

Tax Alert

Kenya Gazettes the Income Tax (Withholding Tax) Rules, 2026



A. Summary

This alert brings to your attention the gazettment of the Income Tax (Withholding Tax) Rules, 2026 through Legal Notice No. 167 of 2026, which came into effect on 28 August 2026.

In summary, the Rules:

- Establish a comprehensive administrative framework governing the deduction, declaration, payment and recovery of withholding tax;
- Introduce a formal mechanism for resolving disputes relating to the characterization of payments and withholding tax rates;
- Clarify the procedures for assessments, demand notices and recovery of withholding tax liabilities; and
- Reaffirm the application of withholding tax rates prescribed under the Income Tax Act and applicable Double Tax Agreements (DTAs).

Although the Rules do not introduce new withholding tax rates, they strengthen compliance and enforcement procedures and provide greater certainty regarding the obligations of withholding tax agents and taxpayers.

B. Background

Withholding tax remains one of the Kenya Revenue Authority's (KRA) primary collection mechanisms, requiring designated persons to deduct tax at source when making specified payments.

Historically, withholding tax obligations have been governed principally by Section 35 of the Income Tax Act, the Third Schedule to the Act and various administrative practices.

The gazettment of the Income Tax (Withholding Tax) Rules, 2026 introduces a consolidated procedural framework governing withholding tax administration, including compliance obligations, dispute resolution, assessments and enforcement.

The Rules came into force on 28 August 2026 and revoke the previous Income Tax (Withholding Tax) Rules.

C. What do the Rules Provide?

Deduction of withholding tax

The Rules require a person making a payment that is subject to withholding tax to deduct tax at the applicable rate prescribed under:

- Paragraphs 3 and 5 of Head B of the Third Schedule to the Income Tax Act; or
- An applicable DTA where Kenya has entered into a tax treaty with another jurisdiction.

The Rules therefore reaffirm the availability of treaty relief where the relevant conditions have been satisfied.

Filing of withholding tax returns

A person who deducts withholding tax is required to file a withholding tax return in the prescribed form.



Payment of withholding tax and issuance of withholding tax certificates

The Rules require withholding tax deducted to be remitted to the Commissioner and provide for the issuance of a withholding tax certificate upon payment of the tax.

Dispute resolution framework

The Rules introduce a formal dispute resolution mechanism where a payee disputes:

- The nature of a payment; or
- The withholding tax rate applied.

Under the framework:

- The payer must provide a written explanation of the withholding tax calculation;
- The payee may apply to the Commissioner requesting amendment or rejection of the calculation;
- The Commissioner may accept, reject or amend the calculation; and
- The Commissioner is required to communicate the decision within sixty days after receiving all relevant information.

The Rules also provide for refunds where excess withholding tax has been paid.

Assessments and enforcement

Where withholding tax has been deducted but not properly declared or remitted, the Commissioner may issue:

- Assessments;
- Additional assessments; or
- Demand notices, depending on the circumstances of the non-compliance.

The Rules further provide that recovery of unpaid withholding tax shall be undertaken in accordance with the Tax Procedures Act.

Changes in taxpayer circumstances

The Rules address situations involving:

- The death of an individual responsible for withholding tax obligations;
- Changes in the identity of a payer; and
- Successor obligations.

These provisions help ensure continuity of withholding tax compliance responsibilities.

D. Our Comments and Key Takeaways

The gazettement of the Income Tax (Withholding Tax) Rules, 2026 represents an important development in Kenya's withholding tax framework.

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Notably, the introduction of a formal dispute resolution mechanism provides taxpayers with a structured avenue for resolving disputes relating to income characterization, withholding tax rates and the application of treaty benefits.

This is particularly relevant given the increasing number of disputes involving cross-border payments, digital transactions, management fees, consultancy services and royalties.

The Rules also reinforce the importance of maintaining robust documentation to support withholding tax positions, particularly where taxpayers apply treaty rates or take positions on the characterization of payments.

From a practical perspective, taxpayers should review their withholding tax compliance frameworks to ensure that:

- Appropriate withholding tax rates are applied consistently;
- Treaty benefit claims are adequately supported;
- Withholding tax returns are filed accurately and on time;

- Tax deducted is remitted within the prescribed timelines; and
- Documentation relating to payment characterization is retained to support positions taken in the event of a dispute.

The Rules signal KRA's continued focus on strengthening withholding tax administration and are likely to form an important basis for future compliance reviews and audits.

KPMG is happy to assist with withholding tax health checks, treaty entitlement reviews, withholding tax compliance assessments, dispute management and engagements with the KRA on withholding tax matters.

If you have any questions, do not hesitate to reach out to us on taxandregulatory@kpmg.co.ke or contact cakora@kpmg.co.ke

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