Kenya

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Corporate - Significant developments

The Tax Laws Amendment Act, (TLAA) 2024 effected various corporate tax changes. These include a revised definition on what constitutes a royalty, introduction of minimum top-up tax, replacement of digital service tax (DST) with the significant economic presence (SEP) tax, and imposition of withholding tax (WHT) on payments to non-residents and residents in respect of supply of goods to a public entity at the rate of 5% and 0.5%, respectively.

Turnover tax

The rate of turnover tax has been increased from 1% to 3%. This is applicable to micro, small, and medium enterprises (MSMEs) if their business turnover is between 1 million and 25 million Kenya shillings (KES).

MSMEs earning below KES 1 million are exempt from turnover tax. However, MSMEs exempted from turnover tax will still be required to declare and file their corporate tax returns.

The Finance Act, 2023 has decreased the upper threshold in respect of the turnover tax from KES 50 million to KES 25 million.

Significant economic presence (SEP)

The Tax Laws (Amendment) Act, (TLAA) 2024 has repealed the DST, which was applicable at the rate of 1.5%, and replaced it with the SEP tax, which has an effective rate of 3%.

Further, whilst the Act exempts non-residents with an annual turnover of less than KES 5 million from SEP tax, it does not anticipate SEP to arise from either the number of users in Kenya or the level of sales in Kenya. As such, the SEP tax appears to be very similar to the DST.

Minimum top-up tax

The Tax Laws (Amendment) Act, (TLAA) 2024 introduced a domestic minimum top-up tax, allowing Kenya to impose an additional amount of tax on the profits of entities that are part of an in-scope multinational group. This ensures the effective tax rate on those profits is 15%.

The proposed domestic minimum top-up tax is derived from the Organisation for Economic Co-operation and Development's (OECD's) Pillar Two framework, which seeks to ensure an effective tax rate of at least 15% in every jurisdiction where an in-scope multinational group operates.

For the purposes of the Kenya Income Tax Act (ITA), an in-scope multinational is defined as a resident person or a person with a permanent establishment (PE) in Kenya who is a member of a multinational group with a consolidated annual turnover of at least 750 million euros (EUR) in the consolidated financial statements of the ultimate parent entity in at least two of the four years immediately preceding the tested year of income.

Proposed tax reforms

In 2018, the National Treasury of the Republic of Kenya released a draft Income Tax Bill (ITB) in efforts to overhaul the Income Tax Act (ITA), which was enacted in 1974. The ITA has undergone a number of piecemeal amendments that have, in some instances, resulted in inconsistencies and led to ambiguity in the legislation. The ITB is intended to do away with the confusion created by the previous piecemeal amendments, provide greater clarity, and make the legislation simple and easy to comprehend.

On 8 July 2022, the National Treasury developed a draft National Tax Policy for guiding tax administration and revenue collection. The policy sets out broad parameters on tax policy and related tax matters in Kenya, with the objectives of providing:

- policy guidance on the collection, enforcement, and administration of tax laws
- the basis for review and development of tax laws
- guidelines to stakeholders, including investors, on tax policy matters
- guiding principles for the Kenyan tax system, and
- a legal framework for granting tax incentives to various sectors of the economy.

Further on 23 November 2023, the National Treasury tabled a National Tax Policy to the Parliament. The overall objective of this Policy is to guide progressive development and administration of the Kenya tax system.

The National Tax Policy is intended to bring certainty in the Kenya tax regime and congruence between the economic and tax policy.

In September 2023, the Government of Kenya published the draft Medium-Term Revenue Strategy (MTRS) for the financial years from 2024/25 to 2026/27.

According to the MTRS for 2024/25 to 2026/27, tax expenditure in Kenya is estimated to be about 6% of gross domestic product (GDP), which is higher than the average of 5% for sub-Saharan Africa. The MTRS also noted a rise in the corporate tax revenue collection gap, which is attributed to low compliance and tax expenditures.

The MTRS outlines various tax policy and administrative measures to be implemented gradually over the strategy period, such as:

- Reviewing and rationalising exemptions and preferential rates on corporate income tax (CIT), personal income tax (PIT), value-added tax (VAT), excise duty, and customs duty.
- Developing a Tax Expenditure Governance Framework to guide the introduction, monitoring, evaluation, and reporting of tax expenditure and to improve transparency and accountability.
- Strengthening the capacity and coordination of the National Treasury, the Kenya Revenue Authority (KRA), and other stakeholders in tax expenditure management and analysis.
- Aligning the tax expenditure regime with the regional and international commitments and best practises, such as the East African Community (EAC) Common External Tariff and the OECD/G20 Base Erosion and Profit Shifting (BEPS) framework.

By implementing the above measures, the MTRS aims to raise the tax-revenue-to-GDP ratio from 13.5% in 2022/23 to 20% by 2026/27.

Other significant amendments in the Tax Laws (Amendment) Act (TLAA), 2024

The Act has exempted ’transfer of a business as a going concern‘ from VAT, which provides a relief to taxpayers pursuing business restructuring as they will not be required to charge VAT on the transaction.

The TLAA has also amended the ITA:

- to increase the tax-exempt threshold for non-cash benefits not prescribed elsewhere in the Act to KES 60,000 *per annum* from KES 36,000
- to exempt from tax the first KES 60,000 of the value of meals provided to an employee annually up from KES 48,000, and
- to increase the tax-free threshold for gratuity or similar payments received in respect of employment or services rendered and paid into a registered pension to KES 360,000 for each year of service up from KES 240,000 *per annum*, provided that the person was not eligible for pension contribution deductions during the period when such payment was accrued.

Corporate - Taxes on corporate income

Resident companies are taxable in Kenya on income accrued or derived from Kenya. Resident companies with business activities outside Kenya are also taxed on income derived from business activities outside of Kenya.

Non-resident companies are subject to Kenya corporate income tax (CIT) only on the trading profits attributable to a Kenyan PE.

The CIT rate for resident companies, including subsidiaries of foreign parent companies, is 30%.

The CIT rate for non-residents, including branches of foreign companies and PEs, is also 30%.

Special rates

There are special rates for certain resident and non-resident companies as set out below.

Entity	CIT rate (%)
Export processing zone (EPZ) enterprises:	
First ten years	0
Next ten years	25
Thereafter	30
Registered unit trusts/Collective investment schemes	Exempt (subject to conditions)
Companies listed on securities exchange	25 (first five years)
Special economic zone (SEZ) enterprises, developers, and operators	10 (first ten years); 15 (succeeding ten years)
Local motor vehicle assembly companies	15 (first five years); 15 (succeeding five years, subject to conditions)
Company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority	15 (first ten years from the year of commencement of its operations)
Company operating shipping businesses	15 (first ten years from the year of commencement of its operations)
Rates on gross income of non-residents derived from Kenya:	
Transmission of messages	5
Ownership or operation of ships and aircraft	2.5
Demurrage charges	2.5

Local income taxes

There are no county or provincial taxes on income, as all taxes are collected by the national government. However, county governments are empowered by the Constitution to impose property and entertainment taxes at the county level.

Corporate - Corporate residence

Kenya-incorporated companies are treated as Kenyan-tax resident. Additionally, companies incorporated overseas are also treated as Kenya resident if their 'management and control is exercised in Kenya in a particular year of income under consideration'. A company may also be declared a tax resident in Kenya pursuant to a declaration in a legal notice by the Cabinet Secretary for the National Treasury.

Permanent establishment (PE)

A business carried on in Kenya through a fixed place of business gives rise to a PE, as does a building site, or a construction or assembly project, that has existed for six months or more.

The definition of a PE is extended to include a dependent agent that habitually concludes contracts on behalf of others.

The Finance Act, 2023 expanded the definition of PE to include a service PE concept. The new definition also excludes certain activities that are preparatory and auxiliary in nature from creating a PE. In addition, the new definition of the fixed place of business PE lacks a threshold as to how long a business must be operating in Kenya to create a PE.

Corporate - Other taxes

Value-added tax (VAT)

VAT is a tax on value addition and is accounted for using the input-output mechanism. In Kenya, there are currently three rates of VAT: standard rated at 16%, zero-rated, and exempt.

VAT registration is required for persons making or expecting to make taxable supplies of over KES 5 million in a 12-month period. In determining the registration threshold, the sale of capital assets is excluded. A person making taxable supplies below the registration threshold may voluntarily apply for VAT registration upon meeting the set requirements. However, this VAT registration threshold does not apply to non-residents who supply services to Kenyans via an electronic network, the Internet, or a digital marketplace.

Input tax on a taxable supply (or importation) may be deducted from the tax payable by a registered person to the extent that the supply was acquired to make taxable supplies. Input tax is allowable for deduction within six months after the end of the tax period in which the supply or importation occurred. To deduct input tax incurred on taxable supplies, a taxpayer must possess the requisite documentation supporting the input tax deduction. With effect from 1 July 2023, there is an additional condition in order to secure input tax recovery. Apart from holding the requisite documentation for recovering input tax, the taxpayer must also ensure that the supplier has declared the respective sales invoice in a VAT return.

Taxable value is the consideration for the supply and includes any taxes (other than VAT), duties, levies, fees, and charges paid or payable on or by reason of the supply.

Effective 1 July 2023, taxpayers can seek refund of VAT paid on bad debts after a period of three years but within ten years from the date of supply. Furthermore, taxpayers are also eligible to claim refunds at any point in time where the customer has been placed under statutory management, such as appointment of an administrator, receiver, and liquidator.

The Tax Laws (Amendment) Act, 2024 (TLAA), effective from 27 December 2024, brought significant changes to the provisions in the VAT Act, including but not limited to:

- changing the time of supply of exported goods to when the certificate of export or relevant export documents are available
- amending the input apportionment formula by deleting the 90:10 input tax apportionment formula that allowed for full deduction where the exempt supplies were less than 10%, and
- introduction of a VAT exemption on 'transfer of a business as a going concern'.

VAT obligations for non-resident suppliers

Non-resident suppliers supplying electronically supplied services to Kenyans will need to adhere to The VAT (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023.

These regulations provide clarity on the nature of supplies subject to VAT, at the standard rate of 16%, when supplied electronically through an electronic network, the Internet, or a digital marketplace. A digital marketplace is defined as an online platform that enables users to sell goods or provide services to other users.

A non-resident person supplying such taxable services is required to register for VAT in Kenya if the supplies are made to a recipient in Kenya in both business-to-consumer (B2C) transactions from April 2021 and business-to-business (B2B) transactions from 1 July 2022.

Prior to enactment of the Finance Act, 2022 on 1 July 2022, the obligation to account for VAT on digital marketplace supplies for B2B supplies rested with the recipient in Kenya and was accounted for through the reverse-charge mechanism.

This person shall register for tax through a simplified tax registration framework and will declare taxes payable on supplies made on the digital marketplace by filing a monthly VAT return. In addition, any VAT due to the Commissioner shall be paid on or before the 20th day of the month following the end of the month in which the service was supplied.

These services include a wide variety of electronic services, such as downloadable digital content, e-books, subscription-based media, software programmes, cloud storage, distance teaching, and so on. For a full list of services that are included, please contact us.

Import (customs) duty

Import duty is levied on importation of goods under the provisions of the East African Community (EAC) Customs Management Act ('the Act'). Imported goods are generally subject to import duty at varied rates. With effect from 1 July 2022, the East African Community Common External Tariff (EAC CET) 2022 version introduced a four-band tariff with a minimum duty rate of 0%, rates of 10% and 25%, and a maximum rate of 35% in respect of all products imported into the East African Community.

The EAC Gazette Notice No. 18 of 2024 introduced amendments to the EAC CET increasing the duty rates of various articles, including items such as particle boards, un-denatured alcohol ethyl, bed linen, tarpaulins, and cans closed by soldering, which will attract a duty rate of 35%, up from 25%. Additionally, some of the subheadings within the EAC CET have been split to enable a more accurate classification of imported goods. The items affected include other vehicles with both spark ignition internal combustion piston and electric motors. The split has been effected to differentiate between 'un-assembled' and 'other', whereby 'un-assembled' will attract a 0% import duty and 'other' now attracts duty at the rate of 25%.

We further note that the EAC Gazette Notice provided a stay from payment of duty of certain products. This stay is applicable for a period of one year beginning 1 July 2024. Some sectors (e.g. metal and allied, textiles, shoes, diapers, and furniture manufacturers) continue to enjoy protection from competition occasioned by foreign imports reflecting Kenya’s objective to enhance local manufacturing.

Similar to the financial year 2023/24, Kenya has been granted a stay to apply lower duty rates on rice, refined cooking oil, and refined soya bean. Additional stays were granted for oils of tariff heading 1507, 1511, and 1512, which will be subject to duty rates of 25% or USD 500/MT instead of 35%.

In addition, enterprises that are established under the Special Economic Zones Act and the Export Processing Zones Act enjoy exemption from payment of import duty on importation of goods. Where raw materials that are not subject to 0% import duty are used to manufacture goods within the East African Community and for export outside the East African Community, one may apply for remission under the EAC duty remission scheme. Please note that one may be required to execute a bond as security for remitted taxes. Further, assemblers of motor vehicles and motorcycles, among others, enjoy import duty remission under the scheme.

Excise duty

Excise duty is imposed on the local manufacture, importation or local supply of certain commodities and services. Excisable commodities include bottled water, soft drinks, cigarettes, alcohol, fuels, and motor vehicles. Excisable services include telephone and Internet data services, fees charged for money transfer services, and other fees charged by financial institutions.

The Tax Laws Amendment Act, 2020 revised the Excise Duty Act, Cap 472 by amending the definition of ‘other fees’ earned by financial institutions to exclude other fees earned from non-licensed activities. This change reduced disputes with the tax authority on what ‘other fees’ should be subject to excise duty.

The Excise Duty Act defines the word ‘licence’ to mean the following:

- In the case of excisable services, ‘licence’ refers to the certificate of registration.

- In the case of excisable goods, ‘licence’ refers to the licence issued under section 17 of the Excise Duty Act.
- In the case of carrying out of any other activity in Kenya for which the Commissioner General for the KRA may impose a requirement for licence, ‘licence’ refers to the licence required under section 15(1)(e).

The Finance Act, 2021 re-introduced excise duty on betting and gaming at the rate of 7.5% of the amount wagered or staked, while the Finance Act, 2022 exempted horse racing.

The Finance Act, 2023 amended the excise duty rates for various excisable services, including the following:

- 20% to 15% for telephone and Internet data services.
- 20% to 15% for fees charged for money transfer services by banks, money transfer agencies, and other financial service providers.
- 12% to 15% for money transfers by cellular phone service providers and payment service providers.
- 15% for alcoholic beverages and gaming advertisements on television, print media, billboards, and radio stations.

Prior to the Finance Act, 2023, the Excise Duty Act contained a requirement for annual inflationary adjustment on excise duty rates. The provision on annual inflationary adjustment was deleted by the Finance Act, 2023, effective 1 July 2023.

The Finance Act, 2023 further provided clarity on offences relating to excise stamps and other markings.

The Tax Laws (Amendment) Act, 2024 (TLAA), effective from 27 December 2024, brought significant changes to the provisions in the Excise Duty Act, including but not limited to the following:

- Introducing a definition of a ’digital lender‘ to provide legislative clarity and formal recognition for digital lenders, ensuring they operate within a defined legal framework. A ’digital lender‘ is defined to mean ’a person holding a valid digital credit providers licence issued by the Central Bank of Kenya’.
- Introducing excise duty on excisable services offered by a non-resident through a digital platform.
- Amending the time frame for paying excise duty on alcoholic beverages. Prior to the change, excise duty had to be paid within 24 hours of removing the goods from the factory. The change extends the time frame to the fifth day of the following month after the transaction.
- Amended Part 1 of the First Schedule of the Excise Duty Act to exclude ‘fertilised eggs for incubation’ from the ambit of excise duty.
- Introducing excise duty on the following goods previously not subjected to this tax:

    - Imported electric transformers and parts of tariff codes 8504.10.00, 8504.21.00, 8504.22.00, 8504.23.00, 8504.31.00, 8504.32.00, 8504.34.00, and 8504.90.00 at the rate of 25%.
    - Imported ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing customs cisterns, urinals, and similar sanitary fixtures of tariff heading 69.10 at the rate of 35% of the customs value or KES 100 per kg.
    - Imported float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting, or non-reflecting layer, but not otherwise worked of tariff heading 70.05 at the rate of 35% of the customs value or KES 200 per kg.
    - Imported ceramic flags and paving, hearth, or wall tiles; unglazed ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics of tariff 69.07 at the rate of 35% of the customs value or KES 300 per kg.
    - Coal at the rate of 5% of the value or KES 27,000 per metric tonne.
- The TLAA increased the excise duty rates for various excisable services listed under Part II of the First Schedule to the Excise Duty Act, including the following:
    - 12.5% to 15% for betting.
    - 12.5% to 15% for gaming.
    - 12.5% to 15% for prize competition.
    - 12.5% to 15% for lottery (excluding charitable lotteries).
- The TLAA further amended Part III of the First Schedule to the Excise Duty Act to interpret fees charged by digital lenders to include “any fees, charges, or commissions charged by digital lenders relating to their licensed activities but does not include interest, preloan interest, post-loan interest, return on loan or any share of profit, or an insurance premium or premium based or related commissions specified in the insurance Act or regulations made thereunder”.

Stamp duty

Stamp duty is payable on transfer of properties, leases, and securities. The rates of stamp duty apply as specified in the Schedule to the Stamp Duty Act.

The rates of stamp duty are shown below:

Activity	Stamp duty rate
Transfer of immovable property:	
Urban	4%
Rural	2%

Activity	Stamp duty rate
Creation or increase of share capital	1%
Registration of a company (nominal share capital)	0%
Transfer of unquoted shares or marketable securities	1%
Transfer of quoted shares of marketable securities	Exempt
Transfer of houses constructed under affordable housing scheme	Exempt
Sukuk arrangements	Exempt
Registration of a debenture or mortgage:	
Collateral security	0.05%
Supplemental security	KES 20 per counter part
Lease:	
Period of three years and under	1% of annual rent
Period over three years	2% of annual rent

Capital gains tax (CGT)

Gains derived on the sale or transfer of property by an individual or company are subject to a final tax at the rate of 15%. The definition of 'property' is widely drawn and includes securities in Kenyan resident private companies (though a specific exemption from CGT exists for securities listed in Kenya).

The High Court has ruled that the Income Tax Act (ITA) cannot impose an obligation on a taxpayer to pay CGT on or before presenting a transfer instrument for registration as opposed to upon registration of the transfer instrument. The KRA has appealed the Court's ruling. No final decision is available at this date.

In addition, an exemption is granted where the transfer of property is triggered by a change in law, a government directive, internal restructuring within a group (with the exclusion of a transfer to a third party), or a transfer made in public interest (the latter being subject to the Cabinet Secretary's approval) from CGT.

The Finance Act, 2023 introduced a tax on gains from the sale of shares or comparable interests if, 365 days before the sale, more than 20% of their value directly or indirectly comes from immovable property in Kenya. This aims to subject such gains to taxation if they are significantly tied to Kenyan immovable property.

The Finance Act also amended the ITA to change the timing of CGT payment. Under the amendment, CGT will be paid at the earlier occurrence of either the vendor receiving the full purchase price or the registration of the transfer.

The Tax Laws (Amendment) Act, 2024 has reduced the CGT rate from 15% to 5% for transactions certified by Nairobi International Financial Centre Authority (NIFCA) under the third schedule. NIFCA must certify that a firm has invested at least KES 3 billion in at least one entity incorporated or registered in Kenya within a period of two years and the transfer of the investment is to be made after five years of the date of the investment.

Payroll taxes

Payroll taxes are administered through the Pay-As-You-Earn (PAYE) mechanism of deducting income tax from employment income (salaries, wages, bonuses, commissions, etc.). PAYE also applies to taxable non-cash benefits.

It is the employers' obligation to deduct and account for payroll taxes on a monthly basis.

The PAYE deducted thereof should be paid to the KRA by the 9th day of the following month.

The employer should submit a monthly PAYE return (can be filed online using the KRA's electronic platform, i-Tax). This return, known as form P10, declares the PAYE for a specific month.

The tax tables applicable to individuals are provided in the Taxes on personal income section of Kenya's Individual tax summary.

Employers' National Social Security Fund (NSSF) contributions

The National Social Security Fund Act No. 45 of 2013 ('the NSSF Act 2013' or 'the new Act') was assented in 2013 and came into force on 10 January 2014. However, its implementation was suspended almost immediately following a consolidated petition filed in 2014.

On 3 February 2023, the Court of Appeal upheld the provisions of the NSSF Act 2013, and NSSF confirmed through a press release issued on 9 February 2023 that the new Act was effective commencing February 2023.

The updated NSSF rates

The NSSF Act 2013 introduced enhanced NSSF contributions at the rate of 12% of an employee's pensionable earnings. This is made up of equal portions of 6% from the employee and 6% from the employer. Pensionable earnings have been defined under the Act as the lower of an employee's monthly wages and the upper earnings limit (UEL).

As per the Act, the lower earnings limit (LEL) and the UEL will be graduated for the first four years of implementation. For the first year beginning February 2023, the LEL was KES 6,000 while the UEL was KES 18,000. From February 2024, the LEL was increased to KES 7,000 while the UEL was revised to KES 36,000.

Effective February 2025, the LEL will increase to KES 8,000 while the UEL will be KES 72,000. The new contributions will be subject to a monthly upper limit (or cap) of KES 8,640 for employees earning above KES 72,000, equally split between the employee and the employer. This will be an increase from the maximum contribution of KES 4,320 in the second year of the implementation of the NSSF Act, 2013.

Tier I and Tier II contributions

The contributions to NSSF will therefore be classified into two categories:

- Tier I contributions: NSSF contributions relating to the earnings up to KES 8,000 (which has been defined as the LEL) will be a maximum of KES 960, comprising equal portions of employee and employer contributions, and will be credited by the NSSF to an account referred to as a Tier I account.
- Tier II contributions: NSSF contributions relating to the earnings above KES 8,000 and not exceeding KES 72,000 will be a maximum of KES 7,680, comprising equal portions of employee and employer contributions. These will be credited by the NSSF to an account referred to as a Tier II account.

Opt out for Tier II contributions

The Act provides that an employer may opt to pay the Tier II contributions into an approved 'contracted-out scheme' (i.e. occupational or private pension scheme that the employer participates in or intends to establish).

The application for contracting out should be submitted in writing to the Retirement Benefits Authority (RBA), accompanied by the prescribed forms and supporting documentation, at least 60 days before the opting out date.

Social Health Insurance Fund (SHIF)

The Social Health Insurance Act, 2024 (SHIA) replaces the National Insurance Fund (NHIF) with a universal registration and contribution system for all Kenyan residents, including provisions for vulnerable populations. It details matters concerning benefits, tariffs, empanelment, contracting, and claims management. The Social Health Insurance Tribunal Procedure Rules, 2024 provide for dispute resolution mechanisms, including alternative dispute mechanisms. The Social Health Insurance Regulations, 2024 establish and manage various health funds and outline registration, empanelment, and benefits. The Social Health Insurance (Amendment) Regulations, 2024 define specialised health care services and provide transition timelines from NHIF to the new system.

Payments of contributions and subsequent access to healthcare services commenced on 1 October 2024.

Households with income from salaried employment shall contribute 2.75% of their gross salary or wage to the SHIF for each month. It is the employer’s obligation to deduct and remit the employees’ contributions to the Social Health Authority (SHA) by the 9th day of the following month.

The Tax Laws (Amendment) Act, 2024 has amended section 15(2) of the Income Tax Act to include contributions made to the SHIF as allowable deductions.

Affordable Housing Levy (AHL)

Initially introduced in July 2023 under section 31B of the Employment Act, 2007 by the Finance Act, 2023, the AHL was nullified by the courts on 28 November 2023. Later, the levy was reintroduced through the Affordable Housing Act, 2024, effective March 2024.

According to this Act, employers are required to deduct and remit the AHL at the rate of:

- 1.5% of the employee's gross monthly salary for the employees, and
- 1.5% of the employee's gross monthly salary for the employer.

The levy must be remitted within nine working days after the end of the month in which payments are due. If the payment is delayed, a penalty of 3% of the unpaid amount will be imposed for each month.

Gross monthly salary constitutes basic salary and regular cash allowances. This includes housing, travel or commute, car allowances, and such regular cash payments, and excludes non-cash payments and irregular payments, such as leave allowance, bonus, gratuity, pension, severance pay, or any other terminal dues and benefits.

The AHL applies to both salaried and non-salaried individuals, requiring all persons who receive income or whose income is accrued in Kenya to remit 1.5% of their gross income as AHL.

Additionally, the TLAA has amended section 15(2) of the ITA to make AHL contributions by employees deductible for PAYE purposes, allowing employees to reduce their taxable income by the amount contributed towards AHL.

Business permit

Every person who carries on a business in Kenya is required to apply for a business permit from the relevant local authority. The business permit is usually based on the size of one's business and is renewable on an annual basis.

Tourism levy

The tourism levy is payable to the Tourism Fund by establishments dealing in tourism activities and services as listed in the Tourism Act at a rate of 2% of turnover.

National Industrial Training Levy (NITA) contributions

All employers are required to pay to the Directorate of Industrial Training a monthly levy of KES 50 per employee. The only exemption from NITA is new employers who registered their business after

23 December 2019 and have less than 100 employees. Such employers are exempted for a period of 12 months from the date of registration.

Employers are required to file and pay the NITA levy through the iTax system when submitting monthly PAYE returns. As such, the due date for NITA is the 9th day of the month following the payroll month. Failure to remit NITA on time attracts a penalty of 5% per month on the outstanding amounts on a pro-rata basis.

Railway Development Levy (RDL)

The Tax Laws (Amendment) Act (TLAA), 2024 has increased the RDL rate applicable on imports into Kenya from 1.5% to 2%.

The TLAA has also amended and added additional items to be exempted from RDL. The exempted items include goods of tariff headings 5407 (woven fabrics) and 6309 (worn clothing and other worn articles) imported as raw materials for manufacture of textile products in Kenya upon recommendation of the Cabinet Secretary responsible for investment, trade, and industry.

Import Declaration Fee (IDF)

The Finance Act, 2023 made amendments to the IDF charged on imports, reducing the rate of IDF from 3.5% to 2.5% for all imported goods. Additionally, it removed the provision that allowed a reduced rate of 1.5% for IDF on raw materials and intermediate products imported by manufacturers and inputs for affordable housing schemes. Further, the Act deleted the provision that allowed goods imported under the EAC Duty Remission Scheme to be subject to a reduced rate of 1.5% for IDF.

The Act amended and added additional items to be exempted from the IDF. The exempted items include aircraft spare parts, goods, inputs, and raw materials for companies operating under a SOFA with the government, denatured ethanol, BEV stoves, equipment, machinery, and motor vehicles for official use by the Kenya Defence Force and National Police Service. In addition, the Cabinet Secretary may exempt other goods in the public interest or to promote an investment, the value of which is KES 5 billion or more.

The Tax Laws (Amendment) Act, 2024 has also amended and added additional items to be exempted from IDF. The exempted items include goods of tariff headings 5407 (woven fabrics) and 6309 (worn clothing and other worn articles) imported as raw materials for manufacture of textile products in Kenya upon recommendation of the Cabinet Secretary responsible for investment, trade, and industry.

Export and investment promotion levy (EIPL)

The Finance Act, 2023 introduced EIPL, which is now chargeable at the rate of 10% and 17.5% of the customs value of certain specified imported products. Products subject to the export and investment promotion levy at 17.5% include cement clinker (tariff no. 2523.10.00) and items of iron and steel (tariff no. 7207.11.00, 7213.91.10, and 7213.91.90).

Articles of paper pulp, of paper, or of paperboard (tariff no. 4804.11.00, 4804.21.00, 4804.31.00, 4819.30.00, and 4819.40.00) will be subject to the export and investment promotion levy at 10%

The TLAA, 2024 introduced EIPL on the following goods: bleached sack kraft of tariff code 4804.29.00 at 10% of the customs value and bleached sack kraft of tariff code 4804.39.00 at 10% of the customs value.

Advance tax on motor vehicles

Advance tax is payable at varying annual rates depending on the motor vehicles and is creditable against any CIT payable for the year.

Fringe benefit tax (FBT)

The FBT is payable by an employer on interest-free or low-interest loans granted to employees, company directors, and their relatives. FBT is due, whether the employer is exempted from tax or not, at the resident CIT rate of 30% (with effect from January 2021). The benefit is the difference between actual interest charged and the interest computed using the Commissioner's prescribed rate published quarterly. The directors and employees are not personally taxed on the benefit.

Betting, lottery, and gaming taxes

The Finance Act, 2019 introduced a 20% excise duty on the amounts wagered or staked in betting activities.

Furthermore, under the Betting, Lotteries, and Gaming Act, there is an additional turnover tax on lottery and gaming at 15%.

The Finance Act, 2023 amended the Betting, Lotteries and Gaming Act to provide that taxes under sections 29A, 44A, 55A, and 59B will be collected following the procedures outlined in the Tax Procedures Act of 2015. This provision ensures that the collection of these specific taxes is carried out in accordance with the guidelines and regulations set forth in the Tax Procedures Act, promoting consistency and adherence to established tax collection practices.

Local government rent and rates

Rent and rates are levied annually on properties in Kenya, and the rateable value that is payable to the county government shall vary in each county based on various forms of ratings, such as area rate, agricultural rental value, or site value.

Corporate - Branch income

The profit of a PE is taxed at the branch income tax rate of 30%, but there is no further taxation on the distribution of branch profits. There are certain restrictions with respect to the tax deductibility of certain costs, such as royalties, interest, and management fees, paid to the head office. However, these payments are also not subject to WHT.

Corporate - Income determination

Inventory valuation

Inventory is stated at the lower of cost or net realisable value, with the exception of biological assets, whose value is prescribed by the Commissioner.

Capital gains

See Capital gains tax (CGT) in the Other taxes section for more information.

Dividend income

Kenya-source dividends paid to a Kenyan resident are taxable in Kenya at the rate of 5% unless the recipient is a Kenya resident company holding 12.5% or more of voting power of the company paying the dividend.

The WHT paid is a final tax. Dividends paid to non-residents and any overseas holding company attract 15% WHT.

Interest income

Interest income is generally included in the determination of taxable income unless expressly exempted for income tax.

Royalty income

Royalty income is generally included in the determination of taxable income and is subject to CIT at 30%. Where royalties paid to a Kenyan taxpayer attract Kenyan WHT, the WHT credit can be used to offset against the tax liability arising from the royalty income

Foreign income

In Kenya, companies are taxed on income accrued or derived from Kenya. Certain income such as royalty, interest, and management and professional fees, paid to non-residents are deemed to have accrued or derived from Kenya.

Corporate - Deductions

The general principle in Kenya is that, unless expressly provided otherwise, expenses are tax deductible if they are incurred wholly and exclusively to generate taxable income.

Depreciation and depletion

No deduction is allowed for accounting depreciation or impairment. However, capital allowances are permitted at varying rates (on a straight-line basis) for certain assets used for business purposes, including buildings and machinery used in manufacturing, industrial buildings and hotels, machinery and plant, agricultural works, and mining.

The capital/investment allowance rates are as follows:

Capital/Investment allowance	Rate
Capital expenditure on buildings:	
Hotel buildings	50% in first year of use and 25% per year in equal instalments
Building used for manufacture	
Hospital buildings	
Petroleum or gas storage facilities	
Educational buildings including student hostels	10% per year in equal instalments
Commercial building	
Capital expenditure on machinery:	
Machinery used for manufacture	50% in first year of use and 25% per year in equal instalments
Hospital equipment	
Ships or aircraft	
Machinery used to undertake exploration operations under a prospecting right	
Machinery used to undertake exploration operations under a mining right	

Capital/Investment allowance	Rate
Motor vehicle and heavy earth moving equipment	25% per year in equal instalments
Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines	
Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming	
Furniture and fittings	10% per year in equal instalments
Telecommunications equipment	
Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator	
Other machinery	
Farm works	50% in first year of use and 25% per year in equal instalments

No transition provisions have been included in the new Second Schedule. Transition provisions would provide guidance on the treatment of the tax written down balances that will be carried forward from previous years.

Goodwill

Cost of acquisition of goodwill and amortisation of goodwill are not deductible as they are capital in nature.

Start-up expenses

There is a specific provision allowing the deduction of certain start-up expenses, provided that the required conditions have been met.

Interest expenses

A deduction for interest is allowed only to the extent that the borrowings are used for the purpose of trade.

The Act limits the deduction of interest expenses to a maximum of 30% of earnings before interest, tax, depreciation, and amortisation (EBITDA) of the company or branch. The Finance Act, 2023 has amended changes to the interest restriction provisions. Interest on loans sourced from non-resident persons will be restricted in accordance with the interest restriction provisions, but interest on loans obtained from resident persons will be exempt from these restrictions. The interest restriction provisions are not applicable to:

- banks
- financial institutions licensed under the Banking Act
- micro and small enterprises registered under the Micro and Small Enterprises Act
- microfinance institutions licensed and non-deposit taking microfinance businesses under the Microfinance Act, 2006 or entities licensed under the Hire Purchase Act or non-deposit taking institutions involved in lending and leasing business
- companies undertaking the manufacture of human vaccines
- companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least KES 5 billion
- companies engaged in manufacturing whose cumulative investment is at least KES 5 billion, provided that the investment shall have been made outside Nairobi City County and Mombasa County
- holding companies that are regulated under the Capital Markets Act, and
- companies involved in the affordable housing scheme, subject to Cabinet Secretary's approval.

Further, the Finance Act, 2023 also introduced a provision allowing taxpayers to defer and carry forward restricted interest for up to three years. During this period, previously restricted interest will be deductible if the company's interest on loans from non-resident persons does not exceed 30% of EBITDA.

In addition, where a person does not meet the threshold set out under the interest restriction provisions, they will defer the realised foreign exchange loss and claim over a period not more than five years from the date the foreign exchange loss was realised.

Bad debts

Bad debts are deductible in the year in which the debt has become irrecoverable in accordance with detailed rules under the ITA for making this determination.

Charitable contributions

Donations to qualifying charities and for certain public works are deductible, subject to certain conditions.

With effect from 3 April 2017, the Finance Act, 2017 provides that expenditure incurred by a taxpayer on donations for the alleviation of distress during national disaster as declared by the President will be deductible expenses for the taxpayer when determining taxable income. Deductible donations will be those made to:

- the Kenya Red Cross
- county governments, or
- any other institution responsible for the management of national disasters to alleviate the effects of a national disaster declared by the President.

Fines and penalties

Generally, fines and penalties are not deductible as they are not considered to be expenses incurred for producing profits chargeable to tax.

Taxes

Kenyan income taxes are not deductible while computing income tax of a person. However, foreign income taxes incurred are generally deductible as an expense if tax credit relief is not available under a double tax treaty (DTT).

Net operating losses

Losses calculated under the tax rules may be carried forward against income from the same source indefinitely.

Payments to foreign affiliates

Transfer pricing rules apply to transactions with foreign affiliates (both companies and branches/PEs). Additionally, there are restrictions on the deductibility of expenses incurred outside of Kenya by non-residents with a Kenyan PE.

Corporate - Group taxation

Each company in a group is taxed as a separate entity in Kenya.

Transfer pricing

A company that has related-party transactions is required to ensure such transactions are at arm's-length. The company is therefore required to prepare transfer pricing documentation to justify the pricing arrangements. The Commissioner is allowed to specify conditions and procedures on the application of the methods for determining the arm's-length price and to adjust the prices if they do not conform to the arm's-length principle. The transfer pricing documentation should be prepared and submitted to the KRA upon request.

Country-by-country (CbC) reporting

The Finance Act, 2022 introduced rules for preparation and filing of CbC notification, CbC reports, as well as Master and Local Files by members of multinational enterprise (MNE) groups operating in Kenya.

The CbC rules are broadly aligned to the OECD's BEPS Action 13, dealing with transfer pricing documentation, which recommends a three-tiered approach consisting of a CbC report, Master File, and Local File in preparation of transfer pricing documentation as a measure to promote tax transparency by MNE groups.

The CbC filing requirements will apply to MNE groups with a gross turnover of more than KES 95 billion. The threshold is consistent with the threshold of EUR 750 million contained in the OECD's BEPS Action 13 report as it is the KES near equivalent to EUR 750 million as at April 2022.

The rules for preparing and filing CbC reports became effective from 1 July 2022 and apply to MNE groups with years of income ending after 1 July 2022.

In September 2022, Kenya signed on to the Multilateral Competent Authority Agreement on Exchange of County-by-Country Reports (commonly referred to as the CbCR MCAA). This framework facilitates automatic exchange of CbC reports. For the CbCR MCAA to become effective, individual jurisdictions, such as Kenya, are required to trigger bilateral exchange relationships. This allows members of the MNE group based in Kenya to be exempted from local filing of the CbC reports.

Currently, as part of the CbCR MCAA framework, there are 69 active bilateral exchange relationships between Kenya and other jurisdictions. This means that if the CbC report is filed by the parent company or another designated entity in any of the jurisdictions that are part of the CbCR MCAA framework and have activated exchange relationships with Kenya, the member of the MNE group based in Kenya will not be required to file the CbC reports locally.

Additionally, local entities within the CbC reporting threshold will be required to file a Master file and Local file annually within six months of the group's reporting year-end. These local entities will also need to file a CbC notification annually, by the last day of the group's year-end.

Interest deduction restriction (previously thin capitalisation)

See Interest expenses in the Deductions section.

Deemed interest

'Deemed interest' is applicable on interest-free borrowings received by foreign-controlled entities in Kenya. The 'deemed interest' is based on the Commissioner's prescribed rates.

WHT is due on the 'deemed interest'.

Controlled foreign companies (CFCs)

Kenya has no specialised rules regarding CFCs. However, entities that are managed and controlled in Kenya are considered resident entities.

There are restrictions on the deductibility of interest and foreign exchange losses of companies.

Corporate - Tax credits and incentives

Foreign tax credit

There is no tax credit for foreign tax paid on business income except as provided for by a DTT (if applicable) between Kenya and the other country. However, foreign tax paid may be deducted as an expense.

Investment deduction

The Finance Act, 2022 reintroduced the 150% investment deduction allowance to projects where the cumulative investment value for the preceding four years from the date the provision came into effect or the cumulative investment for the succeeding three years outside Nairobi County or Mombasa County is at least KES 2 billion.

Export processing zone (EPZ)

Companies located in an approved EPZ, principally to export goods, are taxed at a 0% CIT rate for ten years from commencement and at a rate of 25% for the next ten years.

Special economic zones (SEZs)

SEZ enterprises are not required to register for VAT. The supply of goods or taxable services to an SEZ is subject to VAT at 0% (zero rated). *See the Taxes on corporate income section for the CIT rates*.

Corporate - Withholding taxes

WHT is levied at varying rates (3% to 25%) on a range of payments to residents and non-residents. Resident WHT is either a final tax or creditable against CIT. Non-resident WHT is a final tax.

Payments	Resident WHT rate (%)	Non-resident WHT rate (%)
Dividend > 12.5% voting power	Exempt	15
Dividend < 12.5% voting power	5	15
Dividend paid by SEZ enterprises, developers, and operators licensed under the SEZ Act	Exempt	Exempt
Interest:		
Bearer instruments	25	25
Government bearer bonds (maturity ≥ 2 years)	15	15
Bearer bonds (maturity ≥ 10 years)	10	N/A
Bearer bond issued outside Kenya (maturity ≥ 2 years)	7.5	7.5
Other	15	15
Qualifying interest:		
Housing bonds	10	N/A
Bearer instruments	20	N/A
Other	15	N/A
Royalty	5	20
Winnings from gaming and betting	20	20
Management or professional fees	5	20
Consultancy fees - Citizen of EAC member states	5	15
Training (including incidental costs)	5	20
Rent/leasing:		
Immovable property	N/A	30
Others (other than immovable)	N/A	15

Payments	Resident WHT rate (%)	Non-resident WHT rate (%)
Pension/retirement annuity	Varied (1)	5
Sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services)		20 (2)
Insurance or reinsurance premiums		5 (3)
Contractual fees	3	20
Sale of property or shares in oil, mining, or mineral prospecting companies	10	20
Digital content creators	5	20
Sales promotion, marketing, and advertising services	5	20
Rental income collected by agents who have been appointed by the Commissioner	7.5	N/A
Royalties, interest, management fees, professional fees, training fees, consultancy fees, training fees, consultancy fees, agency fees, or contractual fees paid by an SEZ developer, operator, or enterprise, in the first ten years of its establishment, to a non-resident person	5	Exempt
Supply of goods to a public entity	0.5	5
Owning or operating a digital marketplace or platform, who makes or facilitates a payment in respect of digital content monetisation, property, or services	5	20

Notes

1. This will vary depending on the payments paid out.
2. For EAC citizens, the rate shall not apply to transportation of goods.
3. Shall not apply to insurance or reinsurance premiums paid for aviation that covers aircraft, cargo, and passengers.

Oil and gas sector WHT rates

WHT rates applicable on payments to non-residents in the oil and gas sector are shown in the table below:

Payments	Non-resident (oil and gas) WHT rate (%)
Dividends	10
Interest	15
Natural resource income	20
Management or professional fees	10

Double tax treaties (DTTs)

Lower rates may apply to non-residents where there is a DTT in force. The table below shows the maximum rates of tax that recipients in those countries with a DTT with Kenya can be charged on dividends, interest, royalties, and management and professional fees. The table only includes agreements that are currently in force.

Recipient	WHT (%)			
	Dividends	Interest	Royalties	Management/ Professional fee
Canada	15	15	15	15
Denmark	20	20 (1)	20	20
France	10	12	10	N/A (5)
Germany	15	15 (1)	15	15
India	10	10	10	10
Iran	5	10	10	N/A (5)
Norway	15	20 (1)	20	20
Qatar	5 (4)	10	10	N/A (5)
Seychelles	5	10	10	10
South Africa	10	10	10	N/A (5)
South Korea	10 (3)	12	10	N/A (5)

Recipient	WHT (%)			
	Dividends	Interest	Royalties	Management/ Professional fee
Sweden	15	15	20	20
United Arab Emirates	5	10	10	N/A (5)
United Kingdom	15	15 (1)	15	12.5
Zambia	0 (2)	0 (2)	0 (2)	20

Notes

1. Interest paid by the government and the Central Bank of Kenya is tax-exempt.
2. No Kenya tax is due if subject to tax in Zambia.
3. 8% if the beneficiary holds at least 25% of the capital of the company paying the dividends.
4. A rate of 10% is applicable where the beneficial owner is a company (other than a partnership) that directly or indirectly holds less than 10% of the capital of the company paying the dividends.
5. The treaties do not contain separate Articles on 'management or professional services'. Under the OECD model tax agreement guidelines, such income from such services should be taxed only in the country of residence of the recipient of the income unless the source country has taxing rights in accordance with the Article dealing with 'business profits' (i.e. where there is a PE in the other state). Despite the KRA taking the position that the 'management or professional fees' would fall under the Article on 'other income' and should therefore be subject to WHT at 20%, the High Court has confirmed that the management and professional fees are taxable as business profits as per the OECD model tax agreement guidelines.

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

Corporate - Tax administration

Taxable period

A company has discretion to determine its financial year-end, provided it is a 12-month period. However, any changes in this must be approved by the Commissioner of the KRA.

Tax returns

Resident companies and PEs of non-resident companies must file a self-assessment tax return annually. The return is accompanied by a tax computation and financial statements, amongst other schedules. The return is due within six months following a company's financial year-end.

Payment of tax

Instalment tax payments must be made during the year based on the lower of 110% of the previous year's liability or an estimate of the current year's liability. Instalment tax payments are due on the 20th day of the fourth, sixth, ninth, and twelfth month of a company's financial year.

Agricultural companies are required to pay estimated tax in two instalments of 75% and 25% during the year. Any balance of tax at the end of the year must be paid within four months of the financial year-end.

Payment of agency taxes

The tax withheld from payments must be paid by the 20th day of the month following the month in which the deduction is made.

Tax Procedures Act (TPA)

The TPA, which entered into force on 19 January 2016, aims to provide uniform procedures for consistency and efficiency in the administration of tax laws, facilitate tax compliance by taxpayers, and promote the effective and efficient collection of tax.

The TPA also harmonises and consolidates tax procedural rules. For example, the TPA provides that a taxpayer should keep records for five years. Previously, the different tax laws, such as the VAT Act 2013, Income Tax Act, and Excise Act, prescribed different timeframes that records should be kept by a taxpayer. Given that it is a relatively new piece of tax legislation, there are some inconsistencies when you mirror the TPA and other tax legislation, though we expect these inconsistencies to be addressed with time.

The Finance Act, 2023 introduced section 23A, which grants the Commissioner the authority to establish an electronic tax system for issuing tax invoices and recording stocks. Once implemented, all business enterprises, including residents and PEs of non-resident persons, will be required to use the electronic system to issue invoices and maintain records of their stocks.

The Tax Procedures (Amendment) Act, 2024 extended the tax amnesty initiative which refrains the Commissioner from recovering penalties, interest, or fines on tax debt if the principal tax is paid by 31 December 2023. The amnesty shall be on interest, penalties, or fines on the unpaid tax that have accrued up to the 31 December 2023. Taxpayers who have not paid the principal tax by this date can apply for amnesty on interest, penalties, or fines, provided they propose a payment plan and meet specific conditions by 30 June 2025.

The Tax Procedures (Amendment) Act, 2024 has introduced section 37F, which allows the Commissioner, with written approval from the Cabinet Secretary, to refrain from recovering unpaid taxes under specific conditions. These conditions include impossibility of recovery, public interest, undue difficulty or expense, hardship, or other reasons. Additionally, the Commissioner is required to publish a notice in the Gazette every four months, listing the taxpayers and the reasons for tax abandonment.

The Tax Appeal Tribunal Act

The Tax Appeal Tribunal Act, which entered into operation on 1 April 2015, establishes one tribunal that will hear appeals for all tax areas. Previously, income tax matters would be heard by the Local Committee whereas VAT matters would be heard by the Tax Tribunal.

Tax audit process

There is no prescribed audit process, as an audit can be triggered by various factors as determined by the KRA. Generally, tax audits should be carried out after every two to four years. The audit or inspection will commence with a request from the KRA for the taxpayer to make available any such records or information as may be required.

Statute of limitations

The tax authorities must issue an assessment before the expiry of five years from the date of filing the self-assessment by the taxpayer. The KRA may go back past five years where fraud is suspected. There is no time limit for completing tax audits. However, they are normally completed within a reasonable time, especially if there are no major disputes.

Topics of focus for tax authorities

The tax authorities are focused on detecting fraudulent behaviour and potential tax evasion by using risk-based approaches and by providing analytic capability and intelligence information to users for better decision making and revenue growth.

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