RSMEA Newlsetter

Income Tax (Minimum Top-Up Tax) Regulations, 2026

Introduction

Kenya has gazetted the Income Tax (Minimum Top-Up Tax) Regulations, 2026 through Legal Notice No. 189 of 2026, providing the detailed framework for the implementation of the Minimum Top-Up Tax (MTT) introduced under section 12G of the Income Tax Act. The Regulations were published on 18th September 2026 and apply to years of income commencing on or after 1st January 2025. The Regulations introduce detailed rules on:

- Determining whether a multinational group falls within the scope of MTT;
- Calculating net income or loss and adjusted covered taxes;
- Determining the effective tax rate (ETR);
- Computing the minimum top-up tax payable in Kenya;
- Applying substance-based income exclusions;
- Special rules for restructurings, joint ventures and minority-owned entities;
- Compliance and filing obligations; and
- Safe harbour and transitional provisions.



Who is within scope?

The Regulations apply to constituent entities of multinational groups whose consolidated annual revenue equals or exceeds EUR 750 million in at least two of the four preceding fiscal years.

It applies to:

- Kenyan subsidiaries of multinational groups;
- Permanent establishments located in Kenya;
- Certain joint ventures and joint venture subsidiaries; and
- Minority-owned constituent entities.

The revenue threshold is determined by reference to the consolidated financial statements of the MNE Group. The MTT regime applies to periods starting on 1st January 2025 onwards.

The regulations in 5 steps

Is the group within scope? 1

The Regulations apply to constituent entities that form part of an MNE Group with consolidated annual revenue of at least EUR 750 million.

Determine GloBE income 2

The starting point is the financial accounting income or loss in the financial statements. The Regulations then require various adjustments.

Determine covered taxes 3

Before calculating the Effective Tax Rate, constituent entities must identify all qualifying covered taxes.

Calculate Effective Tax Rate (ETR) 4

The ETR is calculated at the jurisdictional level and compared against the minimum rate of 15%.

Calculate the Top-up Tax 5

If ETR falls below 15%, the Top-Up Tax is determined:

- Calculate top-up percentage
- Apply SBIE
- Determine excess profit
- Compute top-up tax

Substance Based Income Exclusions (SBIE)

Components of the Exclusion	Transition Rates		Impact
– Eligible tangible assets – Eligible payroll costs	Payroll costs	Tangible assets	The exclusions reduce the amount of income subject to top-up tax.
	10%	8%	
	⬇ Gradually reduce over time ⬇		
	5%	5%	

Compliance timelines

Initial notification

Within 60 days of publication

Regulations published on 18th September, 2026

Deadline:
17th November, 2026

Note: A single designated Kenyan entity may notify for multiple covered persons in the same MNE Group

Payment of Top-Up tax

By end of the **4th month** after the year of income

Example for 31st December year-end:

30th April following year

Minimum Top-Up tax return

By last day of the **6th month** after the year of income

Example for 31st December year-end:

30th June following year

GloBE Information Return (GIR)

18 months after end of first year in scope; and
15 months after end of each subsequent year

Note: Local GIR filing may not be required where the ultimate parent entity or designated filing entity files in a jurisdiction with an information-exchange agreement with Kenya.

Computation

Where an entity subject to MTT in Kenya is required to compute the MTT using the formula:

MTT = (15% – Combined ETR) × Excess Profit + any additional top-up tax

The following variables must therefore be determined in arriving at the MTT amount payable by a covered person

- Adjusted Net Income
- Adjusted Net Covered Taxes
- Combined Effective Tax Rate (ETR)
- Excess Profits
- Substance Based Income Exclusion (SBIE)
- Additional Top-up Tax

The determination of the above variables is summarised as follows:

a) Adjusted net income/loss

The net income /loss is the financial accounting net income /loss of a covered person used in preparing the consolidated financial statements of the ultimate parent entity.

How it will be calculated:

- Do not remove intra-group transactions or apply purchase accounting adjustments
- Use the same accounting standards as the group (Kenyan standards if possible). If Kenyan standards can't be used, use another accepted accounting standard, provided that the information contained in the accounts is reliable and permanent differences (over EUR 1 million) resulting from the use of such accounts are adjusted to match the group's standard.

The following adjustments should then be made

Add back the following items:	Add back the following items:
▪ Net tax expense ▪ Loss from excluded equity items ▪ Gains from revaluation methods ▪ Gains from disposal of assets under restructuring rules ▪ Asymmetric foreign currency losses ▪ Policy-disallowed expenses ▪ Accrued Pension expense ▪ Prior period errors and changes in accounting principles ▪ Movement in insurance reserves linked to policyholder securities or excluded equity items. ▪ Any returns made by an insurance company to policyholders not recorded in the financials but reflected in changes in policyholder liabilities. – Certain intra-group financing expenses if: – The financing increases the company's expenses without a matching increase in taxable income for the other counterparty; – The counterparty is in a non-low-tax jurisdiction; and – The company's effective tax rate is below 15% (or would be without the expense)	▪ Excluded dividends received or accrued. ▪ Gains from excluded equity items. ▪ Losses from revaluation methods ▪ Loss from disposal of assets under restructuring rules ▪ Asymmetric foreign currency gains ▪ Amount charged to policyholders for taxes paid in respect to returns to them ▪ Amounts charged by an insurance company to policyholders to recover taxes paid on returns made to those policyholders 

Special considerations

Related party transactions

Must comply with the arm's length principle, with adjustments made to eliminate inconsistencies between the amounts recorded in the respective financial accounts of the related parties.

Permanent establishments

A PE's income or loss is calculated separately using its own financial accounts. A PE's loss may be deducted by the head office for MTT purposes if it is tax-deductible in the head office's jurisdiction and has not been used to offset income taxed in both jurisdictions.

Capital distributions from banks and insurance companies

Distributions paid on qualifying regulatory capital instruments are treated as expenses if they reduce equity, while distributions received are included in net income or loss if they increase equity.

International shipping income

Must comply with the arm's length principle, with adjustments made to eliminate inconsistencies between the amounts recorded in the respective financial accounts of the related parties.

Flow-Through Entities(FTEs)

A PE's income or loss is calculated separately using its own financial accounts. A PE's loss may be deducted by the head office for MTT purposes if it is tax-deductible in the head office's jurisdiction and has not been used to offset income taxed in both jurisdictions.

Election for a company in distress

Distributions paid on qualifying regulatory capital instruments are treated as expenses if they reduce equity, while distributions received are included in net income or loss if they increase equity.



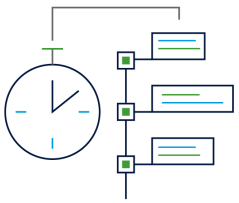
b) Adjusted Covered Taxes

Adjusted Covered Taxes (ACTs) include:

How it will be calculated:

- Current tax expense accrued in the financial accounts;
- Deferred tax expense (where a person has not made a net loss election); and
- Any changes in equity or other comprehensive income related to taxable amounts.

The following items are then added back:	The following items are excluded:
▪ Current tax accrued as an expense before taxation ▪ Net loss deferred tax assets recognized under the regulations ▪ Taxes paid for uncertain tax positions from prior years	▪ Tax expenses for excluded income, uncertain tax positions ▪ Taxes not expected to be paid within three years ▪ Taxes relating to the prior year of income ▪ Top-up taxes accrued under QDMTT Rules ▪ Taxes paid by insurance companies on return to policy holders ▪ Covered taxes exclude (Controlled Foreign Company) CFC taxes paid by a direct or indirect owner on their share of a covered person's income. ▪ Tax expenses recorded by the main entity (UPE) relating to the income or loss of the covered person's permanent establishment ▪ Tax expenses recorded by an owner on income earned by a tax-transparent or reverse hybrid entity. ▪ Tax expenses recorded by an owner of a covered person on distributions received from the covered person, other than withholding tax



The deferred tax expense recorded in the financial accounts shall be adjusted as follows:

- Exclude deferred tax expense for items excluded from net income or loss.
- Exclude disallowed or unclaimed accruals (unless paid).
- Exclude valuation or recognition adjustments with respect to a deferred tax asset.
- Exclude re-measurement due to tax rate changes.
- Exclude tax credits except substitute loss carry-forward deferred tax assets.
- Add recaptured deferred tax liabilities paid in the year.
- Reduce adjusted covered taxes by the amount of a deferred tax asset recognised for a current-year tax loss that was not previously recognised because the recognition criteria were not met.

Special rules

- Deferred tax expense for rates above 15% is capped at 15%.
- Deferred tax assets recorded below 15% may be adjusted to 15% if attributable to net income or loss
- Taxes recorded in the financial accounts of a tax-transparent entity relating to income or loss allocated to that owner as per the flow-through allocation requirements.
- No double counting of covered taxes
- Withholding taxes recorded by a covered person's direct owners on distributions received from the covered person are allocated to the distributing covered person.
- Covered taxes are allocated to the PE unless its income is taxed as part of the main entity, in which case the allocation is capped based on the PE's income mutiplied by the highest ordinary corporate tax rate in the main entity's jurisdiction.



Deferred tax liability

Deferred tax liability other than an excluded liability is recaptured if it is not reversed within the five years of income immediately following the year in which it first arose. The recaptured amount reduces covered taxes in the fifth preceding year, requiring the ETR and top-up tax for that year to be recalculated.

Deferred tax liabilities relating to the following items are excluded from recapture:

a. Cost recovery allowances on tangible assets.
b. Government licences or similar arrangements for the use of immovable property or exploitation of natural resources involving significant investment in tangible assets.
c. Research and development (R&D) expenses.
d. Decommissioning and remediation expenses.
e. Unrealised net gains from fair value accounting.
f. Net foreign exchange gains.
g. Insurance reserves and deferred acquisition costs.
h. Gains from the sale of tangible assets located in Kenya, reinvested in tangible assets located in Kenya.
i. Additional amounts arising from changes in accounting principles relating to the above items.

Other adjustments

a. Any change to a covered person's tax liability for a previous year, recorded in its accounts, is treated as an adjustment in the year the change occurs.
b. If the change reduces taxes already counted in a prior year, that year's ETR and top-up tax must be recalculated, and adjustments made to that year and any affected years. This also applies if Kenya's tax rate drops below 15% for any deferred tax expense previously claimed as a covered tax and not yet reversed.
c. If deferred tax expense was originally recorded at a rate below 15% and later paid at a higher rate, the prior year's covered taxes must be adjusted—but only up to the amount recalculated at 15%.
d. If a current tax expense included in covered taxes is not paid within three years, the ETR and top-up tax for that year must be recalculated by excluding the unpaid amount.
e. A deferred tax expense from a substitute loss carry-forward is included in the adjustment when it arises and when it reverses, but only if the related foreign tax credit offsets tax on income included in the covered person's income or loss.
f. The amount of a substitute loss carry-forward deferred tax asset is limited to the lesser of the foreign tax credit allowed to be carried forward or the tax loss multiplied by the applicable tax rate, and it must be recalculated at 15%.
g. Where negative adjusted covered taxes cause the difference between the minimum top-up tax rate and the combined effective tax rate to exceed 15 percentage points, the negative amount is excluded from the effective tax rate calculation and carried forward. In subsequent years with positive income and adjusted covered taxes, the remaining balance reduces adjusted covered taxes, but not below zero.

Net loss election

A covered person is considered to have made a net loss election if it has a net loss in a year of income and elects to create a deferred tax asset in respect of that loss.

When this election is made:

a. The deferred tax asset for that year is deemed to equal the net loss multiplied by 15%.
b. The deferred tax asset may be used in subsequent years with net income, limited to the lower of the net income multiplied by the minimum top-up tax rate or the available deferred tax asset.
c. The election ceases to apply if the covered person revokes the election in writing or the Commissioner rejects the election.
d. When the election ceases, any remaining net loss deferred tax asset is reduced to zero with effect from the first day of the first year of income in which the election ceases to apply.
e. The election must be lodged with the covered person's first GloBE Information Return and applies to all covered persons belonging to the same multinational group.



c) Combined Effective Tax Rate and MTT

The formula for computing the combined effective tax rate (ETR) is:

Combined ETR = (Sum of all adjusted covered taxes ÷ Sum of all net income or loss) × 100

If the combined ETR for the FY is less than 15%, an entity is required to pay MTT calculated as follows:

MTT = (15% – Combined ETR) × Excess Profit + any additional top-up tax

Where:

- Excess Profit = Net income or loss of the covered person for the year of income, reduced by the substance-based income exclusion (SBIE).
- SBIE is based on various percentages of employee costs and the net book value of tangible assets (adjusted annually as follows) as shown below:

Year beginning	Employee costs	Net book value (NBV) of tangible assets
2025	9.6%	7.6%
2026	9.4%	7.4%
2027	9.2%	7.2%
2028	9.0%	7.0%
2029	8.2%	6.6%
2030	7.4%	6.2%
2031	6.6%	5.8%
2032	5.8%	5.4%
2033 and subsequent years	5.0%	5.0%

Special Considerations for SBIE

- Eligible costs and assets: Includes eligible employee costs and the net book value (NBV) of tangible assets located in Kenya.
- Excluded property: Property held for sale, lease or investment is excluded from the tangible asset calculation.
- Location and time threshold: Employee costs are fully included if an employee works in Kenya for more than 50% of the time. Tangible assets are fully included if located in Kenya for more than 50% of the year. Otherwise, only a proportionate amount applies – based on the proportion of time in Kenya.
- Operating leases: A lessor may include the excess of its average NBV of leased assets over the lessee's right-of-use value, subject to the prescribed conditions.
- Permanent establishments: Employee costs and tangible assets are allocated to the PE and excluded from the main entity's computation. Where PE income is excluded from GloBE income or adjusted covered taxes, the corresponding costs and assets are excluded proportionately.
- Flow-through entities: Eligible costs and assets not allocated to owners are allocated based on ownership interests, provided they are located in Kenya. Other costs and assets are excluded.
- NBV calculation: This is based on the average NBV at the beginning and end of the year, excluding any increase in value due to revaluation and fair value adjustments and the incremental depreciation /amortisation attributable to such revaluations/fair value adjustments.
- International shipping: Employee costs and tangible assets attributable to international shipping income and qualified ancillary international shipping income are excluded.

Additional MTT

An additional MTT shall arise in a year of income if:

- The sum of the net income of all covered persons for that year is nil or results in a net loss;
- The sum of adjusted covered taxes for that year is less than zero;
- The sum of adjusted covered taxes is less than the expected amount, calculated as:

  Expected Adjusted Covered Taxes = Net Loss × 15%
- The amount of Additional MTT = Expected Adjusted Covered Taxes – Actual Adjusted Covered Taxes

Transitional Safe Harbours

Elections

A covered person may elect to apply the Transitional Country-by-Country Reporting (CbCR) Safe Harbour and related extensions or similar safe harbours until a year of income commencing on or after 1st July 2029. These include;

- **Simplified ETR Test**—where the simplified effective tax rate equals or exceeds the Transition Rate (16% for 2025, and 17% for 2026). The Simplified ETR Test uses data exclusively from an MNE Group's Qualified Country-by-Country (CbC) Report and its Qualified Financial Statements (QFS).
- **Routine Profits Test**-where profit before tax is equal or less than the Substance-based Income Exclusion (SBIE) for constituent entities resident in a jurisdiction under the CbCR.

Other elections

- **Non-material Constituent Entity simplified calculations**—covered person may elect to use simplified GloBE calculations for a constituent entity excluded from the group's consolidated financial statements solely because of its size or materiality. The simplified calculations use revenue and income tax information under the applicable Country-by-Country Reporting (CbCR) rules.
- An entity with revenue of €50 million or less may qualify. If its revenue exceeds €50 million, it may still qualify if its financial accounts meet the applicable accounting standards (e.g., IFRS, US GAAP) or an Authorised Financial Accounting Standard (e.g., local GAAP with minor adjustments). The group's consolidated financial statements must also be externally audited.

De Minimis Exclusion

Covered persons are not permitted to make the De Minimis Exclusion election under Article 5.5 of the GloBE Model Rules. .It allows a multinational group to exclude a country's income from the detailed Minimum Top-Up Tax (MTT) calculation if the group's operations in that country fall below specified thresholds. i.e

- Average annual GloBE revenue in the country is less than €10 million
- Average annual GloBE income is a loss or less than €1 million

MTT Compliance Requirements

Notification to the Commissioner	▪ An entity subject to these Regulations shall notify the Commissioner in writing, within 60 days from the date of publication of these Regulations; i.e by 17th November 2026 ▪ Where two or more covered persons are members of the same multinational group in Kenya, a single designated entity may be appointed to notify the Commissioner ▪ Where a person become a covered person after the publication of the regulations, the person shall notify the commissioner in writing at any time before the end of the persons year of income. ▪ A person who ceases to be a covered person for the purposes of these Regulations, shall notify the Commissioner within 6 months from the first day of the year of income. ▪ Any change to the information previously provided to the Commissioner must be reported in accordance with Section 9 of the Tax Procedures Act, which requires registered taxpayers to notify the Commissioner of any changes to their registration particulars within the prescribed timelines. This notification ensures the Commissioner is aware of all entities within the scope of the minimum top-up tax rules and can monitor compliance effectively

Payment of MTT and Record-Keeping	Payment of MTT and ATT must be made to the Commissioner by the end of the 4th month following the end of the year of income. Payment shall be in Kenya Shillings, converted from the presentation currency of the consolidated financial statements using the average foreign exchange rate for the year of income. Where the amount of top-up tax paid exceeds the actual tax payable, Section 47 of the Tax Procedures Act shall apply. This provision allows taxpayers to apply for a refund of overpaid tax, subject to the prescribed conditions and procedures. Record-keeping ▪ The person must keep all records necessary to determine and verify the MTT liability ▪ Records must be maintained in accordance with Section 23 of Tax Procedures Act, which requires taxpayers to maintain sufficient records to enable the determination of their tax liabilities and generally retain such records for a minimum period of five years.
Top-Up Tax Return and	A covered person shall: ▪ Submit a top-up tax return in accordance with Section 52B of the Income Tax Act, which requires taxpayers to submit a self-assessment return and account for any tax payable for the relevant year of income. ▪ File the return not later than the last day of the 6th month following the end of the year of income.
GloBE Information Return(GIR)	Each covered person shall file a GloBE information return for the year of income in the prescribed form and with such content and in the manner specified by the Commissioner taking into account the GloBE Model Rules on filing obligation Filing deadlines: ▪ 18 months after the end of the first year of income in which the covered person becomes subject to Section MTT; ▪ 15 months after the end of subsequent years of income A covered person shall not be required to file a GloBE information return where a GloBE Information Return has been filed by either — a. the ultimate parent entity of the covered person located in a jurisdiction that has entered into an agreement with Kenya; or b. the covered person's designated filing entity located in a jurisdiction that has entered into an agreement with Kenya The GloBE information return shall include: ▪ Common information about the multinational group (including tax identification numbers and jurisdictions); ▪ Organizational structure and controlling interests; ▪ Calculation of effective tax rate and top-up tax payable in Kenya; ▪ Any other information required by the Commissioner. GIRs may be amended in accordance with Section 31 of the Tax Procedures Act, which permits taxpayers to amend self-assessment returns within the prescribed statutory timelines.



Other key considerations

- Corporate Restructuring: Special rules apply to mergers, demergers, ownership transfers and GloBE reorganisations when determining group eligibility, income, covered taxes and asset values.
- Flow-Through Entities: Special rules determine how income, losses and taxes are treated where the UPE is a flow-through entity, including allocations to owners and permanent establishments.
- Minority-Owned Entities: ETR and top-up tax are calculated separately for qualifying minority-owned entities and subgroups.
- Joint Ventures: Qualifying joint ventures and their subsidiaries may be treated as a separate group for MTT purposes.
- Multi-Parented Groups: Special rules govern MTT treatment and compliance where two or more groups combine through stapled or dual-listed arrangements.
- Currency Conversion: Amounts must be converted using the prescribed accounting rules and exchange rates where required.

Our insights

The Income Tax (Minimum Top-Up Tax) Regulations, 2026 provide a comprehensive operational framework for the administration of Kenya's domestic Minimum Top-Up Tax . The final Regulations provide greater certainty on the calculation of qualifying income, adjusted covered taxes, effective tax rates and top-up tax liabilities, adoption of safe Harbours, while also introducing compliance and reporting obligations for in-scope multinational groups.

Notable updated compliance requirements include:

- Notifications to be made by covered persons to the commissioner in writing within 60 days of publication of the regulations
- MTT Returns to be made as per returns under Section 52B of the ITA (Final return and assessment)
- GIR Returns

These developments require the Kenya Revenue Authority (KRA) to promptly operationalise the compliance framework by issuing the necessary notification and return-filing mechanisms, just as it has done with the payments. This will enable covered persons to meet their notification and filing obligations effectively.

Ultimately, effective implementation will be dependent on both regulatory and business preparedness. Continued engagement between businesses, tax practitioners and the tax authorities will be valuable in addressing interpretative challenges and promoting consistent application of the rules, particularly in areas involving complex calculations and cross-border considerations. This will support the effective implementation of Kenya's MTT regime while maintaining alignment with the OECD/G20 Pillar Two framework .



Should you need further specific guidance on how the above changes impact your business, kindly feel free to contact any of the below or your usual RSM contact who will be always available to offer guidance and assistance that you need.

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