Kenya's International Tax Outlook 2026: Transfer Pricing and Digital Taxes

Navigating the expanding tax landscape for multinational enterprises (MNEs)

Kenya's international tax landscape has expanded considerably beyond transfer pricing to cover a broader range of international tax issues, including minimum top-up tax, permanent establishment risks, central management and control, tax on repatriated income, significant economic presence tax, and VAT on digital supplies.

For multinational enterprises (MNEs) operating in Kenya — whether through a physical presence or remotely serving customers in Kenya — this evolving landscape underscores the need for a proactive and forward-looking approach to tax compliance. It requires close monitoring of compliance requirements, their impact on business activities, and the robust documentation required to support tax positions.

1 — Transfer Pricing Compliance
Related party (controlled) transactions must be at arm's length prices and supported by evidence

2 — Country-by-Country (CbC) Reporting
Qualifying MNEs must comply with **3 levels** of CbC reporting in Kenya

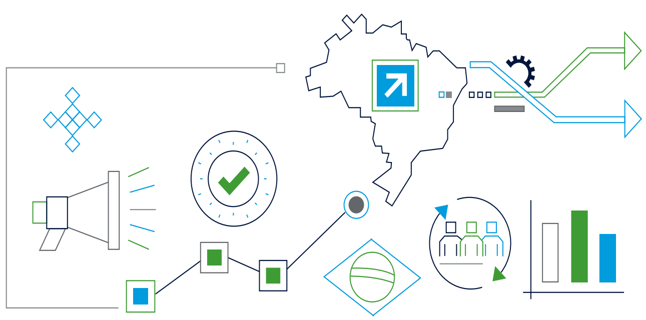
3 — Minimum Top-up Tax (MTT)
Qualifying MNEs must pay a minimum 15% effective tax rate in Kenya

4 — Tax on Repatriated Income (TRI)
TRI of 15% on deemed repatriated income for branches and PEs of foreign entities

5 — Digital Taxes
Value Added Tax (VAT) and Significant Economic Presence Tax (SEPT) apply to remote businesses serving Kenyan users/customers

6 — Virtual Assets
Excise duty on fees charged on virtual asset transactions by Virtual Asset Service Providers (VASPs)

Other key compliance issues
a) Permanent Establishment (PE)
b) Central Management and Control (CMC)
c) Economic Substance



Compliance Matrix – Transfer Pricing & Country-by-Country (CbC) Reporting

Kenya's transfer pricing and CbC reporting rules seek to ensure that profits are appropriately aligned with the functions, assets and risks undertaken in each jurisdiction and provide Kenya Revenue Authority (KRA) with greater visibility over the MNE's activities. Strong, consistent supporting evidence is critical to defending the Kenyan tax position.

Area	Legal Provision	Who/When it Applies	Key Requirements	Deadline	Key Risks
Transfer Pricing Documentation	**Section 18(3) of the Income Tax Act** requires transactions between related entities to be undertaken at arm's-length Section 18A extends the arm's-length principle to local transactions involving preferential tax regimes. The Income Tax (Transfer Pricing) Rules, 2006 provide the framework for determining the arm's-length price.	Kenyan taxpayers undertaking **controlled transactions** with related parties, particularly cross-border transactions.	▪ Identify and disclose related-party transactions ▪ Conduct **FAR and benchmarking analysis** and select the appropriate TP method. ▪ Prepare **Local File and Master File**, and supporting evidence ▪ Ensure pricing is consistent with actual conduct	Documentation should be **contemporaneous and in place before filing income tax returns**	✓ TP adjustment(s) leading to additional tax liability ✓ Weak evidence or inconsistent documentation can significantly increase audit risk. ✓ Increased audit risk where documentation is incomplete or there is unsupported assertions or narratives.
CbC Reporting	**Sections 18C–18F, Income Tax Act** establish Kenya's CbCR framework.	Kenyan constituent entities of qualifying **MNE groups**, generally where consolidated group revenue meets the applicable **€750 million threshold**. Kenyan parent company of an MNE Group	▪ Determine whether the MNE group meets the applicable **€750 million consolidated revenue threshold**. ▪ Establish the Kenyan entity's role — **Ultimate Parent Entity, Surrogate Parent Entity or Constituent Entity**. ▪ File the <u>**3 levels**</u> of CbC reporting if applicable	**CbC Notification** – before the end of the year of income of the MNE **Master File and Local File** — within 6 months after the end of year of income **CbC Reports** — within 12 months after the end of year of income	✓ Penalties for non-compliance. ✓ Incorrect/inconsistent CbC information can trigger broader KRA enquiries. ✓ Increased risk from inconsistencies between CbCR, TP documentation and tax returns.

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Compliance Matrix – Minimum Top-up Tax (MTT) and Tax on Repatriated Income (TRI)

a) Kenya introduced MTT under **Section 12G of the Income Tax Act**, through the **Tax Laws (Amendment) Act, 2024**, as part of the move towards ensuring that qualifying MNE groups are subject to a **minimum effective tax rate of 15%** in Kenya and to address risks arising from low-taxed profits and tax incentives. The provision became effective on **27 December 2024**.

b) Kenya introduced tax on repatriated income under **Section 7B of the Income Tax Act** through the **Finance Act, 2023**, to ensure that profits earned by Kenyan branches/PEs are subject to a tax equivalent to the taxation of profits distributed by Kenyan subsidiaries. The measure was introduced alongside the reduction of the branch corporation tax rate from **37.5% to 30%**, with the repatriation tax applying from **1 January 2024.**

Area	Legal Provision	Who/When it Applies	Key Requirements	Deadline	Key Risks
Minimum Top-up Tax (MTT)	**Section 12G, Income Tax Act** introduces a **15% minimum effective tax rate** for qualifying MNE groups.	MNE groups with **€750 million or more consolidated revenue** in at least two of the preceding four years, subject to statutory exclusions.	▪ Determine whether group is within scope. ▪ Calculate Kenya's ETR. ▪ Determine adjusted covered taxes and consider substance-based income exclusion and other applicable adjustments. ▪ Calculate and pay any top-up tax. ▪ Reconcile MTT computations to financial and tax records.	MTT is payable by the end of the fourth month following the end of the accounting period e.g *For a 31 December year-end: 30 April.*	✓ Additional MTT liability. ✓ Interest and applicable penalties for late payment/non-compliance. ✓ Tax incentives may produce an MTT exposure where the jurisdictional ETR falls below 15%. ✓ Requires coordination between tax and group Pillar Two teams.
Tax on Repatriated Income (TRI)	**Section 7B, Income Tax Act** imposes tax on repatriated income of a **non-resident carrying on business through a Kenyan PE/branch**.	Non-resident companies operating in Kenya through a **PE/branch**. Particularly relevant where there are significant changes in branch net assets or capital movements.	▪ Track changes in net assets. ▪ Calculate repatriated income using the statutory formula. ▪ Maintain supporting schedules for the repatriation calculation.	Incorporated into the **annual corporation tax compliance cycle**	✓ Incorrect determination of repatriated income ✓ Significant changes in branch net assets will affect the liability. ✓ Requires careful distinction between accounting movements and tax-relevant movements.

Compliance Matrix – Significant Economic Presence Tax (SEPT), VAT on Digital Supplies and Tax on Virtual Assets Transactions

Kenya has introduced specific tax measures to keep pace with the rapid growth of the digital economy and address activities that generate value from the Kenyan market without necessarily having a traditional physical presence.

- **Significant Economic Presence Tax (SEPT)** was introduced to tax non-resident digital businesses with a significant *deemed* economic presence in Kenya
- **VAT on digital supplies** was introduced to ensure that digital services consumed in Kenya are brought within the Value Added Tax (VAT) framework.
- The **taxation of virtual assets** seeks to bring income and transactions arising from the growing virtual asset economy within the tax net.

Area	Legal Provision	Who/When it Applies	Key Requirements	Deadline	Key Risks
Significant Economic Presence Tax (SPET)	**Section 12E, Income Tax Act** provides a tax regime for certain **non-resident persons providing services through a digital marketplace, electronically or through the internet** to users or customers based in Kenya	Non-resident businesses that **do not have a physical presence in Kenya** but derive income from users/customers in Kenya through a digital marketplace **electronically or through the internet.**, subject to the statutory conditions.	▪ Determine whether activities fall within the digital marketplace / SEP regime. ▪ Register under simplified framework ▪ Identify Kenyan users/customers and revenue attributable to them ▪ Tax is charged at an effective 3% of gross turnover ▪ Register, file returns and remit tax	Monthly return and payment of SEPT by the 20th day of the month following the sale	Penalties and interest for failure to register, file monthly SEPT return and pay the relevant tax liability
VAT on Digital Supplies	**VAT Act and VAT (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023** provide the framework for VAT on digital supplies.	Non-resident suppliers providing **taxable digital/electronic services to customers in Kenya**	▪ Determine whether supplies are taxable digital services. ▪ Establish **customer location / place of supply**. ▪ Register under the simplified framework ▪ Charge **16% VAT** on taxable supplies. ▪ File returns and remit VAT	Monthly VAT return and payment of VAT liability by the 20th day of the month following the sale	✓ Output VAT exposure where VAT has not been charged and remitted to KRA. ✓ Late filing/payment penalties and interest. ✓ Increasing ability of KRA to use platform/payment data to identify digital businesses.

Excise Duty on Virtual Asset Transactions	The **Excise Duty Act** imposes **10% excise duty on fees charged on virtual asset transactions by Virtual Asset Service Providers (VASPs)**. This was introduced through the **Finance Act, 2025**.	Applies to **VASPs charging fees on virtual asset transactions**. The duty is imposed on the **fees charged**	▪ Identify fees arising from virtual asset transactions. ▪ Determine the excisable value and account for 10% excise duty. ▪ Maintain transaction and fee records supporting the excise computation.	**Monthly excise duty compliance cycle**, subject to the applicable Excise Duty Act filing/payment requirements.	✓ Additional excise duty, interest and penalties for non-compliance
Digital Assets Tax (DAT)	**Section 12F, ITA** previously imposed a **3% tax on the transfer or exchange value of digital assets**. The provision was **repealed effective 1 July 2025**.	**No current DAT** applies to transactions from 1 July 2025. Historical transactions before the repeal remain relevant.	▪ Review transactions up to **30 June 2025** for historical DAT compliance. ▪ Do not assume that repeal of DAT makes digital-asset income tax-free.	**Historical DAT relates to transactions before 1 July 2025.**	✓ Historical DAT liabilities may still attract **tax, interest and penalties**. ✓ Tax treatment of current digital-asset activities remains an area of evolving policy and enforcement.

Other Related Considerations – PE, CMC and Economic Substance

Kenya is increasingly looking beyond traditional transfer pricing adjustments to assess whether the **substance of cross-border arrangements aligns with their legal and contractual form** including:

- Heightened attention to Permanent Establishment (PE) risk, where a foreign enterprise may have a taxable presence through its local activities
- Central Management and Control (CMC), which may affect the tax residence of an entity where key management decisions are effectively made in Kenya; and
- Economic substance, including whether the functions, assets, risks and decision-making supporting an arrangement genuinely exist where they are stated to occur.

Area	Legal Provision	Who/When it Applies	Key Requirements	Deadline	Key Risks
Permanent Establishment	**Section 2 of the Income Tax Act (ITA) defines a PE** as a fixed place of business through which the business of an enterprise is wholly or partly carried on	**A foreign entity may create a taxable presence** in Kenya where it sends/uses employees, agents or other personnel in Kenya to conduct part of its operations in Kenya e.g marketing	▪ Review activities performed by **employees, agents and representatives** in Kenya. ▪ Where a PE exists, determine and report the **profits attributable to the Kenyan PE.** ▪ Maintain evidence supporting the PE position.	**Ongoing assessment** – PE exposure should be monitored whenever the foreign entity changes its operating model, personnel or activities in Kenya.	✓ Unrecognised PE may result in **additional Kenyan corporation tax** on attributable profits. ✓ Potential VAT, WHT and other compliance implications. ✓ PE disputes may arise over whether activities in Kenya constitute a sufficient **business presence**.

Central Management & Control (CMC)	**Section 2 of the ITA** provides that a company can be Kenyan tax resident where the **management and control of its affairs is exercised in Kenya**, even if incorporated outside Kenya.	Particularly relevant to foreign-incorporated companies with directors, senior management or decision-making activities in Kenya.	▪ Identify where **strategic and commercial decisions** are actually made. ▪ Review board meetings, directors' locations, senior management activities and headquarters. ▪ Ensure board governance reflects **actual decision-making**, rather than merely formal arrangements. ▪ Maintain evidence of where decisions are made.	**Ongoing**; assessed for each relevant year of income.	✓ Foreign company may be treated as **Kenyan tax resident**. ✓ Potential taxation of worldwide income under Kenya's residence rules. ✓ Treaty residence issues (double taxation) may arise where the company is also resident elsewhere. ✓ **Substance inconsistent with legal form** increases risk.
Economic Substance	Kenya has no single standalone **"economic substance" provision**. However, substance is relevant through the **ITA, CMC/PE rules, TP rules and anti-avoidance principles**, and KRA may examine the actual activities, people, assets and risks supporting a tax position	Relevant to MNE with intercompany transactions	▪ Demonstrate that the entity has appropriate **people, functions, assets and decision-making capacity** for the activities it claims to perform. ▪ Ensure contractual arrangements reflect **actual conduct**. ▪ Consider whether profits allocated to an entity are consistent with the functions and risks it perform.	**Ongoing**; substance should be maintained and evidenced throughout the relevant period.	✓ KRA may challenge arrangements where **legal form and economic reality differ**. Potential TP adjustments, PE/CMC exposure or denial/challenge of tax positions. ✓ Increased scrutiny of **low-substance entities in low-tax jurisdictions**.

Quick management focus

Monthly	Annually	Ongoing
20th of the month following the month a digital supply/sale was made: ✓ SEP Tax filing and payment ✓ Filing and payment of VAT on digital supplies. ✓ Filing and payment of excise duty on VASP transaction fees.	✓ **By the end of the year of income:** Submit the CbCR Notification. ✓ **Within 4 months after year-end:** Pay and file the Minimum Top-Up Tax ✓ **Within 4 months after year-end:** Calculate and pay Tax on Repatriated Income for branches/PEs. ✓ **Before filing the corporate income tax return:** Ensure Transfer Pricing documentation is prepared and available to support the related-party (controlled) transactions reported in the return. ✓ **Within 6 months after year-end:** File the Master File and Local File. ✓ **Within 6 months after year-end:** File income tax return and TP disclosures ✓ **Within 12 months after year-end:** File the CbC Report.	✓ Review PE, CMC and economic substance positions. ✓ Maintain contemporaneous TP documentation

Kenya's tax environment is increasingly focused on substance, transparency and the effective taxation of economic activity in Kenya. Businesses should therefore look beyond basic compliance and ensure that their transfer pricing policies, tax filings, legal structures and actual business operations are consistently aligned and supported by robust evidence. With KRA's broader focus on digital taxation, cross-border arrangements and non-conventional TP risks, proactive review of these areas is critical to managing potential tax exposures and disputes.

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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