Kenya
Tax Guide **2009**

KENYA

Currency: Shilling (KEC)	Dial Code: 254	Dial Code Out: 00

Member Firm

CITY	NAME	CONTACT INFORMATION
Nairobi	Diamond Jamal	20 4446616 9 Djamal.pkf@kisa.net

A. TAXES PAYABLE

FEDERAL TAXES AND LEVIES: Kenya is a one state regime and therefore there are no federal taxes.

COMPANY TAX: Company tax is based on computed tax profits as follows:

Turnover tax	30% of turnover (with effect from 1 January 2007 for turnover of up to Kshs 5,000,000)
Resident companies	30%
Non-resident companies	37.5%.

CAPITAL GAINS TAX: Not applicable as this tax is presently suspended in Kenya.

BRANCH PROFITS TAX: Branch of a foreign entity: 37.5%.

SALES TAXES/VALUE ADDED TAX (VAT): The tax rate is 16% and zero rated for exports.

FRINGE BENEFITS TAX: Generally, non-cash benefits are taxable on the employee based on the cost incurred by the employer. The cost is added to the emoluments for tax purposes.

LOCAL TAXES: Employment income is taxed on a withholding tax basis known as Pay As You Earn (PAYE).

OTHER TAXES

Land Rates: Land rates are based on the percentage of the site value.

National Social Security Fund (NSSIF): There are graduated rates to the maximum of Kshs 400 per employee per month (combined for employee and employer).

Single business licence: depending on the type of business this costs a minimum of Kshs 4,000 to a maximum of Kshs 100,000.

B. DETERMINATION OF TAXABLE INCOME

CAPITAL ALLOWANCES:

The rates for capital allowances are as follows:

	Rate
Wear and Tear:	
Tractors/heavy vehicles	37.5%
Computers	30%
Other motor vehicles, aircrafts	25%
Ships, plant, machinery, furniture and equipment	12.5%
Industrial Building Allowances:	
Factories	2.5%
Prescribed hotels	4%
Farm works	50% from 1 January 2007
Investment deductions eligible for building and machinery for manufacture	100%
Special Rate Runs from 2004 to 2008:	
Manufacturing under Bond – combined investment deduction	100%

	Rate
Wear and Tear:	
Shipping investment deduction	40% of cost of ship
Mining allowance (on capital expenditure or mining)	
Year 1	40%
Years 2–7	10%
Prescribed hotels	10% (from 1 January 2007)
Hostel or approved education building	10% (from 1 January 2007)

DEPRECIATION: This is an accounting expense not allowable for tax purposes but wear and tear allowances as shown above are given instead.

STOCK/INVENTORY: The cost of sales is deducted as allowable expenditure before arriving at taxable profits.

CAPITAL GAINS AND LOSSES: Gains are not taxable and losses are not allowable since the suspension of capital gains tax.

DIVIDENDS: Dividends are taxed on a withholding tax basis which is final tax. Expenses are therefore not allowable on the dividends income or any other income of the taxable person. Dividends are tax exempt for resident companies controlling more than 12.5% shareholding. Dividends received by financial institutions are exempt.

However, compensating tax (corporation tax) may arise if non-taxed income is distributed, e.g. capital gain or profits on capital allowances. It is worked out through an annual dividends tax account which traces the movement of dividends received or paid and taxes paid.

INTEREST DEDUCTIONS: Interest incurred wholly and exclusively in the production of income is allowable. However, where a company is controlled by a non-resident person together with four or fewer resident persons, the interest deductibility is restricted only to the extent that the total indebtedness of the company does not exceed three times the paid-up share capital and revenue reserves.

LOSSES: Tax losses in Kenya are carried forward perpetually to be allowed against future income. However, it must be allowed only on income from the specific sources. These sources are:

(a) income from renting or occupation of immovable property

(b) income from employment

(c) income from agriculture, horticulture, forestry, etc

(d) income from withdrawals from a registered pension/provident fund by employer

(e) business activities.

Losses are, however, not transferable from one entity to another.

FOREIGN SOURCED INCOME: Income that is not income accrued or derived from Kenya is not assessable in Kenya except:

(a) employment income for an employee who at the time of employment was a resident person in respect of any employment by him outside or inside Kenya

(b) business activities carried out across borders

(c) foreign bank branches' income on investments or trading abroad using locally generated income.

INCENTIVES: Capital deductions are as given under 'Capital allowances' above.

There are currently double taxation treaties with UK, India, Germany, Zambia, Norway, Sweden, Denmark and Canada.

A ten year tax holiday is available to certain designated enterprises that undertake activities consisting of the manufacture of goods for exports only (under the export processing zones). At the end of the tax holiday, a reduced rate of tax of 25% is available.

Tax exemptions apply for organisations undertaking charitable, medical, alleviation of poverty, and religious activities.

C. FOREIGN TAX RELIEF

Foreign tax relief is limited only to countries with double taxation relief.

D. CORPORATE GROUPS

Generally for tax purposes, corporation tax rate of 30% applies to all incorporated companies irrespective of groups in Kenya.

E. RELATED PARTY TRANSACTIONS

Related party transactions are allowable expenses if incurred wholly and exclusively in the production of income and taxed as income if earned or accrued in Kenya as business activities. Transfer pricing rules were brought into operation with effect from 1 July 2006.

F. WITHHOLDING TAX

The relevant rates are as follows:

	Non-Resident	Resident
Artists and entertainers	–	20%
Management fees	–	20%
Professional fees	5%	20%
Royalties	5%	20%
Dividends	5%	10%
Interest	15%	15%
Housing bond interest (HBI)	10%	15%
Two-year government bearer bonds interest	15%	15%
Other bearer bonds interest	25%	25%
Rents — land and buildings	–	30%
Others (except aircraft)	–	15%
Pensions/provident schemes	–	5%
Insurance commissions	10%	20%
Consultancy and agency (from 1 July 2003)	5%	20%
Contractual (from 1 July 2003)	3%	20%
Message transmission	–	5%

G. EXCHANGE CONTROL

The Foreign Exchange Control Act was repealed ten years ago and therefore no restrictions are now in place.

H. PERSONAL TAX

The tax rates for 2005–2007 are as follows:

Yearly Income (Kshs)	Rate
0 to 121,968	10%
121,969 to 236,880	15%
236,881 to 351,792	20%
351,793 to 446,704	25%
Over 446,704	30%

I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The withholding tax rates are as follows:

	United Kingdom	Germany Canada	Denmark Norway Sweden Zambia	India
	(%)	(%)	(%)	(%)
Management and professional fees	12.5	15	20	17.5
Royalties	15	15	20	20
Dividends	10	10	10	10
Interest	15	15	15	15
Pension and retirement annuities	5	5	5	5
Entertainment and sporting events	20	20	20	20
Promoting entertainment or sporting events	20	20	20	20
Rent – immovable property	30	30	30	30
Other than immovable property	15	15	15	15

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