

Tax alert

Kenya's Income Tax (Minimum Top-Up Tax) Regulations, 2026

Key provisions and compliance obligations

October 2026



Introduction

Kenya introduced the Minimum Top-Up Tax (MTT) under section 12G of the Income Tax Act as part of the implementation of the global minimum tax framework. The MTT is intended to ensure that in-scope multinational enterprise (MNE) groups with operations in Kenya are subject to a minimum effective tax rate of 15% on their Kenyan profits.

The Income Tax (Minimum Top-Up Tax) Regulations, 2026 (the Regulations) were made by the Cabinet Secretary for the National Treasury on 12 August 2026 under section 130 of the Income Tax Act and published on 18 September 2026 as Legal Notice No. 189.

The Regulations provide the detailed framework for implementing Kenya’s MTT, including the computation of net income or loss, adjusted covered taxes, the substance-based income exclusion, safe harbours, notification filing obligations and the transitional rules.

Subject to the Act, the GloBE Model Rules and Agreed Administrative Guidance may be applied in interpreting the Regulations (Regulation 34(1)), and covered persons may make relevant GloBE elections not otherwise provided for in the Act or the Regulations (Regulation 34(2)).

The final Regulations follow the draft Regulations published on 24 October 2025. While the underlying framework has largely been retained, the final Regulations introduce important changes and clarifications to the operation of the MTT.

This alert summarizes the key provisions of the final Regulations and the practical actions affected MNE groups should now take.

Who is affected?

Section 12G of the Income Tax Act provides that the MTT applies to a Kenyan resident person or permanent establishment that is a member of an MNE group with consolidated annual turnover of EUR 750 million or more in at least two of the four years immediately preceding the tested year of income.

In applying the threshold, consolidated annual turnover is the turnover reported in the MNE group's consolidated financial statements for the year of income (Regulation 4(1)).

Where a group has a year of income shorter or longer than 12 months, for example following a change in financial year-end, the EUR 750 million threshold is adjusted proportionately to determine whether the group falls within the MTT scope for

that year. The adjusted threshold is calculated as EUR 750 million × A/365, where A is the number of days in the year of income (Regulation 4(2)).

The threshold is converted into Kenya shillings using the average of the daily exchange rates determined by the Central Bank of Kenya for December of the preceding year, which determines the KES revenue threshold for assessing whether a group is within scope (Regulation 26(3)).

Section 12G(4) of the Income Tax Act excludes certain entities from the MTT.

Regulation 2 defines several of these categories, including pension fund, pension services entity, investment fund, real estate investment vehicle and intergovernmental or supranational organisations, and these definitions should be applied in determining whether an entity qualifies for exclusion.



Key takeaways

The Regulations apply to tested years of income occurring on or after 1 January 2025. Persons that were covered persons when the Regulations commence must notify the Commissioner within 60 days of publication, which, based on publication on 18 September 2026, is 17 November 2026.

A person that was a covered person on 27 December 2024 and whose year of income commenced on 1 January 2025 is required to pay the MTT for that year that was due on or before 30 April 2026.

The Transitional CbCR Safe Harbour may be elected for years of income commencing before 1 July 2029, but the De Minimis Exclusion election under Article 5.5 of the

GloBE Model Rules is not available.



How the Minimum Top-Up Tax is calculated

The Regulations prescribe the steps for determining Kenya's MTT liability.

The calculation starts with the covered person's financial accounting net income or loss, adjusted in accordance with Regulations 5 to 12 to arrive at net income or loss. Adjusted covered taxes are then determined under Regulations 13 to 16, and the resulting combined effective tax rate is compared with the 15% minimum rate (Regulation 17).

Under Regulation 18(1), the shortfall is applied to excess profit, being net income reduced by the substance-based income exclusion, and any additional top-up tax arising under Regulations 14, 15 and 20 is then added. Where two or more covered persons are members of the same MNE group in Kenya, the MTT is determined on a group basis and allocated among them (Regulation 18(2)).

Steps	Formula
1. Combined effective tax rate	$\text{Combined effective tax rate} = (\text{Total adjusted covered taxes} \div \text{Total net income or loss}) \times 100$
2. Excess profit	$\text{Excess profit} = \text{Net income or loss} - \text{Substance-Based Income Exclusion}$
3. Minimum top-up tax	$\text{Minimum Top-Up Tax} = [(15\% - \text{Combined effective tax rate}) \times \text{Excess profit}] + \text{Additional top-up tax under Regulations 14, 15 and 20}$



Compliance obligations and deadlines

Compliance obligation	Deadline
Initial notification - persons covered when the Regulations commenced	Within 60 days of publication of the Regulations
Notification on becoming covered after commencement of the Regulations	Before the end of the year of income in which the person becomes covered
Notification where a covered person is no longer in scope	Within six months from the first day of the year of income in which the person ceases to be covered
MTT payment	By the end of the fourth month after the end of the year of income
Kenyan MTT return	By the last day of the sixth month following the end of the year of income
GloBE Information Return - first year of applicability	Within 18 months after the end of the first year of applicability
GloBE Information Return - subsequent years	Within 15 months after the end of the relevant year

Several related administrative rules also apply. The MTT must be paid in Kenya shillings, converted from the presentation currency of the consolidated financial statements at the average exchange rate for the year of income, and any overpayment is dealt with under section 47 of the Tax Procedures Act (Regulation 30).

A single designated entity may make the initial notification for covered persons in the same MNE group, and changes to notified information must be reported under section 9 of the Tax Procedures Act (Regulation 27(4) and (5)).

A covered person is not required to file a GloBE Information Return in Kenya where it has been filed by the ultimate parent entity or designated filing entity located in a jurisdiction that has an agreement with Kenya (Regulation 28(4)), and returns may be amended as provided under section 31 of the Tax Procedures Act (Regulation 28(7)).

Safe harbour assessment before the full calculation

Before undertaking the full GloBE and Kenyan MTT calculations, MNE groups with operations in Kenya should first consider whether the Transitional CbCR Safe Harbour applies. Regulation 29(1) permits a covered person to elect this safe harbour, as set out in the GloBE Model Rules (including any extension or similar safe harbour), for years of income commencing before 1 July 2029. The safe harbour reduces the initial compliance burden by allowing eligible groups to rely on qualifying country-by-country report (CbCR) data and simplified calculations. Under the GloBE Model Rules, it comprises three alternative tests: the De Minimis Test, the Simplified ETR Test and the Routine Profits Test. Separately, Regulation 34(4) prevents covered persons from making the De Minimis Exclusion election under Article 5.5 of the GloBE Model Rules. For Kenyan MTT purposes, the Transitional CbCR Safe Harbour is assessed using the following two tests:

- **Simplified ETR Test:** compares the simplified effective tax rate for the Kenyan operations with the applicable transition rate: 16% for years of income commencing in 2025 and 17% for years of income commencing in 2026. As Regulation 29(1) makes the safe harbour available for years of income commencing before 1 July 2029, groups should confirm the rate that applies to later years under any extension of the safe harbour in the GloBE Model Rules.
- **Routine Profits Test:** considers whether the profit for the Kenyan operations is equal to or below the substance-based income exclusion.

A group that meets either test may apply the Transitional CbCR Safe Harbour in Kenya, provided it retains appropriate supporting evidence. Where neither test is met, the group should assess whether the Non-Material Constituent Entity simplified calculations apply to a qualifying Kenyan entity. If neither simplification is available, the full GloBE and Kenyan MTT calculations will be required.

Illustrative safe harbour tests

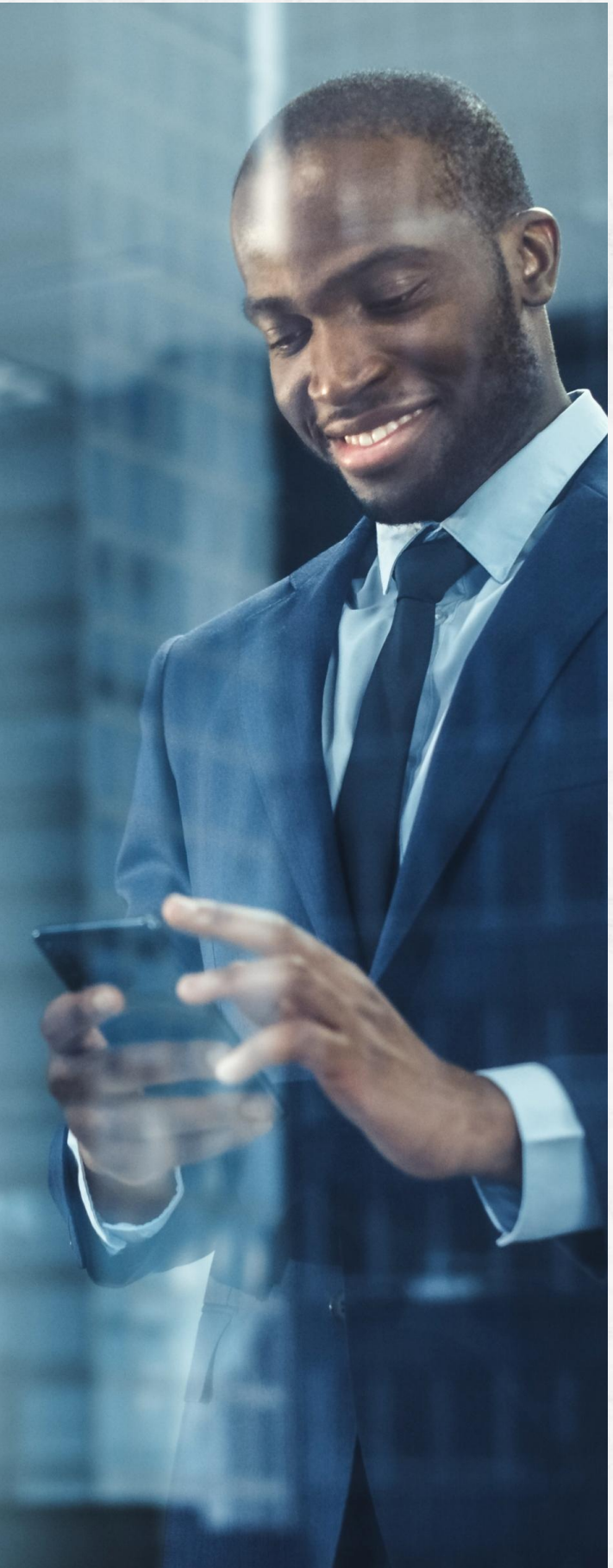
The examples below illustrate how the Simplified ETR and Routine Profits tests may apply to Kenyan operations. Each assessment should be supported by the qualifying CbCR, relevant financial information and applicable GloBE guidance.

Test	Illustrative Kenyan position	Indicative outcome
Simplified ETR test	Profit before tax is KES 500 million and simplified covered taxes are KES 90 million. The simplified ETR is 18%, above the 16% threshold applicable to the 2025 fiscal year.	Test met. The safe harbour may apply, subject to retaining the supporting tax and income reconciliations.
Routine profits test	Profit before tax is KES 600 million and the substance-based income exclusion (SBIE) is KES 750 million. Profit before tax is therefore below the SBIE exclusion.	Test met. The safe harbour may apply, subject to retaining the supporting employee cost and tangible asset information.
No test met	The simplified ETR is below 16% for a 2025 fiscal year and profit before tax exceeds the substance-based income exclusion.	Safe harbour not available. Assess whether the Non-Material Constituent Entity simplified calculations apply; otherwise, complete the full calculation.

Non-Material Constituent Entity simplified calculations

The Non-Material Constituent Entity simplified calculations, which Regulation 29(2) permits a covered person to elect in accordance with the GloBE Model Rules, are separate from the Transitional CbCR Safe Harbour.

Under the GloBE Model Rules, they are available for a constituent entity that is excluded from the ultimate parent entity's consolidated financial statements solely on size or materiality grounds and allow its income and taxes to be determined using simplified CbCR-based data. An MNE group should assess this measure independently for any qualifying Kenyan entity.





What affected groups should do now

- 01

Confirm whether the MNE group meets the EUR 750 million threshold and identify the Kenyan entities and permanent establishments within scope.
- 02

Test the Transitional CbCR Safe Harbour for Kenya and consider separately whether the Non-Material Constituent Entity simplified calculations may apply.
- 03

Determine the applicable notification deadline and whether a single designated entity will make the initial notification for the Kenyan covered persons.
- 04

Where the Transitional CbCR Safe Harbour applies, document the tests performed and retain the qualifying CbCR, financial information and other evidence supporting the Kenyan position.
- 05

Where the safe harbour does not apply, complete the full GloBE and Kenyan MTT calculations, including net income or loss, adjusted covered taxes, the substance-based income exclusion and any additional top-up tax.
- 06

Complete payment by the end of the fourth month after year-end and file the MTT return by the last day of the sixth month. Confirm separately whether the GIR will be filed locally or by the UPE or designated filing entity under the available filing relief.
- 07

Maintain an audit trail covering the scope assessment, safe harbour analysis, elections, calculations, payment, returns and information submitted to KRA

How KPMG can help

Pillar Two compliance requires consistent data, calculations and technical positions across jurisdictions. KPMG combines Kenyan tax experience with its global network of Pillar Two specialists to support an integrated approach to the Kenyan MTT and wider GloBE requirements.

KPMG can support clients with:

- scope and impact assessments, safe harbour testing and Kenyan MTT calculations;
- data-readiness reviews, compliance processes and supporting documentation;
- technology-enabled compliance through KPMG BEPS 2.0 Automation Technology (KBAT), including data collection, calculations, elections and reporting; and
- coordination with KPMG teams in other jurisdictions to support consistent GloBE, GIR and local compliance requirements.

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