interaction with a client or colleague - contributes to making the working world better than it was. But, we aspire to do more. And we believe, that through a shared agenda with our clients and stakeholders, we can achieve more together</p>



**Our promise to
our clients:**

"We believe that through collaboration with clients and stakeholders we can more effectively address the challenges the working world faces and together be part of the solutions"

Content

Who we are	4
EY integration	4
About EY's global tax services	4
EY tax services in East Africa	5
What we stand for	5
1. Income Tax Act	8
2. Value Added Tax (VAT)	16
3. Customs duties	27
4. Excise duty	31
5. Miscellaneous fees and levies	35
6. Other taxes & statutory deductions	37
Stamp duty	37
National Hospital Insurance Fund (NHIF)	37
National Social Security Fund (NSSF)	38
National Housing Development Fund (NHDF)	38
Property rates	39
Catering levy	39
Immigration Rules in Kenya	39
Betting, Lotteries & Gaming taxes	39
7. Appendices	41
Appendix I - Individual rates of tax, reliefs & allowances	41
Appendix II - Corporate rates of tax	44
Appendix III - Withholding taxes	47
Appendix IV - Capital allowances	50
Appendix V - Returns and records	52
Appendix VI- Tax assessment, objections and appeals	53
Appendix VII - Penalties imposed under the Income Tax Act & Tax Procedures Act	54
EY Eastern Africa contacts	55
Offices & tax technical contacts	56

1. Income Tax Act

Relevant Section of the
Income Tax Act (unless
specifically provided)

The Income Tax Act (ITA) was enacted in 1973, and its effective date of commencement was 1974. It replaced the East Africa Income Tax Management Act.

Throughout the years, amendments to the ITA have been made, mainly through the Finance Acts, as well as subsidiary legislation via legal notices. This tax guide is prepared with reference to the ITA which incorporates all amendments up to and including those in the Finance Act, 2018 which was assented to by the President on 21st September 2018 and whose provisions will become effective on 1st January 2019 while others became effective on 1st July 2018 and 1st October 2018.

1. Basis of charge to tax

All the income of a person, whether resident or non-resident, which is accrued in, or derived from Kenya is subject to income tax. **Sec 3(1)**

Resident when applied in relation to a body of persons means (i) that the body is a company incorporated under a law of Kenya; or (ii) the management and control of the affairs of the body were exercised in Kenya in a particular year of income under consideration; or (iii) that the body has been declared by the Minister, by notice in the Gazette, to be resident in Kenya in any particular year of income. **Section 2**

Resident when applied in relation to an individual means he has; (i) a permanent home in Kenya and was present in Kenya for any period in the year of income under consideration, or (ii) no permanent home in Kenya, but was present in Kenya for a period or periods amounting to 183 days or more in the year of income under consideration or was present in that year of income and in each of the two preceding years of income for periods averaging more than 122 days.

A non-resident person can operate in Kenya through registered branch. Where they have not registered a branch, the non-resident may create a permanent establishment. A permanent establishment means a fixed place of business and includes a place of management, a branch, an office, a factory, a workshop, and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, a building site, or a construction or installation project which has existed for six months or more where that person wholly or partly carries on business. **Section 2**

2. Income subject to tax

Income tax is chargeable on gains or profits from a business for whatever period of time carried on. **Section 3(2)**

Where a business is carried on, or exercised partly within and partly outside Kenya by a resident person, the whole of the gains or profits from that business are deemed to have been accrued in or derived from Kenya. **Section 4(a)**

**Relevant Section of the
Income Tax Act (unless
specifically provided)**

In determining the total income of a person for any period, all expenditure incurred wholly and exclusively in the production of that income is tax deductible.

Section 15(1) & (2)

Gains or profits of a person from specified sources of income should be computed separately. Any loss realised from a specified source of income can only be deducted against future gains or profits from the same source of income.

Section 15(7)

The specified sources of income under the ITA are; rental income, employment income, income from agricultural activities (including pastoral, horticultural and forestry), surplus funds withdrawn from registered pension/provident funds, disposal of interest in a person in the case of immovable property, natural resource income and other sources relating to business income but not relating to sources listed above.

3. Dividends and Interest

Dividend paid by a resident company are deemed to be chargeable income in the year they were payable.

Section 7(1)

Dividends shall be deemed as distributed by a company to a shareholder where;

Finance Act, 2018

- any cash or asset is distributed or transferred;
- the shareholder is discharged from any debt obligation measurable in money;
- the amount is used in any other manner for the benefit of the shareholder;
- any debt owed by the shareholder is paid or settled by that company;
- the amount represents additional taxable income or reduced assessed loss by virtue of any transaction resulting from a transfer pricing adjustment.

Dividends received by a resident company from a company in which it controls 12.5% or more of the voting power are not subject to tax.

Section 7(2)

Dividends received by specified financial institutions (listed under the Fourth Schedule to the Income Tax) are deemed to be income subject to tax.

Section 7(3)

Qualifying dividends paid to persons (individuals & legal entities) are subject to withholding tax

Section 34(1)(d)

Interest income earned by individuals from financial institutions licensed under the Banking Act, a building society or the Central Bank of Kenya is subject withholding tax which is a final tax.



Relevant Section of the Income Tax Act (unless specifically provided)

Compensating tax is imposed if a company pays dividends from untaxed gains or profits. The company distributing the dividend shall be charged to tax in the year of income in which the dividends are distributed at the corporate tax rate of 30% on the gains or profits from which such dividends are distributed. Compensation tax shall not apply to registered collective investment schemes and power producers under a power purchase agreement.

Section 7A
Finance Act, 2018
Section 52B(4)

The tax is due by the end of the six month following a company's financial year-end.

4. Pensions

Pensions received by a resident individual from a fund or scheme registered outside Kenya are taxable in Kenya to the extent that they relate to employment services provided in Kenya.

Section 8(1)

Pensions received by a non-resident individual from pension funds established in Kenya, or annuities made in Kenya are taxable in Kenya.

Section 8(2)

Pensions and retirement annuities received by a resident individual are exempt from tax up to a maximum of KES 300k per annum. This exemption applies to pensions or retirement annuities received from registered funds and the National Social Security Fund (NSSF).

Section 8(4)

Contributions by an employer to a pension, provident or individual retirement fund or scheme are generally not chargeable to tax on the employee. However, employees of organisations not chargeable to tax will be liable to tax on contributions made by the employer to an unregistered fund, or the excess contributions made to a registered fund.

Section 5(4) (c)

5. Employment Income

Income tax is chargeable on any gains or profits from employment or services rendered. Gains or profits from employment are widely defined and include wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commissions, gratuity, travelling, entertainment or other allowances.

Section 5(2) (a)

Value of benefits (in kind), advantage or facility received from employment are only taxable if the aggregate value exceeds KES 36k annually.

Section 5(2) (b)

Life insurance premiums paid by an employer on the life of his employee(s) where such a cover confers a benefit to the employee (or any of his dependants) are deemed to be a taxable benefit.

Section 5(2) (f)

Where a motor-vehicle is provided by an employer, the taxable benefit is the higher of 2% per month of initial capital expenditure by the employer on the car, or the actual cost to the employer. Where an employee is provided with a leased or hired vehicle, the taxable benefit is the cost of lease or hire of the vehicle. For employees who have restricted use of motor vehicles, the Commissioner may, if satisfied of that fact upon proof by the employee, determine a lower rate of the benefit depending on the usage of the motor vehicle.

Section 5(2B)

Where a house is provided by the employer, the value of benefit is determined as the higher of the rent paid by the employer or 15 % of the employment income excluding the value of those premises. Where the premises are provided under an agreement with a third party which is not at arm's length, the benefit is valued at the fair market rental value of the premises, or the rent paid by the employer, whichever is higher. Where the employer owns the premises, the benefit is taxed at the fair market rental value of the premises. Agricultural employees residing on the plantation or farm are taxed at 10% of their employment income.

Section 5(3)

Where an employer invites his employee(s) to participate in the ownership of the company's shares, the value of the benefit is the difference between the market value per share and the offer price per share at the date the option is granted by the employer. The benefit is deemed to have accrued to employees at the end of the vesting period. The benefits under the Employees' Share Ownership Plans (ESOPs) accrue in cases where such plan is registered with the Commissioner as a Collective Investment Scheme (CIS) as defined under the Capital Markets Authority Act.

Section 5(6)

6. Exempt Income and Benefits

The following income and benefits are exempt from tax:

- Interest from Post Office Savings Bank (POSB) ordinary accounts.
- The first KES 300k per annum from registered pension and retirement annuities.
- Withdrawal benefits from a registered pension or provident fund. The limit is KES 60k for every year worked up to a maximum of KES 600k
- One third of employment income of a non-citizen employee of a regional office which has been approved by the Commissioner, who is absent from Kenya for the performance of his duties for a period or periods aggregating 120 days or more in that year of income.
- Group life policy premiums paid by an employer on the life of an employee where such policy does not confer benefit to the employee or his dependents.
- Medical services for both employees and directors, or medical insurance provided by an insurance provider approved by the Commissioner of Insurance and paid by the employer on behalf of a full time employee or his/her beneficiaries. For directors other than whole time service directors, the maximum limit as prescribed by the Cabinet Secretary (National Treasury) is KES 1m per annum.
- **"Beneficiaries"** mean the full time employee's spouse and not more than four children whose age is not more than 21 years.
- Expenditure incurred by a partnership for the benefit of any partner or a sole proprietorship for the benefit of the proprietor in securing a medical cover or medical insurance allowable up to KES 1m
- Monthly and lump-sum pension granted to a person who is 65 years of age or more.

- Cost of passage to and from Kenya for non-citizen employees recruited outside Kenya.
- Reimbursement of expenses expended wholly and exclusively in the production of income.
- The first KES 2k paid to an employee per day as an allowance while on official duty is deemed to be a reimbursement and therefore not taxable.
- Non-cash benefits up to a maximum of KES 36k per year.
- Fringe benefit tax paid by the employer on behalf of an employee.
- Education fees of an employee's dependants, which have been taxed on the employer.
- Meals served in a canteen or cafeteria operated or established by the employer or a third party who is a registered tax payer for the benefit of employees subject to an annual limit of KES 48k per employee.
- Interest earned on deposits to registered Home Ownership Savings Plan (HOSP) of up to KES 3m deposit.
- Income from employment paid in the form of bonuses, overtime and retirement benefits provided that the employees' taxable employment income before bonus and overtime allowances does not exceed the lowest tax band.

7. Capital Gains

Gains realized by companies and individuals on or after 1st January 2015 on transfer of property situated in Kenya are taxable. The general tax rate applicable is 5%.

Section 3(2) (f) & Eighth Schedule

Effective 1st January 2016 however, the tax will not apply to gains realised from securities listed on the Nairobi Securities Exchange.

Effective 1st July 2018, gains arising from the transfer of property by an insurance company other than property connected to life insurance business will be subject to capital gains tax.

8. Residential Rental Income Tax

Effective 1st January 2016, rental income received by a resident person for the use or occupation of residential property (not exceeding KES 10m per annum) is subject to tax at a flat rate of 10% on the gross rental income received. The minimum threshold was however capped to KES 144k with effect from 9th June 2016.

Section 6A & Third Schedule

However, a person may elect, by notice in writing addressed to the Commissioner at least 3 months before year end, not to be subject to residential rental income tax in which case other provisions of the ITA will apply.

The Commissioner should respond within 60 days of receiving the notice failure to which he is deemed to have received the notice.

If a person under residential rental income tax believes his rental income will exceed KES 10m he should inform the Commissioner before year end.

Losses brought forward are deemed to have been extinguished as at 31st December 2015.

9. **Set-off tax rebate for apprenticeships**

Any employer who engages at least ten university graduates as apprentices for a period of six to twelve months during any year of income shall be eligible for a tax rebate equal to fifty percent of the amount of salaries and wages paid to them in the year of income and the subsequent three years of such engagement. The contracts must be registered with the National Industrial Training Authority (NITA).

Section 39B

10. **Transfer of interest in a person where value is derived from immovable property in Kenya**

The net gain from the disposal of interest in a person (where the interest derives 20% or more of its value from immovable property in Kenya) is subject to tax. The net gain is taxable based on a prescribed formula.

Section 3(2)(g)

Immovable property has been defined to include a mining right, an interest in a petroleum agreement, mining information or petroleum information

11. **Natural Resource Income**

Any amount paid as consideration for the right to take minerals or a living or non-living resource from land or sea shall be subject to tax in Kenya. The rate of 20% applies to payments made by non-residents. Residents will be required to account for withholding tax (WHT) at the rate of 5%.

Section 3(2)(h)

12. **Tax losses**

Tax deficits can only be used in the year of income that they arise and the subsequent nine years unless the period of deduction is extended by the Cabinet Secretary (National Treasury) on the recommendation of the Commissioner.

Section 15(4)

Capital losses realised in any given period can be utilised against capital gains earned in that period, in so far as such losses have not already been utilised against gains from subsequent periods.

Section 15(2)(f)

Paragraph 5(2), Eighth Schedule

For companies operating in the extractive industry (that is, mining and oil & gas), any losses incurred in a year of income can be carried forward indefinitely.

Paragraph 3 & 8 of the Ninth Schedule

	Relevant Section of the Income Tax Act (unless specifically provided)
13. Thin Capitalisation	
This occurs when a company's debt to equity ratio exceeds 3:1 and the company is under the control of a non- resident person who alone or together with four or fewer other person, and where the company is not a bank or a financial institution licensed under the Kenyan Banking Act.	Section 16(2) (j) Section 4A
Where a company is thinly capitalised:	
<ul style="list-style-type: none"> Interest is restricted to the extent of thin capitalisation; and foreign exchange losses whether unrealised or realized in respect of the related party loan(s) are not taken into account as deductible expenses. 	Ninth Schedule
For companies operating in the extractive sector (mining and oil & gas), the prescribed debt to equity ratio is 2:1.	
14. Transfer Pricing Rules	
The rules, which were enacted in 2006, require all transactions between related parties (where one party is resident in Kenya and the other outside Kenya), to be documented in accordance with set out guidelines. The rules also apply to transactions between a head office and its branch (or other related branches).	Section 18(3) Transfer Pricing Rules
Resident related parties are required to adhere to the arm's length principle for any related party transactions if one of the parties is operating under a preferential tax regime. A preferential tax regime is one which that includes a reduction in the tax rate or the tax base.	Section 18A
The main objective of the rules (which are modelled on the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations) is to ensure that any transfer prices charged between related parties satisfy the arm's length principle.	
The rules set out:	
<ul style="list-style-type: none"> The entities and related party transactions under review; The methodologies which may be used by the entities in determination of the arm's length transfer price; and The records pertinent to the stipulated transactions which must be maintained 	
15. Payment of taxes	
Tax on employment income is paid through the Pay-As-You-Earn (PAYE) system. The employer makes monthly deductions which are remitted to the Commissioner of Domestic Taxes by the 9th day of the following month.	
Fringe benefit tax is charged on the total taxable value of a fringe benefit provided by an employer in a month and is payable by the 10th day of the following month.	Section 12B
Presumptive tax shall be due at the time of payment or renewal of the business permit / trade license.	Section 12C Finance Act, 2018

Other taxpayers pay tax within the financial year in four equal instalments, which are due by the 20th day of the 4th, 6th, 9th and 12th months. Agricultural enterprises however, pay tax in two instalments which are due by the 20th of the 9th month (75%) and 20th of the 12th month (25%). Any tax balance is payable by the end of the 4th month after the end of the year. The instalment tax is based on the lower of preceding year's tax multiplied by 110% and current year's estimate.

Section 12

Withholding taxes are paid by the 20th day of the month following the month of deduction

A taxpayer may, subject to approval by KRA, set-off tax or duty due under the Income Tax Act, Customs and Excise Act, and VAT Act, against a refund of tax or duty under the mentioned Acts. In case of Customs and Excise Act and VAT Act, the set-off only applies in respect of local supply of goods and

Tax paid outside Kenya by a Kenyan citizen on employment income (or income in respect of artists, instructors, entertainers and sportsmen) is offset against tax payable in Kenya on that income.

Section 39(2)

16. Books and accounts

Any return, record or document required to be kept or produced should be in either English or Kiswahili. The unit of currency of any such return, record or document is Kenyan Shilling.

Section 55 & 23, Tax
Procedures Act

A tax payer is also required to preserve books of account (and any document required to explain any entry in the books of account) for at least 5 years.

2. Value Added Tax (VAT)

Relevant Section of the VAT Act, 2013 (unless specifically provided)

1. Introduction

VAT is a tax on supply on taxable goods and services introduced in Kenya in January 1990 to replace sales tax. The VAT Act, Cap 476 of 1989 was repealed and VAT Act 2013 enacted effective 2 September 2013. The provisions of the Repealed VAT Act however remain in force and effect for the purpose of the assessment and collection of any tax and recovery of any penalty, payable under the Act and outstanding at the date upon which such repeal becomes effective.

LN. 193, Aug 2013

Sec 68

It is also worth noting that any subsidiary legislation made under the repealed Act in force at the commencement of the VAT Act 2013 shall remain in force so far as it is not inconsistent with the VAT Act 2013, until subsidiary legislation with respect to the same matter is made under the Act.

Sec 68(3)

LN 54 of 2017 issued on 30 March 2017

The guidelines below are based on the provision of the VAT Act 2013 and the Tax Procedures Act, 2015 and should be read in conjunction with the issued regulations, as well as the repealed VAT Act and regulations.

2. Charge to tax

Taxable supplies can be subject to VAT at the;

- Standard rate (currently at 16%)
- Zero rate
- *Special rate (currently at 8%). This rate was introduced by The Finance Act, 2018 effective 21st September 2018 for goods listed in Section B of Part I of the First Schedule. The taxable value in respect of these goods excludes excise duty, fees and other charges.*

All other supplies are exempt from VAT except those supplies that falls outside the scope of VAT.

3 Taxable persons

3.1 Registration

Any person who in the course of business has supplied, or expects to supply taxable goods or services or both with a value of KES 5m or more in a period of 12 months should apply for registration within thirty days. VAT registration is currently done online by adding a VAT obligation which must be reflected in the Taxpayer's registration certificate or Personal Identification Number (PIN).

Sec 34

Sec 34(4)

However, a person who makes or intends to make taxable supplies but does not meet the turnover threshold of KES 5m may apply to the Commissioner for voluntary registration.

3.2 Registration process

When a person qualifies for VAT registration by virtue of having attained the registration threshold, he needs to apply to the Kenya Revenue Authority (KRA) so that his tax obligations can be expanded to cover VAT. The application is done online and the certificate downloaded from KRA's website.

Sec 8, Tax Procedures Act. 2015



3.3 Deregistration

Where the value of taxable supplies made by a registered person in a period of 12 months is less than KES 5m, the registered person may apply in writing to the Commissioner, for cancellation of the person's registration.

Sec 36(2)

Sec 36(1)

Where the registered person ceases to make taxable supplies, the registered person shall apply in writing to the Commissioner, for cancellation of the person's registration.

3.4 Tax representative

A non-resident person who qualifies for VAT registration but does not have a fixed place of business in Kenya is required to appoint a tax representative in Kenya; failure to which the Commissioner may appoint a tax representative for the person.

Sec 15A , Tax
Procedures Act,
2015

4. Taxable goods and services

VAT is chargeable on sale or importation of goods except those specifically exempt. Exempt goods are listed in Part I of the First Schedule to the VAT Act, 2013.

First and Second
Schedule Sec 5(2)

The VAT (Amendment) Act 2014 came into effect on 29th May 2014. It mainly widened the list of goods and services that are exempt from VAT.

The list of exempt supplies has further been revised by the introduction of more items and at the same time moving some exempt items to the list of zero rated or taxable and vice versa vide the Finance Act, 2018. The supplies are indicated in the table below;

Description	Previous	Current
Cereals of chapter 10 with sees of tariff heading 1001 and 1003	Taxable	Exempt
Materials, water residue and by-products, whether or not in the form of pellets, and preparation of a kind used in animal feeding of tariff numbers 1213.00.00,1214.10.00 and 2303.20.00 (have been included)	Taxable	Exempt
Garments and leather footwear, manufactured in an export Processing Zone at the point of importation	Exempt	Taxable
Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization	Taxable	Exempt

Description	Previous	Current
Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government	Taxable	Exempt
Hearing aids ,excluding parts and accessories, of tariff No.9021.40.00	Taxable	Exempt
Postage services provided through the supply of postage stamps, including rental of post boxes or mail bags and any subsidiary services thereto	Taxable	Exempt
Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangement with the Government	Taxable	Exempt
Transfer of business as a going concern by a registered person to another registered person	Zero rated	Exempt
Supply of natural water excluding bottled water, by national government, county government and any political sub-division or an approved person.	Zero rated	Exempt
Articles of apparels, clothing accessories and equipment specifically designed for safety or protective use in registered hospitals and clinics or by county government or local authorities in fire fighting.	Zero rated	Exempt
Goods supplied to marine fisheries and fish processors upon recommendation.	Zero rated	exempt
Goods imported by passengers arriving from places outside Kenya subject to the limitation and conditions specified.	Zero rated	Exempt
Goods for emergency relief purposes for use in specific areas within a specified period by the specified bodies and government upon approval.	Zero rated	Exempt
Agricultural pest control products.	Zero rated	Taxable
Input or raw materials for electric accumulators and separators supplied to manufacturers of automotive and solar batteries.	Taxable	Zero rated
<i>*Some of the listed exemptions are subject to specified conditions</i>		

Items whose exemption has been expanded included;

- The exemption on taxable goods for direct and exclusive use for construction of specialized hospitals with accommodation facilities has been expanded to include equipment and apparatus. The exemption has however been restricted for specialized hospital with a minimum bed capacity of fifty.
- Parts imported or purchased locally for computer are exempt subject to approval by the relevant cabinet Secretaries.
- Specialised equipment for the development and generation of solar and wind energy including deep cycle batteries which use and store solar power.

All services are taxable other than those listed as exempt in Part II of the First Schedule to the VAT Act, 2013.

Exempt supplies are business transactions on which VAT is not chargeable at either zero-rate or the standard rate. Input tax incurred in the course of providing exempt supplies is not deductible.

5. Taxable value

The taxable value of a supply including a supply of imported services by a person to an unrelated person is the price paid as consideration for the supply. The taxable value for supply, which is not at arm's length, is the open market value of the supply. Taxable value is not considered to be at arm's length where the supplier and recipient are related. Discounts or rebates allowed and accounted for at the time of the supply are relieved of tax.

Sec 13

Sec 13(4)

LN 54 of 2017

Sec 13(5)

Sec 14(1)

Taxable value should include any charges made to the customer for any wrapper, package, box, bottle or other container in which goods are supplied or any liability that the purchaser has to pay to the seller by reason of or in respect of the supply in addition to the amount charged as price.

Where an invoice does not provide for a separate VAT amount, the invoice amount will be deemed to be inclusive of VAT.

In calculating the value of any services, there shall be included any incidental costs incurred by the supplier of the services in the course of making the supply. However, disbursements to third parties on behalf of clients are excluded from the taxable value.

The taxable value of goods imported into Kenya is the sum of the value of such goods ascertained for the purpose of customs duty in accordance with the East African Community Customs Management Act, 2004, whether or not any duty or customs is payable on those goods, or the cost of insurance and freight incurred in bringing the goods to Kenya including the cost of services treated as part of the imported goods; and the amount of customs duty, if any, paid on those goods.

Based on amendments introduced under Finance Act, 2018, the taxable value of the supply of mobile cellular services shall include excise duty.

6. Deduction of input tax

A taxable person is required to register for VAT and make monthly returns in the prescribed form (VAT 3). The form shows details of tax on goods and services charged to customers during the month (output tax), and tax suffered on goods and services charged by his suppliers (input tax).

Sec 17(2)

Sec 17 (5)

LN 54 of 2017

Input tax is allowable for deduction once a person has relevant supporting tax invoice and must be claimed within six months after the end of the tax period in which the supply or importation occurred.

Sec 17(4)

Sec 17(6)

Where output tax exceeds input tax, payment of the excess tax is made to the Commissioner of Domestic Taxes. Where input tax is greater than output tax, the balance is carried forward to the next return.

Sec 17(7)

The Commissioner may refund any excess input tax over output tax if he is satisfied that such excess arises from making zero-rated supplies.

A person shall be entitled to a deduction of input tax incurred for trading stock on hand at the date that the person becomes registered.

Tax on certain inputs is not deductible. These include tax on expenditure on passenger cars or mini buses unless they have been acquired by a registered person exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses and entertainment, restaurant and accommodation services unless the services are provided in the ordinary course of the business carried on by the person to provide the services and the services are not supplied to an associate or employee, or the services are provided while the recipient is away from home for the purposes of the business of the recipient or the recipient's employer.

Where a registered person provides both taxable and exempt supplies, the input tax that is not directly attributable to the taxable supplies is not deductible.

Deduction of input tax attributable to both taxable supplies and other uses calculated as follows;

Value of taxable supplies × total input tax/ value of total supplies

Where the exempt supplies constitute less than 10% of the total supplies, then the input tax can be claimed in total, except for input tax directly related to exempt supplies. Where the exempt supplies constitute more than 90%, the registered person shall not be allowed any input tax credit, except for input tax directly related to taxable supplies.

7. Tax point

VAT is chargeable on the supply of goods or services at a definite time, called the time of supply. The time of supply becomes the tax point and VAT should be accounted for by reference to that tax point. For any supply in Kenya, the time of supply including a supply of imported services is deemed to be the earlier of;

Sec 12(1)

Sec12(3)

Sec 12(4)

- the date on which the goods are delivered or services performed;
- the date a certificate is issued by an architect, surveyor or any other person acting as a consultant in a supervisory capacity;
- the date on which the invoice for the supply is issued; or
- the date on which payment for the supply is received, in whole or in part.

Where services are supplied for a continuous period under an agreement or law that provides for periodic payments, the services are treated as successively supplied for the relevant parts of the period. Each successive supply is deemed to take place at the earlier of the date on which payment for the successive supply is due or received.

Tax on imported goods is payable at the point of importation. An importer of taxable services is required to declare the importation and to compute and pay the applicable tax.

8. VAT filing and payment

A monthly VAT return (VAT3) should be submitted together with the payment. A nil/credit return should be filed if no taxable activities have taken place or if the input tax is more than the output tax in a certain tax period. The monthly VAT return and the VAT liability should be submitted to the Commissioner of Domestic Taxes by the 20th day of the month following the tax period.

Sec 19(2)

Sec 44(1)

Sec 44(2)

9. Withholding VAT system

The withholding VAT system entails an appointed withholding VAT Agent, withholding VAT, at specified rate, on the taxable value of the supply at the point of paying the supplier. The Agent is required to remit the VAT withheld and issues the supplier with a withholding VAT certificate for the amount withheld.

Sec 42A, Tax Procedures Act

The Finance Act, 2014 reintroduced Withholding Tax system effective 19th September 2014. The appointed withholding VAT Agents included government ministries and agencies, county governments and other government owned institutions with the extension of the scope by the Finance Act, 2015 to include any other person that may be appointed. Please note that the withholding VAT provisions were repealed in the VAT Act 2013 and moved to the Tax Procedure Act, 2015 through the Finance Act, 2016, effective 19th January 2016

A supplier may be exempted from the provisions of withholding VAT if he can demonstrate that due to the nature of the business or application of the section he is going to be in a continuous credit position for a period of not less than 24 months. A person who commits an offence relating to withholding VAT provisions is liable on conviction to a penalty of 10% of the amount involved.

The agents are required to withhold 6% of the taxable value on payment for taxable supplies and pay the balance of 10%, to the supplier at the point of paying for the supplies. The Agent is required to pay the VAT withheld to KRA, through the appointed banks by the 20th day of the month following the month of payment. In addition, the agent is required to issue a certificate to the supplier through the iTax platform.

The Commissioner may at any time revoke the appointment of a VAT withholding agent at his own discretion.

Any person who prior to the commencement of Section 42A of the Tax Procedures Act (as introduced by the Finance Act, 2016) was appointed as a VAT withholding agent under the VAT Act, 2013, shall still be deemed to be appointed under this Section.

10. VAT on Imported services (Reverse charge VAT)

VAT registered persons are required to account for reverse charge VAT only to the extent it relates to exempt supplies.

Sec 2 &

Sec 10

Sec 5(6)

Tax on the supply of imported taxable services is a liability of the registered person receiving the supply.

In instances where the importer of taxable services is not registered for VAT, the foreigner supplier of services is required to appoint a local tax representative who is required to account for VAT on the imported taxable services.

11. Remissions and relief from tax

The Cabinet Secretary is no longer empowered to grant VAT remissions in respect of any taxable supply. Where a remission of tax was granted under the repealed Act on any taxable goods or services, such remission continues to remain in force for a period of five years from the date of commencement of the VAT Act, 2013.

Sec 37, Tax Procedures Act

The Commissioner may however, with the prior approval of the Cabinet Secretary, abandon tax collection because of doubt or difficulty in recovery of tax.

12. Refund of tax

A refund to a registered person who makes taxable supplies at both the general rate and zero rate shall be apportioned based on the proportion of the total value of zero rated supplies to the total value of taxable supplies made in the month of supply.

LN 54 of 2017

13. Tax invoice

A registered person who makes a taxable supply is required to furnish the purchaser with a tax invoice at the time of supply. A tax invoice should have the details specified below:

Sec 42 (1)

- The words "TAX INVOICE" in a prominent place on the invoice
- Name, address, and Personal Identification Number (PIN) of the person making the supply;
- Serial number of the invoice;
- Date of the invoice;
- Date of supply if different from the date of the invoice, with effect from 12th June 2009, the invoice should be issued at the time of making the supply;

Reg 4 of the VAT Regulations, 1994 of the Repealed VAT Act

LN 54 of 2017

Relevant Section of the VAT Act, 2013 (unless specifically provided)

<ul style="list-style-type: none"> Name and address, if any and Personal Identification Number of the purchaser; 	Sec 17 (3)
<ul style="list-style-type: none"> Description, quantity and price of the goods or services being supplied; 	Reg. 6 (2) of the VAT Regulations, 1994 of the Repealed VAT Act
<ul style="list-style-type: none"> Taxable value of the goods or services if different from the price charged; 	Sec 16 (1)
<ul style="list-style-type: none"> Details of whether the supply is cash or credit sale and details of discount if any; 	Sec 16 (4)
<ul style="list-style-type: none"> Rate and amount of tax charged on each of the goods and services; 	
<ul style="list-style-type: none"> The total value of the supply and total amount of VAT charged; and 	
<ul style="list-style-type: none"> Electronic signature generated or attached to an Electronic Tax Register (ETR) receipt. 	

Under Regulation 9, Electronic Tax Register is no longer a requirement of a tax invoice.

The purchaser will require an original tax invoice or a certified copy of the original tax invoice to claim the input tax.

Credit notes/pro forma invoices/statements

Credit notes require the same details as an **invoice**. Further, the credit notes should refer to the invoice to which they relate to. Credit notes should contain the word's "**CREDIT NOTE**" in a prominent place.

Credit notes must be issued within a period of six months for the supplier to utilise the credit.

Pro forma invoices can be issued showing the value of goods/services and the VAT payable. However, tax is not payable until the tax point crystallizes. Statements are not acceptable as a basis to charge output tax or claim input tax.

Debit notes

Where a registered person has issued a tax invoice in respect of a taxable supply and subsequently makes a further charge in respect of that supply, or any transaction associated with that supply, the person shall, in respect of the further charge being made, issue a debit note, and shall show on it the details of the tax invoice issued at the time of the original supply. Debit notes should contain the word's "**DEBIT NOTE**" in a prominent place.

Under the Finance Act, 2018 credit notes and debit notes should be issued on prescribed forms.

14. VAT records

Every registered person shall, for the purposes of the VAT Act, 2013, keep in the course of his business, a full and true written record, whether in electronic form or otherwise, in English or Kiswahili of every transaction he makes and the record shall be kept in Kenya for a period of five years from the date of the last entry made therein.

Sec 43 (1)
Sec 43 (2)
Sec 75 , Tax Procedures Act

The records to be kept shall include;

- copies of all tax invoices and simplified tax invoices issued in serial number order;
- copies of all credit and debit notes issued, in chronological order;
- purchase invoices, copies of customs entries, receipts for the payment of customs duty or tax, and credit and debit notes received, to be filed chronologically either by date of receipt or under each supplier's name;
- details of the amounts of tax charged on each supply made or received and in relation to imported services, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for a particular purpose;
- tax account showing the totals of the output tax and the input tax in each period and a net total of the tax payable or the excess tax carried forward, as the case may be, at the end of each period;
- copies of stock records kept periodically as the Commissioner may determine;
- details of each supply of goods and services from the business premises, unless such details are available at the time of supply on invoices issued at, or before, that time; and
- such other accounts or records, as may be required.

The following tax formalities or procedures should be carried out by use of information technology:

- an application for registration;
- a return or statement required to be furnished;
- any payment or repayment;
- any notice or other document required to be issued by the Commissioner; or
- any act or thing which requires to be done under the VAT Act, 2013.

15. Penalties

Various penalties are chargeable for non-compliance with the VAT Act, 2013 and the Tax Procedures Act, 2015. These include, among others.

Offence type	Penalty	section
Late filing of return (VAT 3)	KES 10k or 5% of tax due whichever is higher	Sec 83 (1) (c) Tax Procedures Act, 2015
Late payment of VAT	Penalty at 5% of the tax due plus interest at the rate of 1% of tax due per month, simple interest	Sec 38 & Sec 83A, Tax Procedures Act, 2015

Relevant Section of the VAT Act, 2013 (unless specifically provided)

Offence type	Penalty	Section
General penalty	Fine not exceeding KES 1m, or to imprisonment for a term not exceeding three years, or to both.	Sec 63
Tax Avoidance	If the Commissioner has applied a tax avoidance provision in assessing a taxpayer, the taxpayer is liable for a tax avoidance penalty equal to double the amount of the tax that would have been avoided	Sec 85, Tax Procedures Act
Failure to register or deregister, wrongful deregistration or failure to display the certificate of registration	Fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.	Sec 37
Unauthorized access to or improper use of tax computerized system	In case of an individual, Imprisonment for a term not exceeding two years, or to a fine not exceeding KES 400k or both. In the case of a body corporate, a fine not exceeding KES 1m	Sec 103A, Tax Procedures Act
Interference with tax computerized system	Imprisonment for a term not exceeding three years, or to a fine not exceeding KES 800k or both.	Sec 103B, Tax Procedures Act
Failure to keep, retain or maintain books, records, information, etc	Penalty equal to the higher of, ten per cent of the amount of tax payable or where no tax is payable. KES 100k	Sec 82, Tax Procedures Act

3. Customs duties

Relevant Section of
the EACCMA (unless
specifically)

1. **The East African Community Customs Management Act 2004**

The East African Community Customs Management Act (EACCMA) was enacted in 2004 with an effective date of commencement of January 2005. The act repealed the Customs and Excise Act, Cap 472.

The Act has gone through several amendments since its enactment including through the East African Community Customs Management (Amendment) Act 2011, East African Community Customs Management (Amendment) Act 2015, various annual EAC gazette notices as well as other subsidiary legislation. This tax guide is prepared with reference to the EACCMA incorporating all amendments up to and including those proposed in the 30th June 2017 EAC legal notice.

Goods are imported into EAC either for home consumption, warehousing, transit, transshipment, temporary importation, Export Processing Zone (EPZ) or for re-export. Goods are exported either under single customs territory regime to EAC countries or directly to countries outside the EAC region. Customs duties are charged on dutiable imported and exported goods. If the goods are entered for home consumption, all applicable import taxes will be paid to the Customs Service Department, Kenya Revenue Authority. The duties and charges levied on imported goods are generally categorised into import duty, excise duty and import VAT. Import Declaration Fee (IDF) is an additional charge collected at the point of importation into Kenya. Effective 1 July 2013 the Railway Development Levy (RDL) was introduced on all imports into Kenya.

Other selected legislation administered in Customs and International Trade include the the Excise Duty Act, 2015, the Common External Tariff (CET), the Export Processing Zones Act, the Value Added Tax, 2013, the EAC Duty remission regulations and the Miscellaneous Fees and Levies Act 2016.

With the repealing of the Customs and Excise Act, Railway Development Levy, Export Duties and Import Declaration Fee are now governed by the new Miscellaneous Fees and Charges Act 2016 effective 21 September 2016.

2. **Customs declaration**

A customs declaration (Entry) in the prescribed Form (Form C17B) is required for clearing both imports and exports. An import license is applied for before importation of goods by lodging an import declaration form and paying a fee of KES 5k. Import Declaration Fee (IDF) is charged at a rate of 2% of the Customs value as per Miscellaneous Fees and Charges Act 2016 with a few exceptions (Previously 2.25% of the value of goods imported subject to a minimum of KES 5k).

Sec 34

Sec 73

3. **The Simba System/Integrated Customs Management System**

KRA, in an attempt to modernize customs operations, introduced the Simba system in 2005. All C17Bs entries must to be lodged using this system declaring among others the particulars of the importer, type of goods, quantity of goods, value, currencies, location and destination of goods. Currently, the Simba system has been integrated with the Kenya National Single Window System which facilitates online regulatory approvals prior to customs clearance of the goods.

KRA is currently piloting an integrated customs management system that interfaces multiple customs related systems in operation.

4. **Tariff classification**

Goods are classified according to the World Customs Organisation's Harmonized System Convention (HSC) that forms the basis for tariff classification of goods traded in the international market. Declarations under the Simba system must be based on goods classification using 8-digit code. In Kenya tariff codes and respective duty rates are found in the EAC Common External Tariff, 2017 which became effective on 1st July 2017.

EAC CET 2012

5. **Customs duty rates**

A three band tariff structure (0% for raw materials and machinery/equipment, 10% for intermediate goods and 25% for finished products) is applied in the determination of import duty on imported goods.

The bases of charging duties are ad valorem (percentage on price of the declared goods) and/or specific duty per unit (volume, weight, number or other measurement). A list of sensitive items was prescribed by the EAC Council of Ministers following fulfilment of an agreed criteria. The sensitive list sustains the EAC region's economic agenda. Reduced customs duty rates are applicable on preferential imports from countries in the COMESA region (ranging from 0% to a discounted rate) and EAC countries (0%). To qualify for these reduced rates, a valid certificate of origin must be presented to Customs on importation.

Sec 110

EAC Gazette No. 5 of 2016

Effective 30th June 2018, a number of amendments to the EAC CET rates have been effected including reduction of duty rates on poly vinyl alcohol (3905.30.00) and paper/board (4802.56.00). Similarly, EAC countries have been granted country specific stay of application of the CET rates to apply an alternative rate for a period of one year. Remission of duty on certain imports was also approved by the Council of Ministers.

6. Customs valuation

The value of imported goods is determined in accordance with the General Agreement on Trade and Tariffs (GATT) Valuation rules that Kenya adopted in January 2000. The value is based on the Cost, Insurance and Freight (CIF) incoterm. Air freight is not considered in the determination of customs value. The GATT has six methods of valuation with the primary one being the transaction/invoice value or price actually paid or payable for the goods when sold for export to the country of importation.

It is mandatory for sea cargo importers to obtain marine insurance cover from an insurance provider registered in Kenya effective 1st January 2017 unless exempted by the Commissioner. The cover is a contract where the insurer undertakes to indemnify the assured, in a manner and to the extent thereby agreed, against the losses incident to any movable property other than the vessel including money and other valuable securities.

Fourth Schedule
Sec 20, Marine Insurance Act

7. Prohibited and restricted imports

Goods specified in Part A and B of the Second Schedule are prohibited and restricted imports respectively, with exemption to goods in transit. As such, only permitted goods can be imported into any of the Partner States.

Sec 18 (1,2)
Sec 19 (1,2)
Sec 20 (1,2)
Second schedule

8. Warehousing of goods

Goods liable to import duty may on first importation be warehoused without payment of duty in a Government warehouse or a bonded warehouse; after which they may be entered either for home consumption, exportation, removal to another warehouse, use as stores for aircraft/vessel, re-warehousing, removal to an EPZ or removal to a free-port.

Sec 47
to
Sec 61

9. Bonded warehouse

The Commissioner may, upon application, licence any building or any other place as a warehouse for the deposit of goods liable to import duty.

The warehouse keeper shall operate a bonded warehouse upon being in possession of a valid license. He/she is required to provide the necessary facilities and abide by the guidelines of operating such a warehouse.

Sec 62
Sec 63
to
Sec 69

	Relevant Section of the EACCMA (unless specifically)
10. Prohibited and restricted exports	
Goods specified in Part A and B of the Third Schedule are prohibited and restricted goods respectively. As such, only goods permitted shall be exported out of Kenya.	Sec 70 Third Schedule Kenya Gazette No. 2356 of 2017
Effective 8th August 2017, the Kenya government has banned the use, manufacture and importation of plastic carrier and flat bags	
11. Exemption regime	
Duty is not chargeable on the items listed in Part A (specific exemptions) of the fifth schedule of the EACCMA, when imported or purchased before clearance through the Customs, for use by the persons listed in that part. Duty is also not chargeable on the items listed in Part B (general exemptions) of the fifth schedule of the EACCMA, when imported in accordance with the conditions attached thereto.	Sec 114 Fifth schedule EAC Gazette No. 9 of 2015 Kenya Gazette No. 2356 and 4536 of 2017
Effective June 2018, EAC countries have exempted the following items from duty:	
<ul style="list-style-type: none"> ▪ one motor vehicle, motorcycle or bicycle imported by either racing drivers or riders. ▪ qualifying sightseeing busses and overland trucks, and ▪ tourism boats imported by a licensed tour operator subject to the fulfilment of prescribed conditions. 	

4. Excise duty

Relevant Section of the Excise Duty Act, 2015 (unless specifically provided)

Excise Duty in Kenya is managed and administered under the Excise duty Act 2015. The Excise duty Act, 2015 was enacted in November 2015 and came in to operation on 1st December 2015. This tax guide is prepared with reference to the amendments of the Finance Act, 2018

1. Imposition of excise duty

Excise duty is imposed on excisable goods manufactured in Kenya by a licensed manufacturer, excisable services supplied in Kenya by a licensed person or excisable goods imported into Kenya by a registered person.

Section 5

First Schedule

Section 10

Goods liable to excise duty include among others wines and spirits, beer, bottled water, petroleum products, soft drinks, cigarettes and sugar confectionery including white chocolate. Excisable services include mobile and wireless phone services, fees charged for money transfer services and other fees charged by financial institutions.

Specific excise duty rates shall, by notice in the gazette, be adjusted annually to take into account inflation. Following the adjustment of the specific rates on 2 July 2018 where the rates took effect on 1st August 2018, the next revision is expected on 1st July 2019.

2. Registration and licencing

Transition clause

Any person who is registered or licensed under the repealed Act shall be treated as registered or licensed under the Excise Duty Act 2015 unless the Commissioner provides otherwise.

A person shall not undertake any of the following activities unless the person is licensed or registered by the Commissioner to undertake the activity;

- the manufacture of excisable goods in Kenya;
- the importation into Kenya of excisable goods specified by the Cabinet Secretary as requiring an excise stamp;
- the supply of excisable services;
- the use of spirit to manufacture goods in Kenya that are not excisable goods; or
- the carrying out of any other activity in Kenya for which the Commissioner, by notice in the Gazette, may impose a requirement for a license.

A person who intends to undertake any of the activities specified in section above shall apply to the Commissioner for a licence.

How to register for excise licence:

Applications maybe done via i-Tax portal. i.e. Log in to i-Tax> click on the registration tab> other registration > Excise License. Complete the form and submit the required documents to the Excise Office

3. Taxable goods and services

The Excise duty Act provides a list of exempt goods and services. These include but not limited to;

Second Schedule

Section 7 (2)

Goods;

- Goods imported into Kenya or purchased in Kenya by a diplomatic or consular mission,
- Goods imported into Kenya or purchased in Kenya by a foreign government or international organisation,
- Goods imported or Purchased locally by the Kenya Red Cross,
- Goods imported by a person changing residence or a returning resident

Services:

- Excisable services supplied in Kenya to a diplomatic or consular mission or to a diplomat or consul, or a member of the diplomat or consul's family.
- Excisable services supplied in Kenya to a foreign government, international organisation, or aid agency.

The Second Schedule has been expanded to cover a number of items which include but not limited to;

- Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization.
- Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.
- One personal motor vehicle imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his spouse subject to conditions

Excise duty rates on excisable goods & services have been increased as follows;

- Motor vehicles will be subjected to excise duty at a rate of either 20% or 30% dependent on the tariff classification.
- Fees charged for money transfer services by banks, money transfer agencies and other financial service providers have increased to 20% of their excisable value.
- Other fees charged by financial institutions have increased to 20%
- Telephone and internet data services have increased to 15%
- Fees charged for money transfer services by cellular phone service providers, have increased to 12%

4. Value for excise duty

The value of imported goods for purposes of levying excise duty is the sum total of the following amounts; **Sec 9 (2)**

- the customs value of the goods as determined under the East African Community Customs Management Act, whether or not any duty of customs is payable on the goods; and
- the amount of duty of customs (if any) payable on the goods under the East African Community Customs Management Act, 2004.

The value of locally manufactured goods for the purpose of levying ad valorem excise duty is the ex-factory price. **Sec 9 (3)**

Ex-factory selling price does not include VAT, cost of excise stamps and cost of any returnable containers.

The value of services for the purpose of levying excise duty shall be; **Sec 9 (4)**

- if the excisable services are supplied by a registered person in an arm's length transaction, the fee, commission, or charge payable for the services; or
- in any other case, the open market value of the services.

The excisable value of excisable services shall not include the value

5. Remission of excise duty

The Act grants powers to the Cabinet Secretary who may by notice in the Gazette, grant remission of excise duty, wholly or partially, in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya. **Part III**

Excise Duty (Remission of Excise Duty) Regulations, 2017 effective 30 March 2017 repealed the outdated Customs and Excise (Remission of Excise Duty) Regulations, 2013.

6. Excise duty returns and payment

Sec 35 & 36

The excise duty payable by a licensed manufacturer in respect of excisable goods removed from a manufacturer's factory and the excise duty payable by a supplier of excisable services in respect of supplies of excisable services made by the supplier during a calendar month shall be paid not later than the twentieth day of the succeeding month.

The excise duty payable by an importer in respect of the importation of excisable goods into Kenya shall be paid to the Commissioner at the time of importation.

A licensed manufacturer or a supplier of excisable services shall submit an excise duty return, for each calendar month not later than the twentieth day of the succeeding month, whether or not any excise duty is payable for that month.

For the purpose of assessing, collecting, accounting and enforcing the payment of excise duty on the importation of goods into Kenya, the East African Community Customs Management Act, 2005 shall apply as if excise duty were customs duty.

7. Excise stamps and other markings

The Cabinet Secretary may in the regulations specify; a) the excisable goods to which excise stamps shall be affixed; b) the systems for management of excise stamps and excisable goods, and c) the place and time of affixing excise stamps.

The law requires that all manufactured or imported excisable goods (other than motor vehicles) bear an excise stamp.

The Commissioner shall, by notice in at least two newspapers of national circulation, specify the types and descriptions of excise stamps to be affixed on goods.

KRA issued a public notice on 7th September 2016 regarding the introduction and verification of new generation excise stamps.

8. Excisable Goods Management System (EGMS)

The Customs and Excise (Excisable goods Management System) Regulations, 2013, came into effect on 18th June, 2013. It is aimed at automating the management of excise stamps. The system has currently automated the affixing of excise stamps on cigarettes and spirits and plans to extended programme to other excisable goods. The system has a track and trace element that enables excise stamps to be traced back to either the importer or the manufacturer of the excisable goods.

Legal Notice No. 110 of
2013

EGMS is a system for protection of excise tax revenue which comprises of an enhanced excise stamp with multiple security layers.

5. Miscellaneous fees and levies

Miscellaneous Fees and Levies Act

Reference

Duties, fees and levies on imported or exported goods are administered under the Miscellaneous fees and levies Act 2016 which was enacted in 31 August 2016 and came in to operation on 21st September 2016.

1. Administration

The Commissioner shall be responsible for the control and collection of, and accounting for, duties, fees and levies paid under this Act and shall, subject to the direction and control of the Cabinet Secretary, have the superintendence of all matters relating thereto.

Sec 3

2. Imposition of levies and fees

a) Export levy:

Export levy is levied on goods specified in the first schedule. However, the levy shall not apply to exports to Export Processing Zones or Special Economic Zones.

Section 5(1)

First Schedule

Where more than one rate is specified, the levy shall be the higher of the ad valorem or the specific rate specified.

Export levy shall be paid by the exporter at the time of entering the goods for export.

Goods exported to the East African Community Partner States are exempted from export levy.

b) Import Declaration fee (IDF)

This is levied on all goods imported into the country for home use.

Sec 5 (7)

IDF shall be at the rate of two per cent of the customs value of the goods payable on importation.

Second Schedule

Part A of the second schedule lists goods exempt from import declaration fee. They include but not limited to;

- Goods destined for approved duty free shops;
- Goods destined for approved Export Processing Zones or Special Economic Zones
- Goods destined for approved enterprises manufacturing under bond
- Accompanied and unaccompanied used personal effects
- Ammunition and weapons imported by the government, etc.

Goods imported under the East African community Duty Remission Scheme shall be charged import declaration fee of KES 10K

c) Railway Development Levy (RDL)

RDL is levied on all goods imported into the country for home use.

Sec 8

RDL shall be at the rate of 1.5% of the customs value of the goods

Part B, Second Schedule

Part B of the second schedule lists goods exempt from RDL. They include but not limited to;

- Goods for the implementation of an official aid funded project;
- Goods by United Nations or its agencies;
- Goods from the EAC partner states provided they meet the EAC rules of origin
- Goods imported for construction of Liquefied Petroleum gas storage facilities as approved by Cabinet Secretary responsible for Liquefied Petroleum gas, etc.

d) Anti-adulteration levy

This was introduced effective 1st October 2018 on all illuminating kerosene imported into the country for home use. It is applicable at the rate of KES 18 per litre of the customs value of the illuminating kerosene payable by the importer at the time of importation.

Finance Act, 2018

Gross income (kes)	Proposed premiums (kes)
60,000 – 69,999	1,300
70,000 – 79,999	1,400
80,000 – 89,999	1,500
90,000 – 99,999	1,600
100,000 and over	1,700
*Self-employed (Special)	500

NHIF is payable by the 1st day of the month following the month of deduction. However, in practice, the fund accepts payments made by 9th of the following month without penalties.

Late payment of any contribution attracts a penalty equal to two times of the unpaid contribution.

National Social Security Fund (NSSF)

Employees are required to contribute 5% of their salary to a maximum of KES 200 per month. The employer is required to contribute an equivalent amount for each employee. For casual employees, the employer pays 5% of gross wages as a special contribution. The special contributions are treated as surplus available to augment registered individual accounts. NSSF is payable by the 15th of the month following the month of deduction.

With effect from 1st January 2008, membership to NSSF was extended to self-employed and unregistered casual workers. Previously, employees of a non-contributing employer were restricted from joining the fund. Foreign nationals who are members of a social security scheme in their home country and are expected to be in Kenya for less than 3 years at any one time may be exempt from making contributions to the fund. However, they have to make an application for the exemption.

Contributions not paid after the end of the following month attract penalty at 5% per month or part thereof.

A new NSSF legislation (the NSSF Act, 2013) was enacted on 24th December 2013 to replace the NSSF Act Cap 258. The NSSF Act, 2013 establishes two funds namely, the Pension Fund and the Provident Fund. The new legislation requires the employer and the employee to each contribute 6% of the employee's monthly pensionable earnings subject to prescribed upper and lower earning limits.

The NSSF Act, 2013 was initially slated to take effect on 10th January 2014. However, an industrial court ruling suspending the implementation of critical provisions of the Act still in effect. The repealed NSSF legislation is therefore expected to remain in force until the suspension is lifted by the court.

National Housing Development Fund (NHDF)

An employer shall pay to the National Housing Development Fund (NHDF) in respect of each employee;

- The employer's contribution at 1.5% of the employee's monthly basic salary; and
- The employee's contribution at 1.5% of the monthly basic employee's salary

Provided that the sum of the employer and employee contributions shall not exceed KES 5k per month.

The employer shall remit both the employee and employer contributions to the NHDF before the 9th day of the following month failure to which 5% penalty shall apply.

The contribution shall only be operational once regulations prescribing the requirements for qualification to the scheme are gazetted by the Cabinet Secretary responsible for housing in consultation with the Cabinet Secretary responsible for finance.

Property rates

Rates are payable to county governments on real estate based on the sale value of the property.

Catering levy

The levy is payable to Catering Levy Trustees by hotels and restaurants at a rate of 2%.

Immigration Rules in Kenya

Under the Kenyan Immigration Rules, a foreign national is required to obtain a valid work permit in order to work in Kenya.

There are various classes of permits according to the scope of activities the foreigner will engage in. Foreign nationals seconded to perform services to a specific company in Kenya require a Class D work permit which is valid for a period of between 1 to 2 years but is renewable for a period not exceeding 5 years. A Special pass may also be obtained where the foreign national is expected to work in Kenya for short periods. It is valid for 3 months, and renewable once for another 3 months. An application for a class D work permit should be made by the Kenyan employer.

A Kenyan visa does not allow a foreign national to work in Kenya. Different types of visas include;

- Ordinary-Singe Entry or Multiple Journey Visa
- Transit Visa
- Diplomatic Visa
- Official/Service/ Courtesy Visa
- East Africa Tourist Visa - Entitles holders to travel to and within the Republic of Kenya , Uganda and Rwanda

Dependant(s) of the expatriate employee(s) are required to obtain dependant passes. These however can only be obtained once the expatriate working in Kenya has obtained a work permit. School going children of an expatriate employee should obtain a pupil's pass.

In addition any foreigner who intends to be present in Kenya for more than 3 months is required to register as an alien and obtain an alien card. Expatriates should also apply for a PIN from the KRA.

Betting, Lotteries & Gaming taxes

Betting tax chargeable at the rate of fifteen per cent of the gaming revenue. This is payable by the licensed bookmaker on the 20th day of the month following the month of collection.

Lottery tax chargeable at the rate of fifteen per cent of the lottery turnover. This is payable by a person authorized to promote the lottery on the 20th day of the month following the month of collection.

Gaming tax chargeable at the rate of fifteen per cent of the gaming revenue. This is payable by a person carrying on a gaming business on the 20th day of the month following the month of collection.

Prize competition tax chargeable on the cost of entry to a competition which is premium rated at the rate of fifteen per cent of the total gross turnover. This is payable by the licensed person on the 20th day of the month following the month of collection.

Late payment of the above taxes attracts a penalty of 5% of the tax payable and one percent simple interest per month or part thereof for every month that the same remains outstanding. The aggregate interest is capped at the principal tax liability.

7. Appendices

Appendix I - Individual rates of tax, reliefs & allowances

The tax bands and personal relief below are effective 1st January 2018

Monthly rates of tax

Monthly taxable pay (KES)	Rates of tax %	Cumulative (KES)
1-12,298	10	1,230
12,299-23,885	15	2,968
23,886-35,472	20	5,285
35,473-47,059	25	8,182
Excess over 47,059	30	
Personal relief	1,408 (a)	
Insurance relief	5,000 (b)	
Affordable housing relief	KES 9,000 (c)	

Annual rates of tax

Annual taxable pay (KES.)	Rates of tax %	Cumulative (KES)
1-147,580	10	14,758
147,581-286,623	15	35,614
286,624-425,667	20	63,423
425,668-564,711	25	98,184
Excess over 564,710	30	
Personal relief	16,896(a)	
Insurance relief	60,000 (b)	
Affordable housing relief	KES 108,000 (c)	

Individual tax reliefs

A tax relief refers to an amount which is available for deduction against the tax payable.

- Personal relief is only granted to individuals who are resident in Kenya for a year of income. An individual is only entitled to personal relief from only one employer.
- Insurance relief is applicable on premiums paid for either; life insurance (policy commencing 2003), health insurance (policy commencing 1st Jan 2007), education insurance (policy commencing 1 January 2003 and with a maturity period of 10 years). The amount of insurance relief shall be fifteen percent of the amount of premiums paid but shall not exceed sixty thousand shillings per annum.
- A resident individual who saves for purchase of a house, applies and awaits allocation of a house under an affordable housing scheme will be entitled to affordable housing tax relief of 15% on gross emoluments capped at KES 108k per annum.

Tax allowances and reliefs

Allowance against taxable income	Maximum allowable per annum (KES)
Mortgage interest on owner occupied house	
Prior to 1st January 2017	150,000
Effective 1st January 2017	300,000
Gratuity, pension and provident fund contributions to a registered scheme	240,000
Contribution to a registered home ownership savings plan	48,000*

*The Finance Act, 2018 increased the amount to KES 96k effective 1st July 2018

Approved pension contributions

The combined employer and employee contributions to a registered fund or scheme on behalf of a member are unlimited. However, the tax allowable amount is limited to the lower of:

- Actual contributions;
- 30% of the employee's pensionable income; and
- KES 240k per annum (KES 20k per month).

Pension and retirement annuities

Pension and retirement annuities from an unregistered pension fund or scheme received by a resident individual are not taxable if the contributions to the fund or scheme have not been allowed as a deduction, and the income of the scheme has been taxed. Tax is withheld from payments in excess of the tax-free limits at the following rates:

Ordinary withdrawals	
Annual taxable pay (KES.)	Rates of tax %
1-147,580	10
147,581-286,623	15
286,624-425,667	20
425,668-564,711	25
Excess over 564,710	30

Special withdrawals*

Annual taxable pay (KES.)	Rates of tax %
Up to 400,000	10
400,001-800,000	15
800,001-1,200,000	20
1,200,001-1,600,000	25
Excess over 1,600,000	30

* These are withdrawals that meet the following conditions:

- Are made after expiry of 15 years from the date of joining the fund, or
- On attainment of 50 years, or
- Upon early retirement on grounds of ill-health or infirmity of body and mind.

Appendix II - Corporate rates of tax

	Rate of Tax
Resident companies	30%
Permanent establishments of non-resident companies (branches)	37.5%
Newly listed companies	20 - 27 % (a)
Residential rental income tax	10% (b)
Real estate companies	15% (c)
Presumptive tax	15% (d)
Export processing zones	
▪ First ten years	▪ Nil
▪ Next ten years	▪ 25%
▪ Thereafter	▪ 30% or 37.5%
Special Economic Zone enterprise, developer and operator (e)	
▪ First ten years	▪ 10%
▪ Next ten years	▪ 15%
▪ Thereafter	▪ 30% or 37.5%
Companies in local assembling of motor vehicle	
▪ First five years	▪ 15% (f)
Companies engaged in business under a special operating framework arrangement with the Government	To the extent provided in the framework arrangement

a) The rates for newly listed companies apply to companies newly listed on any securities exchange approved under the Capital Markets Act. The rates are as follows;

- Tax rate of 20% for companies with at least 40% of the issued share capital listed. The rate applies for a period of 5 years
- Tax rate of 25% for companies with at least 30% of the issued share capital listed. The rate applies for a period of 5 years
- The rate of 27% for companies with at least 20% of the issued capital listed. The rate applies for a period of 3 years.

Effective 1st January 2016, the tax rate of 25% shall apply in the case of a company introducing its shares through listing or any securities exchange through introduction. The rate applies for a period of 5 years commencing immediately after the year of income following the date of such listing.

b) The rental residential tax regime is applicable for the use or occupation of residential property which does not exceed KES 10m during any year of income but which is in excess of KES 144k per annum.

c) This is applicable where a company constructs at least one hundred residential units annually subject to approval by the Cabinet Secretary responsible for housing provided that where a company is engaged in multiple activities, the lower rate shall be applied proportionately to the extent of the turnover arising from the housing activity.



d) Presumptive tax applies to:

- Any person whose turnover from business exceeds does not exceed KES 5m in a year of income.
- All persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income.

The rate of presumptive tax is 15% of the amount payable for a business permit or trade licence issued by a County Government. The tax charged shall be final. A person liable to pay presumptive tax notice may by notice in writing, addressed to the Commissioner, elect not to be subject to presumptive tax in which case the other provisions of the ITA shall apply.

Presumptive tax does not apply to management, professional or training fees, rental income and income of an incorporated company.=

- e) The lower corporation tax rate is applicable whether Special Economic Zone enterprise sells its products within or outside Kenya.
- f) The 15% corporate rate of tax shall be extended for a further period of five years if the company achieves a local content equivalent to 50% of the ex-factory value of the motor vehicles.

Appendix III - Withholding taxes

Description	Notes	Residence Status	
		Residents	Non- resident Residents
		%	%
Dividends	(a)	5	10
Housing Bonds	(b)	10	15
Government bearer bonds	(c)	15	15
Other sources	(d)	15	15
Deemed interest	(e)	-	15
Commission			
Insurance Brokers		5	20
Others	(f)	10	20
Royalties	(g)	5	20
Management, professional & training fees	(h)	3	20
Contractual fees	(i)	10	30
Real estate rent	(j)	10	30
Telecommunication service fees	(k)	-	5
Lease of equipment	(l)	-	15
Services of a petroleum or mining service-subcontractor with no PE		-	5.625
Transfer of a petroleum or mining interest		10	20
Natural resource income		5	20
Pension and retirement annuities	(m)	0 to 30	5
Sporting or entertainment income	(n)	-	20
Winnings	(o)	20	20
Demurrage charges	(p)	-	20
Insurance premiums	(q)	-	5%

(a) Withholding tax rate applicable to citizens of East African Community Partner States in respect of dividends is 5% of the gross sum payable

(b) Qualifying interest in respect of Housing Bonds is limited to KES 300k per year.

(c) Withholding tax rate in respect of interest arising from bearer bonds with a maturity of 10 years for residents is 10%. In respect of interest arising from bearer instrument other than a Government bearer bond of at least two years duration, the withholding tax rate is 25% of the gross amount payable. Interest income accruing from all listed bonds used to raise funds for infrastructure and social services are exempt from tax provided that the bonds shall have a maturity of at least 3 years.

- (d) Withholding tax on interest income received by a resident individual from the following sources is final; banks or financial institutions licensed under the Banking Act, building societies licensed under the Building Societies Act and Central Bank of Kenya. The withholding tax rate on interest payments by a Special Economic Zone Enterprise, Developer or Operator to a non-resident shall be 5%.
- (e) Deemed interest refers to an amount of interest equal to the average 91 day T-Bill rate, deemed to be payable by a foreign controlled resident person in respect of any outstanding loan provided or secured by the non-resident, where such loans have been provided free of interest.
- (f) Exemptions include:
- Commissions payable to non-resident agents for purposes of auctioning horticultural produce outside Kenya are exempted from withholding tax;
 - a commission paid by a resident air transport operator to a non-resident agent in order to secure tickets for international travel are exempted from withholding tax
 - a commission or fee paid or credited by an insurance company to another insurance company is exempted from withholding tax.
- (g) The withholding tax rate on royalties paid by a Special Economic Zone Enterprise, Developer or Operator to a non-resident shall be 5%.
- (h) Withholding tax on payments to resident persons for management, professional and training fees applies to payments of KES 24k or more in a month to both registered and non-registered businesses. The non-resident rate in respect of consultancy fees payable to citizens of the East African Community Partner States is 15%. Moreover, the non-resident rate for payments made by a Special Economic Zone Enterprise, Developer or Operator shall be 5%.
- (i) Contractual fee means any payment for work done in respect of building, civil or engineering works.
- (j) For residents, withholding tax is applicable in respect of rent, premium or similar consideration for the use or occupation of immovable property.
- (k) The tax is subjected to payments made to non-resident telecommunication service providers and is based on gross amounts.
- (l) Leasing of aircrafts, aircraft engines, locomotives or rolling stock is exempted from withholding tax.
- (m) Tax deducted at source on withdrawals from provident and pension schemes in excess of the tax-free amounts made after the expiry of fifteen years, or on the attainment of the age of fifty years, or upon early retirement on health grounds are final.
- (n) Payments made by non-resident filming agents and filming producers approved by the Kenya Film Commission to actors and crew members are exempted from withholding tax.
- (o) Winnings means winnings of any kind and a reference to the amount or the payment of winnings shall be construed accordingly
- (p) Demurrage charges means the penalty paid for exceeding the period allowed for taking delivery of goods, or returning of any equipment used for transportation of goods.

(q) Insurance premiums paid for insurance of aircraft are exempted from withholding tax.

Non-residents persons without a permanent establishment in Kenya pay tax at the above specified withholding tax rates, which is final tax.

Lower rates of withholding tax are applicable on some payments to residents of countries that have a Double Tax Agreement (DTA) with Kenya. The current treaty rates are as follows;

Payee resident in	Dividends (%)	Interest (%)	Royalties (%)	Management & Professional (%)
Canada	10	15	15	15
Denmark	10	20	20	20
France	10	12	10	20
Germany	10	15	15	15
India	10	10	10	10
Norway	10	15	20	20
Sweden	10	15	20	20
United Kingdom	10	15	15	12.5
Zambia	0	15	15	15
South Africa	10	10	10	20
Qatar	10	10	10	20
UAE	5	10	10	20
South Korea	10	12	10	20

Where the treaty rate is higher than the non-treaty rate, the lower rate applies.

Appendix IV - Capital allowances

Capital Allowance	Description	Rate (%)
1. Industrial Buildings Allowance (<i>Part 1 of the Second Schedule</i>)	Industrial buildings	10
	Hotel buildings (provided such building has been certified by the Commissioner as such).	10
	Hostel, educational and training buildings, provided such building has been certified by the Commissioner as such.	50
	Rental residential buildings constructed in a planned developed area approved by cabinet secretary (for the time being responsible for matters relating to housing).	5
	Commercial buildings	25
	Building in use for the training of film producers, actors or crew	100
2. Wear and Tear Allowance (<i>Part II of the second Schedule</i>)	Heavy self-propelling machinery such as tractors and combine harvesters	37.5
	Computers and peripheral computer hardware, calculators, copiers and duplicating machines	30
	Based on cost net of any ID and computed on declining balance basis	
	Other self-propelling vehicles and aircrafts (cost of non-commercial motor vehicles is restricted to KES 2m)	25
	All other machinery including ships and petroleum pipeline	12.5
Machinery first used to undertake exploration or prospecting operations by petroleum or mining companies	100	
3. Capital expenditure on Agricultural (<i>Part IV of the Second Schedule</i>)	Construction of farm works	100
	(The qualifying cost of a farm house is a third (1/3) of the expenditure.	
4. Investment Deduction (ID) (<i>Part V of the Second Schedule</i>)	Building and machinery used for manufacturing purposes	100
	Civil works and structures forming part of an industrial building used for manufacturing purposes.	100
	Construction of a building or purchase and installation of machinery for manufacturing purposes outside the city of Nairobi or the municipalities of Mombasa or Kisumu whereof the investment is KES 200m or more.	150
	Filming equipment by a local film producer licenced by the Minister responsible for matters relating to communication.	100
	Construction of a building or on the purchase and installation of machinery by or for a Special Economic Zone Enterprise for use by the enterprise in carrying out the business activities for which it was licensed.	100



Capital Allowance	Description	Rate (%)
	If the construction of the building or the purchase and installation of machinery by the Special Economic Zone Enterprise is located outside Nairobi and Mombasa Counties	150
5. Shipping investment deduction	The deduction is claimed when a ship owner incurs expenditure on the purchase of a new power driven ship of more than 125 tons gross. This deduction is withdrawn where a ship is sold within a period of five years from the end of the year of income in which the deduction was given.	100
6. Other capital allowances	Computer software	20
	Telecommunication equipment	20
	Irrevocable right to use fibre optic cable	5

Appendix V - Returns and records

- Any person who carries on business is required to keep records such as; accounts, books, receipts, expenses, deeds, contracts, vouchers which in the opinion of the Commissioner are adequate for purpose of computing tax. *Section 54A, ITA*
- Such records should be produced for examination, when required by the Commissioner, at any time prior to the expiration of five (5) years, or longer periods in case of fraud or wilful neglect. *Section 23, Tax Procedures Act*
- Any return, record or other document required to be kept for tax purposes should be in the official languages (English or Kiswahili) and the unit of currency shall be the Kenya shilling. *Section 23, Tax Procedures Act*
- Individuals are required to furnish the Commissioner with a self-assessment return by 30 June of the following year. The financial year of an individual is the calendar year. *Section 52B, ITA*
- All other persons (other than individuals) are required to submit their self-assessment return to the Commissioner by the end the sixth month following the end of the company's accounting period. A corporate entity is allowed to vary its financial year from the calendar year. *Section 52B (1) (b), ITA*
- The return of income by individuals and corporate entities are made using prescribed forms. Kenya Revenue Authority (KRA) has, by public notice of 31 July 2015, required that all tax payments and filings be done on iTax, and that manual payments and returns will, with effect from 1st August 2015, not be accepted at any KRA office.
- A person required to submit a tax return may apply in writing to the commissioner for an extension to submit the return as follows;
 - In the case of a monthly return, fifteen (15) days before the due date
 - In the case of an annual return, thirty (30) days before the due date
- The commissioner may grant the application if satisfied that there is reasonable cause and shall notify the applicant at least 5 days before the due date. If the notification is not received, the application shall be deemed to have been granted. *Section 25, Tax Procedures Act*
- The Tax Procedures Act, 2015 provides for public and private rulings. A public ruling is the Commissioner's interpretation of a specific tax law, and it is binding on the Commissioner. The Commissioner can, on application by a tax payer, issue a private ruling providing the Commissioner's interpretation of a tax law in relation to a transaction. While the ruling is binding on the Commissioner, it is not binding on the tax payer it is issued to. *Sec 62 & 65, Tax Procedures Act, 2015*

Appendix VI- Tax assessment, objections and appeals

- Assessment of tax in Kenya is by voluntary self-assessment basis. Where a person delivers a return of income to the Commissioner, the Commissioner may either accept the amount declared in the return, or he may issue his own assessment if he has reasonable cause to believe that the return is not true and correct. *Section 73, ITA and Section 28, Tax Procedures Act, 2015*
- The Commissioner may accept or reject the amended self-assessment return and where he rejects, he shall furnish the taxpayer with the reasons for such rejection within thirty days of receiving the application. *Sec 31, Tax Procedures Act, 2015*
- The Commissioner may assess tax on a person who fails to submit a return of income, if he is of the opinion that such a person had income chargeable to tax. *Section 73, ITA and Section 29 of the Tax Procedures Act, 2015*
- The Commissioner may also assess tax on a person who is about to permanently leave Kenya, or in case of a company which is about to be liquidated or about to cease business, if the Commissioner believes that any tax payable is at risk of non-payment. *Section 26, Tax Procedures Act, 2015*
- A Commissioner may issue an additional tax assessment where he considers that a person has been assessed at a less amount with regard to income charged to tax or amount of tax payable. Such additional tax assessment should be issued to the tax payer in writing, prior to the expiry of five (5) years after the year in which the assessment relates to. *Section 31, Tax Procedures Act, 2015*
- A taxpayer who disputes a tax decision made upon him may, by a notice in writing to the Commissioner, object to such decision within 30 days of being notified of the decision. A notice of objection shall be treated as validly lodged by a taxpayer if;
 - the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments; and
 - In relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute or has applied for an extension of time to pay the tax not in dispute.
 - All the relevant documents relating to the objection have been submitted
- Where the Commissioner has not responded to an objection within a period of 60 days, the grounds of objection are deemed to have been accepted. *Section 51, Tax Procedures Act, 2015*
- If a tax payer is aggrieved by the Commissioner's decision, he may appeal to the Tax Appeals Tribunal, upon paying all the tax not in dispute. A valid notice of objection must state precisely the grounds of objection to the assessment, the taxpayer must also have paid the entire amount of tax due under the assessment that is not in dispute and it should be received by the Commissioner within thirty days after the date of service of the notice of assessment. *Section 51, Tax Procedures Act, 2015*
- The Tax Appeals Tribunal Act requires that a deposit of KES 20k be made before an appeal to the Tribunal can be made.
- Either party may appeal to the High Court, the decision of the Tax Appeals Tribunal but only on a question of law or of mixed law and facts. A further appeal may be made to the Court of Appeal against the decision of the high court. *Section 53 & 54, Tax Procedures Act, 2015*

Appendix VII - Penalties imposed under the Income Tax Act & Tax Procedures Act

- Failure to deduct or account for tax relating to the income paid to employees, or failure to file a return with respect to employment income - 25% of the tax payable or KES 10k whichever is greater *Section 37 (2) and Section 83, Tax Procedures Act*
- Failure to submit a self-assessment return - 5% of the tax balance or KES 20k whichever is greater *Section 83, Tax Procedures Act*
- Failure to submit a compensating tax return - 5% of the compensating tax payable or KES 20k whichever is greater *Section 83, Tax Procedures Act*
- Penalty for knowingly and fraudulently understating the tax liability in a tax return - double the difference of the tax declared by the person and the actual tax payable *Section 85, Tax Procedures Act*
- Penalty for negligence or disregard of the law by an authorized tax agent - one half of the additional tax liability, but subject to a minimum of KES 1k and maximum of KES 50k per return or document subject to additional taxes *Sec 72B, ITA*
- Penalty for under payment of instalment tax - 20% of the difference between the amount of instalment tax payable and the instalment tax actually paid, multiplied by 110% *Sec 72C, ITA*
- Penalty on any tax which remains unpaid after the due date- 20% of the tax due *Sec 72D, ITA*
- Failure to deduct or remit Withholding tax - 10% of the amount of tax involved subject to a maximum of KES 1m *Para 14A of the Income Tax Act (Withholding Tax) Rules*
- General penalty for any offence which no penalty is specifically provided for - fine not exceeding KES 100k *Sec 107, ITA*

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