Kenya Country Profile

Africa Tax Centre: 2020 Fiscal Guide

May 2021

2020 Key tax factors for efficient cross-border business and investment involving Kenya

Double Tax Treaties

With the following countries, territories and jurisdictions:

Canada	Germany	Mauritius	United Kingdom	South Korea
Denmark	India	Norway	Zambia	Qatar
France	Iran	Sweden	South Africa	United Arab Emirates
Iran				

Most important forms of doing business

Limited liability company, sole proprietorships and partnerships.

Legal entity capital requirements

There is no legal requirement for a maximum or minimum share capital. However, the Registrar of Companies and the Collector of Stamp Duty recommend that a company be incorporated with a minimum share capital required of KES 100,000.

Residence

An individual is resident if it has been present in Kenya for 183 days or more in that year of income or present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income.

A company is considered to be a resident if it is incorporated in Kenya or where Kenya is considered as the place of effective management or where the Cabinet Secretary for National Treasury has declared such company to be a resident in Kenya.

Compliance requirements for CIT purposes

Companies are required to file their CIT returns by the last day of the sixth month following the financial year end.

Companies are also required to account for instalment tax or minimum tax by the 20th day of the fourth, sixth, ninth and twelfth month of each year.

Any balance of tax should be accounted for by the last day of the fourth month after the financial year end.

Corporate income tax rate

The standard corporate income tax rate is 30% for resident entities and 37.5% for non-resident entities.

However, the resident rate had been revised to 25% effective 25 March 2020 to 31 December 2020 as a cushion measure for resident companies due to the Covid 19 pandemic.

With effect from 1 January 2021, the corporate income tax rate is 30%.

Holding rules

Dividends are taxed on a withholding tax basis which is a final tax. Expenses are therefore not allowable on the dividends' income or on any other income of the taxable person. Dividends are tax-exempt for resident companies controlling more than 12.5% of shareholding of the company paying dividends.

Dividends may be deemed to have been distributed where:

- Cash or asset is distributed or transferred by a company for the benefit of a shareholder;
- A shareholder/person related to the shareholder is discharged from an obligation it owes that is measurable in money;
- An amount is used by the company in any manner that is for the benefit of the shareholder or any person related to the shareholder;
- Payment of any debt owed by the shareholder or any person related to the shareholder to any third party; and
- Secondary Transfer Pricing adjustments.

Compensating tax of 30% may arise where dividends are distributed out of untaxed profits. Income exempted under the Income Tax Act, for example interest from infrastructure bonds, is excluded from the computation of compensating tax. Other income excluded from the computation of compensating tax includes income received by a collective investment scheme, dividend received by a resident company from a subsidiary, whether local or foreign, has been subjected to Capital Gains Tax or has been subject to a final tax.

Withholding tax rates

Income stream	Resident withholding tax rate (%)	Non-resident withholding tax rate (%)
Dividends	5*σ	15
Lottery and other gambling proceeds	20≠	-
Management, professional, service and training fees	5	20ϕ
Contractual fees (building, civil and engineering)	3	20
Royalties	5	20
Rent – commercial and residential	10**	30
Rent – lease of equipment		15
Interest	15∞	15
Interest on government security	15»	15
Interest on housing bonds	10δ	15
Interest on bearer instrument	25◆	25
Insurance/reinsurance premiums	-	5ÿ
Shipping and road transport	-	20y'
Commissions – brokers/agents	5	20
Commissions – insurance agents and others	10	20
Messages transmission by cable, VSAT, television, radio	-	5
Shipping (including demurrage costs) and air transport	-	2.5%
Marketing, sales, promotion and advertising	-	20

*σ - Same rate of 5% to apply to East African Community citizens
σ - 5% for listed companies.
* - WHT on dividends and interest paid to residents of East Africa Community on investments in listed bonds with a maturity of 3 years is 5%.
≠- Winnings from any kind of betting gambling, lottery now attract 20% WHT in Kenya.
**- In Kenya, only withholding tax agents appointed by the Commissioner to withhold tax on rental income which does not exceed KES 15,000,000 and is more than KES 288,000 per annum. In Uganda, only gazetted withholding tax agents can withhold tax on rental income
∞ - Interest on bonds issued by East African Development Bank (EADB) is exempt from tax. Effective 1 July 2016
» - Includes interest on Government bearer bonds of at least two years, treasury bills and bonds.
δ - Qualifying interest in respect of Housing Bonds is limited to KES 300,000 per year.
◆ - Interest on bearer bonds with a maturity of ten years and above is 10%
ϕ - 15% on consultancy fees for East African citizens.
Ÿ – Insurance/reinsurance premium paid in respect of aircraft is exempt. Effective 25th April 2020, reinsurance premiums paid to non-residents are subject to WHT at the rate of 5%.
y'- Effective 25th April 2020, WHT has been expanded by including transportation of goods by non-residents among the services that are subject to WHT at the rate of 20%. However, Air and Shipping transport services were however excluded from the change. Further, EAC Community citizens are also exempted from the tax.

Income streams for non-resident petroleum/mining companies	Withholding tax rate (%)
Dividends	15
Interest	15
Management fees, training and professional fees	12.5
Royalty	20
Subcontractor/licensee service fee	5.625

β - This applies to non-residents without a permanent establishment in Kenya.

Capital Gains Tax

Capital Gains Tax (CGT) was re-introduced in Kenya effective 1st January 2015. CGT is applicable on the transfer of property situated in Kenya, for example, land, buildings, marketable securities and the transfer of property by general insurance companies.
The Capital Gains Tax (CGT) rate is 5% which is a final tax.
Gains on sale of marketable securities sold through the Nairobi Securities Exchange is exempt from CGT.
Further, capital gains resulting from transactions involving incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity is exempt from CGT provided:

- It is a legal or regulatory requirement;
- It is as a result of a directive or compulsory acquisition by the government;
- It is an internal restructuring within a group which does not involve transfer of property to a third party.

Tax losses

Tax losses in Kenya are carried forward as allowable deductions against future income. A deficit for a year of income is treated as an allowable deduction in preparing income tax computations for the next nine (9) successive years of income.
This is strictly applied for each of the seven sources of income specified below:
Income from renting or occupation of immovable property;
Income from employment;
Income from agriculture, horticulture, forestry, etc.;
Income from withdrawals from a registered pension/provident fund by employer;
Business activities;
Gains made as a result of the disposal of direct or indirect interest in immovable property (extractive industries); and
Natural resource income.
Losses are, however, not transferable from one entity to another.
Companies may apply for extension of time to utilize tax losses in instances where a company anticipates that it will be unable to utilize these tax losses within 9 years.

Registration duties

None.

Stamp Duty

Item	Rate
Transfers of securities not listed on the stock exchange	1%
Transfer of securities listed on the stock exchange	Nil
Immovable property situated in any municipality	4%
Immovable property situated outside municipalities	2%
Creation or increase of share capital	1%
Lease with a period of 0 to 3 years	1%
Lease with a period over 3 years	2%

Turnover tax

Turnover tax is applicable on a resident person at the rate of 1% whose annual income exceeds KES 1 million but does not exceed KES 50 million.
Turnover tax does not apply to rental income, management or professional or training fees, income of incorporated companies or income which is subject to a final withholding tax.

Presumptive tax

Presumptive tax was introduced with effect from the 1 January 2019 in respect of businesses with a turnover of less than KES 5 million per annum. It is applicable at a rate of 15% of the amount payable for a business permit or trade license.
Presumptive tax is an advance tax that can be offset against turnover tax payable.
This tax in not applicable to income derived from management and professional services, rental business and incorporated businesses.

Transfer pricing and thin capitalization rules

The Income Tax Act also provides for the replacement of arm's length prices where the profits of a resident's business are reduced, i.e. transferred as a result of or by virtue of business having transacted with a non-resident with whom the resident is related.
A person will be regarded as related to another if either person participates directly or indirectly in the management, control or capital of the business of the other or if a third person participates directly or indirectly in the management, control or capital of the business of both.
Thin capitalization rules are applied when the debt/equity ratio exceeds 3:1. The debt/equity ratio for Petroleum Contractors and Mining Licensees has been set at 2:1.
In calculating thin capitalization, negative reserves are considered.

Deemed interest

A company, excluding banks and financial institutions, that has an interest-free loan from a related non-resident entity is required to compute deemed interest and add it back to the tax computation.
The deemed interest attracts 15% WHT and is an off-the-financial-statement adjustment that only affects the tax computation (and not the financial statements).
The deemed interest is based on the Commissioner of Domestic Taxes' prescribed rates.

Inheritance, gifts and donations

The transfer of property by way of gifting is chargeable to capital gains tax. Transfer through inheritance is however exempt from capital gains tax.
Donations are not tax deductible in calculating the taxable income of a person except for those made to registered charitable organizations, exempted societies and political parties.

Taxation of group life policies

Not taxable.

Transaction taxes

Value Added Tax (VAT) is charged under the Value Added Tax Act 2013 on the supply of taxable goods and services and the importation of taxable goods and services into Kenya. The standard rate of VAT is 16% (was 14% between 1 April 2020 and 31 December 2020). The VAT rates in respect of exports and other essential goods is 0% while VAT on petroleum products is charged at the rate of 8%.
Reverse VAT is applicable at the rate of 16% on imported services. Reverse VAT is applicable on companies whose exempt sales constitute at least 11% of total sales.

Withholding VAT

Withholding VAT (WVAT) is withheld by Government Ministries, Departments and Agencies as well as any other taxpayer whom the Commissioner of Domestic Taxes so appoints. Appointed WVAT agents are required to account for WVAT at the rate of 2 percent (2%) for taxable supplies made to them. This amount is required to be remitted to the Kenya Revenue Authority on or before the 20th day of the following month in which the deduction is made.

Excise duty on financial services and telecommunication services

The term financial service provider has been replaced with financial institutions which includes banks, insurance companies, micro finance organizations, Savings and Credit Co-operative (SACCO) societies and the Kenya Post Office Savings Bank.

Item	Excise Duty rate (%)
Mobile cellular services	15%
Telephone and internet services	15%
Mobile transfer services by banks, money transfer agencies and other financial service providers	20%
Money transfer services by cellular phone service providers	12%
Other fees charged by financial institutions	20%

Other taxes

- Infrastructure Development Levy – 1.5% on all goods imported for home use;
- Sugar development levy – 4% of sugar sold or imported;
- Refinery throughput tax – 15% of refining charges raised by a refinery; and
- Fringe benefits tax (FBT) – 30% of the fringe benefit. FBT is payable by every employer in respect of a loan provided to employees/directors at concessional rates. The concessional rates are compared with rates prescribed by the Commissioner to determine the benefit.
- Residential Rental Income Tax - income from the use or occupation of residential property is taxable on a monthly basis tax at the rate of 15% of the gross rental income if it does the same is between **KES 288,000** and **KES 10 million** during any year of income. This is a final tax. Any amount above or below the limits is to be declared in the persons self-assessment return and tax accounted on the same accordingly.

Recent Tax Developments

Income Tax Act (ITA)

Minimum tax

Minimum tax was introduced with effect from 1 January 2021 and is applicable at the rate of 1% of gross turnover. Minimum tax is payable where it is higher than instalment taxes, which is an advance corporate income tax payment.
Similar to instalment taxes, minimum tax is paid on the 4th, 6th, 9th and 12th month of each year of income. Incomes exempted from minimum tax include rental income, employment income, income subject to turnover tax, capital gains, companies engaged in business whose retail price is controlled by the Government (oil marketing companies), insurance companies and income earned by companies in the extractive industries.

Digital Services Tax

DST is applicable at the rate of 1.5% on the provision of digital services.
Examples of digital services include provision of a digital marketplace, downloadable mobile applications, e-books and films, streaming services, subscription-based media, website hosting, online data warehousing, file sharing and cloud storage services, electronic booking or electronic ticketing services among others.
The taxable value for DST purposes is 1.5% of the payment received in the case of provision of a digital service or 1.5% of the commission or fee paid to the digital marketplace provider in the case of the provision of a digital marketplace.
DST is payable by the 20th day of the following month.

Income Tax Act (ITA)

Amendment of capital allowance rates

Some of the key capital allowance deductions that have been amended include the following:

Description	Old rate (%)	New rate (%)
Buildings used for manufacture	100	50 for the first year and 25 per year on residual
Hotel buildings	100	50 for the first year and 25 per year on residual
Hospital buildings	-	50 for the first year and 25 per year on residual
Petroleum or gas storage facilities	-	50 for the first year and 25 per year on residual
Commercial buildings	25	10
Machinery used for manufacture	100	50 for first year and 25 per year on residual
Hospital equipment	12.5	50 for first year and 25 per year on residual
Ships	100	50 for first year and 25 per year on residual
Aircraft	25	50 for first year and 25 per year on residual
Farm works	100	50 for first year and 25 per year on residual

Amendment to Pay As You Earn rates

The employment tax rates are now taxed as follows:

New tax bands	Old rate (%)
First KES 288,000	10%
Next KES 100,000	25%
Above KES 388,000	30%

Electricity rebates

Electricity rebates of 30% previously available to manufacturers has now been scrapped.

The Excise Duty Act

License

The definition of license for excise duty purposes has been expanded to include the operating licenses for activities that have been gazetted by the Commissioner as activities for which an excise license is required.

Excise Duty on betting

Excise Duty on the amounts wagered or staked during betting is no longer applicable.

Tax Procedures Act

Voluntary Tax Disclosure Programme.

A Voluntary Tax Disclosure Programme (VTDP) which is a confidential program where a taxpayer discloses tax liabilities that were previously undisclosed to the Commissioner for the purpose of being granted relief of penalties and interest of the tax disclosed has been introduced.

The VDP shall be open for a period of 3 years effective 1st January 2021 and will be eligible for tax periods of up to 5 years for the period 1 July 2015 to 30 June 2020.

Taxpayers who take advantage of the program in 2021 will qualify for 100% waiver of penalties and interest, 50% in 2022 and 25% in 2023.

Extension of time limit for private rulings

The Commissioner is now required to publish the private rulings within 60 days of receiving a taxpayer's application, up from 45 days.

Investment Information

Investment rules

Kenya has a long-standing, stable and positive attitude towards foreign private investment. The major instrument for attraction and protection of foreign investment is the Foreign Investment Protection Act. Kenya has also instituted the Industrial and Promotion Advisory Centre to assist approved investors with investment procedures.

Investment rules	Utilities and infrastructure are exclusively reserved for the public sector. There are no sectors or regions reserved for nationals to the exclusion of foreign investors. However, foreign investment in agriculture is controlled if it entails land ownership or leasing (freehold or leasehold). There are local participation requirements for investments in the telecommunication sector where locals must hold at least 30% interest in such companies.
General	
Investment incentives	The Cabinet Secretary to the National Treasury may declare any area in Kenya to be an Export Processing Zone (EPZ) or a Special Economic Zone (SEZ). Manufacturing, commercial or service activities, as defined, may be undertaken in an EPZ/SZE, but to obtain a license from the EPZ/SEZ Authority the enterprise must: o Be incorporated in Kenya, whether or not it is 100% foreign-owned, for the sole purpose of producing goods for export in that zone; o Engage in eligible activities in the EPZ/SEZ in question; o Not have a harmful effect on the environment, impinge on national security or pose a health hazard; and o Conduct business in accordance with the laws in force. EPZ/SEZ enterprises may be permitted to sell a percentage of their products in the local market and enjoy the following benefits: o Exemption from VAT, excise duties and customs import duty on inputs; o Operation under one license issued by EPZ/SEZ Authority and exemption from compliance with various laws applicable to non-EPZ enterprises; o For EPZs, exemption from corporation tax for 10 years following the date of the first sale and at 25% rate for the next 10 years. The exemption and reduction do not apply to commercial activities; For SEZs, a corporation tax of 10% will apply for the first 10 years of operation while 15% will be applicable for the next 10 years. o Investment deduction of 50% on the first year of use and 25% on a reducing balance of capital expenditure; o For EPZs, exemption from WHT on payments to non-residents for the first 10 years; o EPZ enterprises are deemed to be non-residents and as such subject to non-resident - WHT on any payments made to them; and Exemption from stamp duties, import/export quota restrictions, rent or tenancy controls and personal income tax for non-resident employees.
Exchange control	There are no exchange controls after the 1994 liberalization which removed all restrictions. However, the Proceeds of Crime and Anti-money Laundering Act of 2009 requires a reporting institution to file reports of all cash transactions exceeding US$10 000 or its equivalent in any other currency carried out by it to the Financial Reporting Centre.
Residence and work permits	All foreign citizens are required to obtain work permits, which will only be granted if it can be demonstrated that a citizen is unable to perform the job
Annual budget announcement	The Cabinet Secretary to the National Treasury announces the annual Budget and Taxation Proposals in June each year. The Finance Bill is however published by 30 April of each year and the same is debated with the aim of enacting the legal provisions by the beginning of the next fiscal year of 1 July.
Trade and bilateral agreements	Membership – WTO, ACP-EU Partnership Agreement, COMESA, EAC, and AGOA. Trade Agreements concluded with Argentina, Bulgaria, China, Czechoslovakia, Ethiopia, Germany, Hungary, India, Iraq, Lesotho, Liberia, Poland, Romania, Rwanda, Sudan, Swaziland, Russia, DRC, Bangladesh, Comoros, Djibouti, The Netherlands, Egypt, Nigeria, South Korea, Romania, United Kingdom and Thailand.

The East African Community

The East African Community (EAC) is moving towards becoming a fully integrated economic community. The Common Market Protocol, which was signed in November 2009 commenced in 1 July 2010, making the EAC a fully-fledged customs union under a common external tariff.

Import duty is levied under the EAC Customs Management Act. Imported goods are generally subject to import duty at varied rates, including 0% for raw materials and capital goods (also exempt from VAT), 10% for intermediate goods, and 25% for finished goods. However, a different rate of duty can be prescribed by the Council of Ministers of the EAC partner states.

Goods moving freely within the EAC partner states must comply with the EAC Rules of Origin and with certain provisions of the Protocol for the Establishment of the EAC Customs Union for them to enjoy exemption from import taxes. The EAC rules of origin provide that goods shall be accepted as originating in a Partner State where the goods are:

a) wholly produced in the Partner State; or

b) Produced in the Partner State incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the Partner State and:

i. The goods are classifiable under a tariff heading other than the tariff heading of the non-originating materials used in their production; or

ii. The total value of the refrigerators does not exceed 15% of the ex-works price of the refrigerators.

Simple assembly of components and parts imported from outside the Partner State to constitute a complete product shall not support a claim that goods originate from a Partner State.

Further, all the operations carried out in a Partner State on a given product shall be considered to determine whether the working or processing undergone by that product is to be regarded as insufficient as thus not conferring originality.

Economic statistics

Prime Interest Rate (November 2020)	11.99%
US$ Exchange Rate (20 April 2020)	106.7941
Inflation (December 2020)	5.62 %
GDP (December 2019)	5.40 %

Travel information

Visa requirements	South Africans are exempted from visa requirements if their stay in Kenya is 30 days or less. Most other EU and USA passport holders also require visas.
Flights	Direct international flights to Nairobi from other regional and international hubs. There is now a direct Nairobi to New York flight operated by Kenya Airways. However, due to the Covid-19 Pandemic, most flights have been halted and passengers required to produce negative PCR test results before being admitted to the country.
Inoculations	Standard requirements

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