



Global vision
backed by local
knowledge

Doing Business in Kenya

JULY 2021 edition

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Foreword

Kenya is the leading economy in Eastern Africa. Its strategic location coupled with a well-developed business infrastructure makes it a natural choice for investors. Many regional and international organisations have designated Kenya as their regional hub. Kenya is located on the eastern part of the African continent and is bordered by Uganda, Tanzania, Sudan, Southern Sudan, Ethiopia and Somalia.

Nairobi is a major transport hub for Eastern Africa with Jomo Kenyatta International Airport (JKIA) acting as the nucleus of regional air transport. The airport has connectivity to key African, European, Asian and Middle Eastern cities. In the near future, there is a strong possibility to increase this connectivity to key cities in Northern America. Mombasa, the main principal seaport of Kenya, serves as a major distribution hub for the landlocked neighbouring countries.

Investing in Kenya provides access to the larger regional markets of the East African Community (EAC) which has a population of over 177 million and a combined Gross Domestic Product (GDP) of US\$ 193.7 billion, and the Common Market for Eastern and Southern Africa (COMESA) with a population of over 560 million and a combined GDP of US\$ 768 billion.

RSM Eastern Africa has prepared this publication for use by its clients, business associates, partners and staff. The guide provides a comprehensive coverage of the key aspects of setting up and running businesses in Kenya including types of business entities, taxation, employment laws, accounting, listing rules and investing in Kenya.

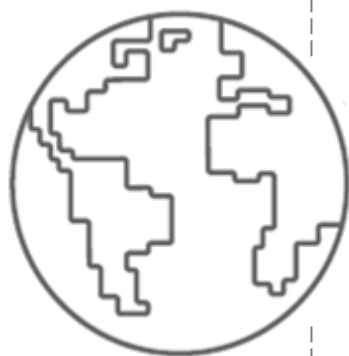
This document is designed to provide general information to those contemplating investing in Kenya. We therefore advise you to consult RSM Eastern Africa offices listed on the last page before taking further action.

The data provided reflects current information at the publication date which is subject to change. Whilst every care has been exercised in ensuring the accuracy and completeness of the information, RSM Eastern Africa, RSM International and staff involved in the preparation and review of this booklet will not accept any liability for any errors or omissions contained herein whether caused by negligence or otherwise; or for any loss however caused or sustained by anyone who acts or refrains from acting as a result of placing reliance on the contents of this booklet. The booklet and the information therein is intended for information purposes only, and should not be used as a basis of decision making without seeking current and independent legal and professional advice.

ABOUT RSM – YOUR GLOBAL NETWORK

Our commitment to our clients is that we will strive to truly understand you, your strategies and your aspirations and endeavour to be considered the adviser of choice to your business. By sharing the ideas and insight of our most senior professionals, we bring our expert local and global knowledge and resources to your environment, so you feel understood and empowered to move forward with confidence.

It is our strong, collaborative approach that differentiates RSM member firms. This is the Power of Being Understood. This is the RSM experience.



- A world leading provider of audit, tax and consulting services to entrepreneurial growth-focused organisations globally
- Firms in over 120 countries and are in each of the top 40 major business centres throughout the world
- 48,000 people in over 820 offices covering Africa, Asia Pacific, Europe and the Americas

RSM's International network was named the 'Global Accounting Network of the Year – 2017' by the International Accounting Bulletin. This prestigious award given annually to one of the global accounting networks was given to RSM to recognise the efforts made by it in expanding its global footprint and brand awareness without compromising the quality of its services.

RSM International is a member of the Forum of Firms. The objective of the Forum of Firms is to promote consistent and high quality standards of financial and auditing practices worldwide.

RSM is the brand used by a network of independent accounting and advisory firms, each of which practises in its own right. RSM International Limited does not itself provide any accounting and advisory services.



EXPERIENCE THE POWER OF BEING UNDERSTOOD

At RSM, we deliver **The Power of Being Understood** to our clients, colleagues and the community.

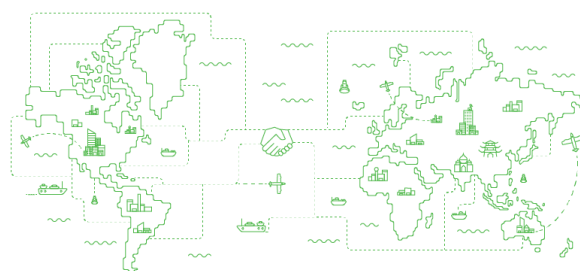
The business world is evolving rapidly. Through advances in technology, communications and infrastructure, business barriers are disappearing and each day, we become ever more global.

In this fast-paced environment, you need an adviser that thinks ahead and rapidly responds to your changing needs. At RSM, we build strong relationships based on a deep **understanding** of what matters most to our clients.

It is our strong **collaborative approach** that differentiates us. We will strive to truly understand you, your strategies and your aspirations and endeavour to be considered the adviser of choice to your business. By sharing the **ideas and insights** of our most senior professionals, we bring our expert local and global knowledge and resources to your environment, so you feel understood and empowered to move forward with confidence.

This is the **POWER OF BEING UNDERSTOOD**. This is the RSM experience and our commitment to you.

RSM INTERNATIONAL



WHAT DOES RSM STAND FOR?

- In 1964, an association, what we now know as RSM International, born
- Three companies form an alliance LHBD – Lasser, Harmood Banner and Dunwoody
- In 1993, the network was renamed RSM International in a meeting between Lawrence Robson (Robson Rhodes), Edouard Salustro (Salustro Reydel) and Ira McGladrey (McGladrey)
- October 2015 – Unified global name, brand and network under the name RSM

OUR PURPOSE AND VALUES



PURPOSE

- At RSM, we deliver The Power of Being Understood to our clients, colleagues and the community



DISTINGUISHING BELIEFS

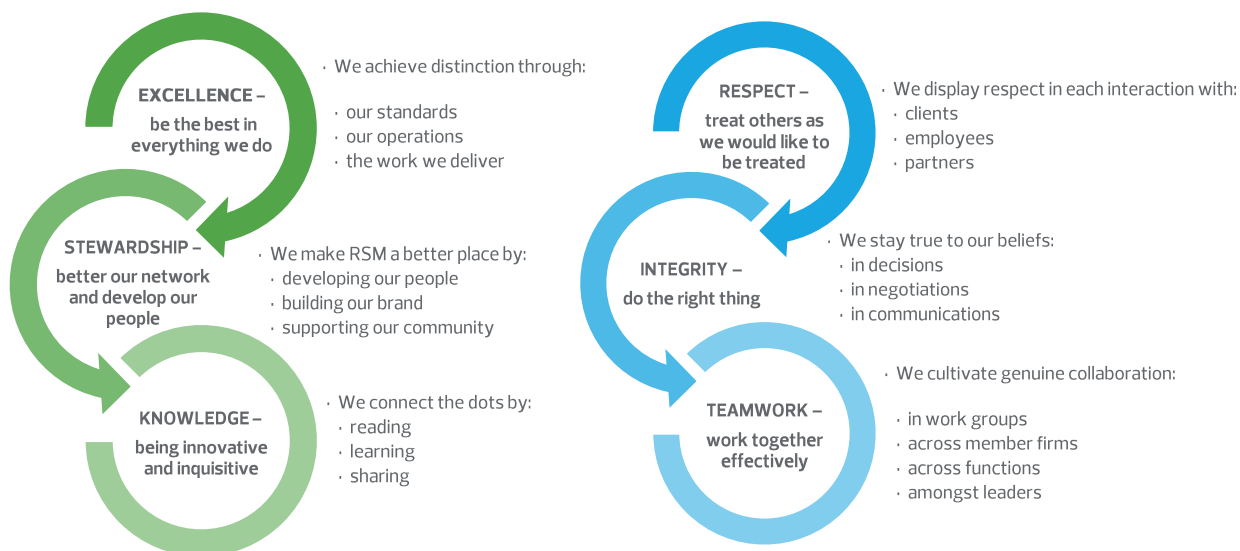
- Collaboration
- Understanding
- Ideas and Insight



OUR PROMISE

- Get it right first time
- Guaranteed delivery on time and scope
- Leadership accessibility

Core Values



RSM IN EASTERN AFRICA

4
OFFICES

10
PARTNERS/DIRECTORS

192
MINDS

1

GENERAL

INTRODUCTION

Kenya lies on both sides of the equator on the eastern coast of Africa. The country's port of Mombasa serves most of the Eastern and Central African landlocked countries, including Burundi, Ethiopia, parts of Northern Tanzania, Rwanda, Sudan, Southern Sudan and Uganda. Kenya's major trading partners are the member states of the EAC, COMESA and the European Union (EU) and the countries of Japan, China, the United Arab Emirates (UAE) and the United States. It is the largest single exporter to the EAC and COMESA.

Geographically, Kenya is well placed to be the financial and air transport hub of the region, making the country an ideal investment destination for investors targeting regional markets. The country's strategic location provides easy access to the EAC which has a population of about 177 million people and a combined GDP of US\$ 193.7 billion, and COMESA with a population of over 560 million and a combined GDP of US\$ 768 billion.

Kenya occupies an area of 591,971 square kilometers. Agriculture is the dominant sector of the economy. Horticulture, agro-processing, fishing and livestock hold substantial potential for further development, while natural attractions such as mountains, lakes, rivers and game parks, combined with a climate that ranges from the tropical to temperate offer tremendous opportunities for tourism. Kenya has some of the best natural game parks, white sandy beaches, Mount Kenya and various lakes that make it a one-stop tourist destination for persons wanting to enjoy the best of what Africa has to offer.

On the political front, Kenya is a multiparty state. The new Constitution of Kenya was promulgated on 27th August 2010, and provides a structure for a Government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law. The Constitution in its preamble recognises that the people of Kenya are committed to nurturing and protecting the well-being of the individual, the family, communities and the nation.

POPULATION AND LANGUAGE

The population of Kenya is estimated at 47.6 million in 2019, with approximately 28% living in the urban areas. By 2025, the projected population of the country is expected to be 54 million. Kenya's population consists of more than 70 different ethnic groups with different languages and cultures. The country boasts a multinational population of Africans, Europeans, Asians, Arabs and Americans among others. The Constitution of Kenya guarantees freedom of religion and worship, and there is no official state religion. The main religions practised in Kenya are Christianity (Roman Catholic, Protestants and Seventh Day Adventists) and Islam.

The national language of Kenya is Kiswahili, a grammatically Bantu language. The official languages are Kiswahili and English. English is the business language, and the majority of contracts and accounting records are maintained in English.

FOREIGN RELATIONS

Kenya is a signatory to bilateral, regional and international trade agreements that aim at facilitating and increasing trade. The agreements provide certain preferential treatment that investors benefit from when doing business in Kenya. Trade agreements where Kenya is a signatory include Regional Trade Agreements (EAC and COMESA), Non-Reciprocal Market Access Arrangements (The African Growth and Opportunity Act (AGOA)), ACP/EU Cotonou Partnership Agreement and Generalised System of Preferences (GSP), and has Bilateral Trade Agreements with a number of other countries, including China, India Netherlands, Pakistan, and South Korea. Kenya has been a World Trade Organisation member since 1st January 1995 and a member of General Council of Tariffs and Trade since 5th February 1964.

BUSINESS INFRASTRUCTURE

POWER AND ENERGY

The largest share of Kenya's electricity supply comes from five hydroelectric power generating stations at dams constructed along the upper Tana River. Kenya has total installed capacity of 2,819 MW. Kenya's commercial sector depends heavily on oil for its energy needs, which has serious foreign exchange implications. The sector provides for opportunities especially Public Private Partnerships (PPP) in the areas of electricity generation and alternate sources of energy both for commercial and domestic consumers. Kenya has seen one of the fastest increases in electrification rates within sub-Saharan Africa since 2013: by 2018, 75% of the population had access. Kenya aims to reach full access by 2022; the grid would be the principal least-cost solution for the majority of the population (mainly in the south) still lacking access.

Lower global crude oil production and higher inventories levels led to a reduction in international oil prices in 2020, leading to murdan crude prices to hit a low of US\$ 17.66 per barrel. Kenya saved KShs 121 billion (US\$ 1.1 billion) in foreign exchange. Kenya's oil imports represented approximately 20% of all imports, down from 33% in 2019.

TELECOMMUNICATION

In the last decade, Kenya has undergone a transformation in the Information Communication and Technology (ICT) sector which has had a profound impact on Kenya's social and economic structures. ICT has increasingly become an important enabler of economic growth. Further, the Government has continued to focus on the implementation of e-government to enhance the uptake of ICT in its operations for effective and efficient delivery of services to its citizens. The sustained uptake of ICTs in the country is expected to continue supporting economic growth and modernisation as well as enabling optimisation of production in every sector of the economy. The last 8 years has seen the landing of 5 under-sea fibre optic cables. This is a significant move for a country which up to early 2009, relied solely on satellite communication for connectivity.

The National Optic Fibre Backbone (NOFBI) is a project aimed at ensuring connectivity in all the 47 counties of Kenya. The implementation of this project aims to ease communication across counties as well as improve government service delivery to the citizens such as application of national identity cards, passports and registration of birth and death certificates. The project is being implemented in 2 phases: NOFBI Phase 1 and NOFBI Phase 2.

Phase 1 of the project was completed in 2009 and established a National Optic Fibre Backbone Infrastructure with access points in most of the district headquarters and some border towns. Fibre backbone passes through 58 towns in 35 counties across Kenya with 4,300 km cable.

The construction of NOFBI Phase 2 began in September 2014. To date 1,200 km of the 1,600 km civil works have been completed and 900 km of fibre has been laid in the backbone section.

The ICT sector in Kenya has influenced global trends by pioneering products like mobile banking and mobile money transfer. With three players in the mobile communication sector, the number of mobile subscribers in Kenya has exceeded 39 million. With the proposed development of an ICT and a financial services centre on a 2,000 hectare development in Konza (60 kilometres from Nairobi), the Government of Kenya has created a vision to develop Konza into one of the most successful cities in Africa, competing economically and culturally with the best cities in the world. This development offers significant opportunities to global players in the ICT, Business Process Outsourcing (BPO), financial services and providers of support to these sectors.

In January 2020, Kenya had 23 million internet users in Kenya, up 3.2 million from 2019. Internet penetration stood at 43% in January 2020. There were 52 million mobile connections in January 2020 (98% of the total population), up 4.2 million from 2019.

ROAD TRANSPORT

The country's transport sector, and in particular the roads sub-sector, plays a key role in facilitating the marketing of agricultural produce, transportation of cargo, development of industries and import-export trade. Roads are also critical in facilitating the provision of social services in health and education.

Currently, Kenya has a road network of 178,000 km out of which approximately 64,000 is classified. The classified road network has increased from 41,800 km at independence, translating to a rate of approximately 600 km per annum. Since independence, paved road network has grown from 1,811 km to 9,273 km.

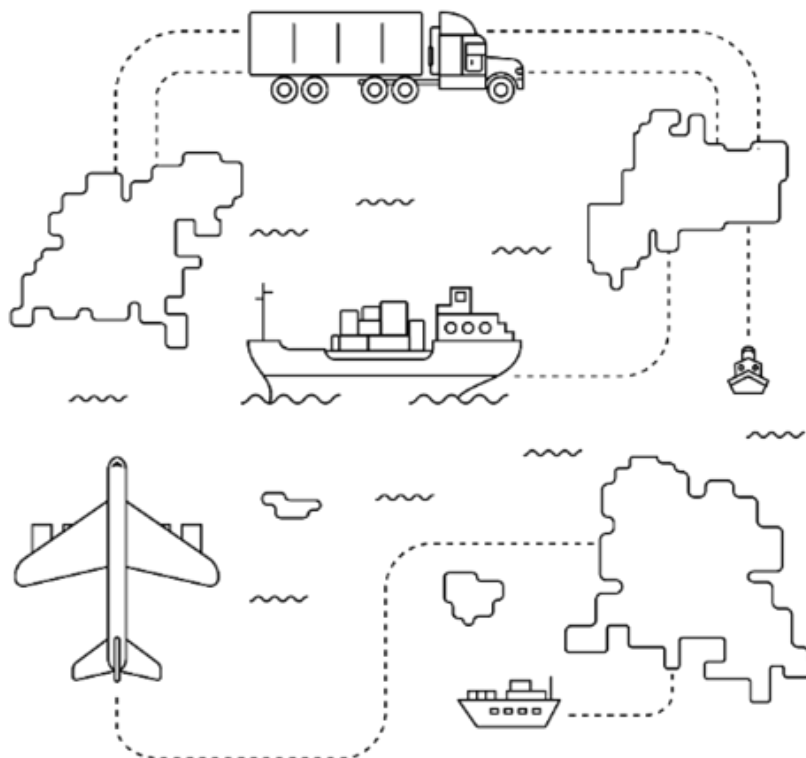
In order to support the country's development objectives, the Government embarked on a programme of upgrading the roads to bitumen standards and improving rural roads to gravel standards. The speedy and timely rehabilitation of the country's road network is one of the goals outlined in Vision 2030.

It is presently estimated that about 70% (44,100 km) of the classified road network is in good condition and is maintainable while the remaining 30% (18,900 km) requires rehabilitation or reconstruction.

AIR TRANSPORT

Kenya has a number of airlines that offer safe and efficient domestic flights between the major cities and towns including Nairobi, Mombasa, Kisumu, Eldoret, Malindi and Kakamega. Commercial and charter flights are also available to the other smaller towns including northern Kenya and game parks. Kenya air travel is convenient and flight times between the major cities are approximately an hour.

Kenya has four international airports namely JKIA in Nairobi, Moi International Airport in Mombasa, Eldoret International Airport in Eldoret and Kisumu International Airport in Kisumu. Nairobi is a popular East and Central Africa air-traffic hub as it directly connects most major cities in this part of Africa with cities in Africa, Europe, Asia, Middle East and various Indian Ocean Islands. The national airline, Kenya Airways, with its strategic partner KLM, has developed flight schedules with convenient timings facilitating business travel. In the last few years, JKIA has seen the entry of several modern transit sheds increasing its annual cargo capacity to 1.2 million tonnes.



VISION 2030 AND THE ECONOMY

Kenya is taking a variety of steps to creating an enabling environment for both foreign and domestic investments. This is in line with the Government's Vision 2030.

The overarching vision under Vision 2030 is to make Kenya "a globally competitive and prosperous nation with a high quality of life by 2030".

Underlying the vision are 3 pillars, namely:

- **Economic:** To maintain a sustained economic growth of 10% p.a. over the next 25 years.
- **Social:** To create a just and cohesive society enjoying equitable social development in a clean and secure environment.
- **Political:** To create a democratic political system that is issue-based, people-centred, result-oriented, and accountable to the public.

Kenya's economy is projected to grow at 0.6% in 2020, largely due to the negative effects from the COVID-19 pandemic. Economic growth is expected to bounce back to 6.64% in 2021 on a strong recovery in trade and expected favourable weather which will support agricultural output.

AGRICULTURE

Agriculture is the mainstay of the economy, providing livelihood to approximately 75% of the population. The sector contributed approximately 33% of GDP. There is considerable scope for diversification and expansion of the agricultural sector through accelerated food crop production, value addition through processing of agriculture produce and increase of non-traditional exports. Intensified irrigation and additional value added processing are marketable areas for investments.

Less than 20% of the land is suitable for cultivation, of which only 12% is classified as high potential (adequate rainfall) agricultural land and about 8% as medium potential land. The rest of the land is arid or semi-arid with a potential for cultivation through the use of irrigation systems.

In the FY 2021/22 budget the government has allocated KShs. 60 billion to support the achievement of 100 percent food and nutrition security to all Kenyans. Initiatives have been put in place to support farming, livestock rearing and fish production.



MANUFACTURING

Manufacturing, contributing 9.2% of GDP, plays an important role in adding value to agricultural output and providing forward and backward linkages. Over the years, the sector has been supported by a vibrant domestic demand as well as the regional markets. A wide range of opportunities for direct and joint-venture investments exist in the manufacturing sector, including agro-processing, manufacture of garments, electronics, paper, chemicals, pharmaceuticals, metal and engineering products for both domestic and export markets.

A number of interventions been proposed in the Vision 2030 statement which will lead Kenya to be globally competitive and prosperous. These include the development of Special Economic Zones, industrial parks and clusters, and niche products. The ultimate objective is to strengthen capacity and local content of domestically manufactured goods, raise the share of products in the regional market from 7% to 15% and to develop niche products for existing and new markets.

There are a wide range of direct and joint-investment opportunities in this sector, including agro-processing, garments, the assembly of automotive components and electronics, plastics, paper, chemicals, pharmaceuticals, metals and engineering products for domestic and export markets.

A number of interventions been proposed in the Vision 2030 statement which will lead Kenya to be globally competitive and prosperous. These include the development of Special Economic Zones (Naivasha Industrial Park, Dongo Kundu, and Kisumu), industrial parks and clusters, and niche products. The ultimate objective is to strengthen capacity and local content of domestically manufactured goods, raise the share of products in the regional market from 7% to 15% and to develop niche products for existing and new markets. The government has also prioritized establishment of private SEZs to boost the manufacturing sector.

In addition to high demand for locally manufactured goods, regional markets are accessible for Kenya's manufactured goods owing to its membership to two key regional economic blocs the East African Community (EAC) and Common Market for East and Southern Africa (COMESA).

Kenya has launched a 10-year plan to revive the manufacturing and industrial sector, which is hoped to generate one million new jobs. The plan developed by the Ministry of Industrialisation and Enterprise Development is expected to pump an additional KShs200 – KShs300 billion into the economy in the next five years. In the FY 2021/22 budget the government allocated KShs. 20.5 billion to support the manufacturing sector.

TOURISM

Kenya is endowed with a unique combination of tourist attractions, including beautiful coastal beaches, coral reefs, abundant wildlife (including the 'big five' in their natural habitats), and tropical climate.

Tourism is Kenya's third largest foreign exchange earner with over two million visitors in 2019. Tourism is one of Kenya's most important industries, and has strong linkages with transport, food production, retail and entertainment. The tourism industry is growing as a result of the liberalisation measures, diversification of tourist generating markets, continued Government commitment to providing an enabling environment and successful tourism promotion campaigns. Kenya is also becoming a hub for regional and international conferences. The negative foreign press which in most cases overplays the security concerns in Kenya continues to negatively impact the sector. Enormous opportunities exist for investment in film production, recreation and entertainment facilities including conference tourism, cultural tourism, cruise ship tourism, aviation/tour and travel tourism and eco-tourism.

As one of the world's most popular business and leisure tourism destinations, investors have the opportunity to leverage several Government-led programmes to attract investment into the industry. These include the establishment of resort cities, branding of premium parks, development of high value niche products and MICE tourism facilities, and the construction of new internationally branded hotels, among others.

FINANCIAL

The banking sector was liberalised in 1995 and all exchange controls were lifted. The Central Bank of Kenya (CBK) is responsible for formulating and implementing monetary policy, fostering liquidity and solvency and overseeing the proper functioning of the financial system. The banking industry in Kenya is governed by the Companies Act, the Banking Act, the Central Bank of Kenya Act and the various Prudential Guidelines issued by the CBK.

The banking sector comprises 42 commercial banks, and 1 licenced mortgage finance institution. Most banks operate under the traditional banking model where interest on loans is their principal source of earnings. Loans and advances are the principal assets, largely funded from customer deposits. Until recently, when the Government introduced long-term bonds with maturities of up to 30 years, most savings and investment products had short to medium tenures of 5 to 7 years. This model negatively affected the growth of medium and long-term lending products which were required for projects with long gestation periods, especially those in the infrastructure and real estate development sectors. The concept of Islamic Banking is growing in Kenya and there are now 3 dedicated Islamic Banks, with others offering Islamic Windows.

BUILDING AND CONSTRUCTION

Kenya has a well-developed construction industry. Quality engineering, building and architectural design services are readily available. The industry has in the recent past experienced an upward trend. With the increase in population, opportunities exist in construction of residential, commercial and industrial buildings, including prefabricated low-cost housing.

Kenya has long had a deficit of affordable housing in urban and peri-urban areas and has since implemented measures to address this deficit. A core item of the "Big Four" transformation agenda for the Nation to be implemented between 2017 – 2022, is the delivery of 500,000 affordable houses. Other measures include allocating national and county land available for grand housing and bulk infrastructure projects, identify suitable tax incentives (such as exempting stamp duty for first-time home owners under the affordable housing arrangement).

In 2020, the state raised KShs 537 million in deposits from the sale of 1,370 low-cost houses in Nairobi, which featured one, two and three bedroom units. Construction commenced in April 2019. Demand far outstrips supply as was evidenced when the ministry put for sale 228 of the affordable housing units and attracted over 300,000 interested buyers. In the FY 2021/22 budget the government has allocated KShs. 13.9 billion for affordable housing.



EAST AFRICAN COMMUNITY

The EAC is the regional inter-governmental organisation of the Republics of Kenya, Burundi, South Sudan, Rwanda, Uganda and the United Republic of Tanzania, headquartered in Arusha, Tanzania. The Treaty for Establishment of the East African Community was signed on 30th November 1999 and entered into force on 7th July 2000 following its ratification by the original three partner states – Kenya, Uganda and Tanzania. The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty on 18th June 2007 and became full Members of the Community with effect from 1st July 2007. The Community has a population of over 177 million, a combined GDP (nominal) of US\$ 193.7 billion and covers a land mass of over 2.5 million square kilometres.

The EAC operates as a Common Market under a Common Market Protocol signed in July 2010 which provides for:

- Free movement of persons
- Free movement of workers
- Right of establishment
- Right of residence
- Schedule on the movement of services
- Schedule on the movement of capital.

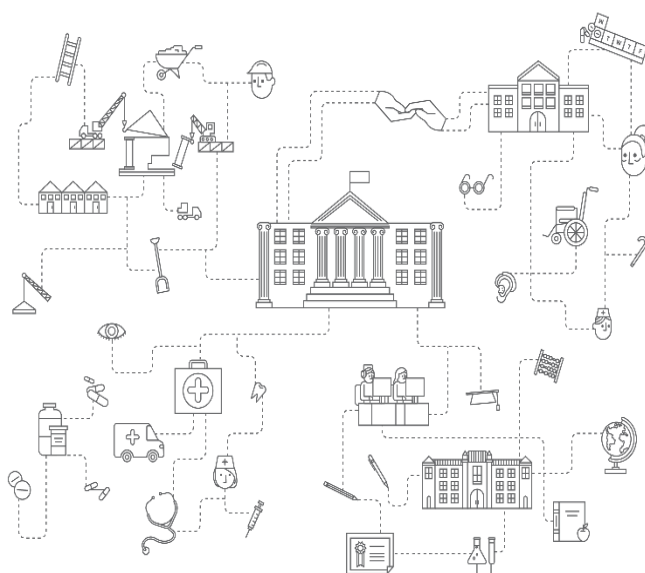
The countries operate a common customs procedure which provides for a Common External Tariff (CET) on imports from third countries and duty-free trade between the member states (subject to certain restrictions).

RELATIONSHIP OF GOVERNMENT AND BUSINESS

The Kenyan Government encourages private sector participation in economic activities in the country and also engages in public-private partnerships in areas which require a huge capital outlay or technical expertise such as infrastructure development and exploration. The Government is presently divesting its interests in various non-strategic commercial enterprises in which it owns shareholdings as part of its privatisation programme. The stated aim of the Government is to have minimal interference in the operation of the private sector and it is increasingly relegating itself to the role of a regulator rather than an active participant.

In line with improving business environment objectives, the licensing regime in Kenya was in 2006 overhauled with a view to reducing the number of licences required. The Licensing Laws (Repeals and Amendments) Act, 2006, which came into effect on 1st May 2007, reduced the number of business permits required for a distributor of goods or provider of services to carry on its business activities.

The Nairobi City County has introduced the new unified business permit online in order to make it easier and simpler for applicants to obtain the unified business permit. The unified business permit consolidates 5 permits i.e. the single business permit, fire clearance certificate, advertising signage, health certificate and food hygiene into one permit. There are certain sectors like the financial services sector which require licences from the regulators in addition to the single business permit. For some regulated professions like accountancy, the licence to operate is provided by the regulator and such professions are not subject to a single business permit. KRA has now been appointed as the principal county Revenue collector and all payments for business permits have to be made to KRA. The single business permit is normally charged on the basis of the size of entity or individual business and is renewable annually.



Kenya has an electronic portal, kenya.eregulations.org which provides existing and prospective investors with a one-stop guide to Kenya's investment regulatory framework.

Kenya's ranking in the World Bank Doing Business Report improved by 5 positions to #56 in 2019 to #61, from a total of 190 countries. In Africa, Kenya's ranking dipped by 1 position to #4 from #3, with the top 3 positions occupied by Mauritius, Rwanda and Morocco.

Kenya's improvement in the global ranking was primarily due to:

- More transparent issuance of construction permits
- Increased reliability of electricity supply through infrastructure modernization
- Ease of credit through online registration, modification and cancellation of security interests and set-up of credit bureaus
- Enhanced protection of minority investors by requiring shareholders to approve election and dismissal of external auditor
- Ease of insolvency resolution through the continuation of the debtor's business during insolvency proceedings
- Schedule on the movement of capital.

COMPETITION LAW

On 1st August 2011, The Competition Act, 2010 came into force in Kenya and replaced the Restrictive Trade Practices, Monopolies and Price Control Act (RTPA), Cap 504. This new Act, in addition to placing general prohibitions on restrictive trade practices, controlling mergers and acquisitions and concentration of economic power, aims to protect consumers and the public at large from unfair and misleading market conduct by criminalising false or misleading statements or unconscionable conduct by tradesmen, banks, retailers, wholesalers, insurers, brokers, businesses, suppliers, service providers, manufacturers, etc. in connection with the promotion/marketing, supply or possible supply of goods and/or services. It establishes the powers and functions of the Competition Authority (the Authority) which is mandated to implement the Act.

This Act has an impact on every sector and player in the economy, including importers and exporters and applies to the private sector as well as the public sector (Government, state corporations and local authorities) in so far as they engage in trade. The Act also applies to conduct outside Kenya by Kenyan citizens or residents, companies incorporated or carrying on business in Kenya and persons supplying goods or services into or within Kenya.

The Act places a general prohibition against anti-competitive practices. Any agreement which has as its object or effect, the preventing, restricting or distorting of competition in Kenya falls within the ambit of prohibition e.g. price fixing, division of market areas, collusive tendering, minimum retail prices, distortion or restriction of competition, etc. It also prohibits businesses from abusing their dominant position in a market. A business has a dominant position if (i) it produces, supplies, distributes or otherwise controls 50% or more of the total goods or services which are produced or rendered in Kenya or a substantial part of Kenya or (ii) although not dominant, it controls at least forty per cent but not more than fifty per cent of the market share unless it can show that it does not have market power or (iii) it controls less than forty per cent of the market share but has market power.

Consumer rights are also protected under this Act and it is an offence to supply goods to customers where the products do not meet the laid out product safety standards. Hence, businesses operating in Kenya will need to be more cautious about their product and service offering to consumers and their products must comply with consumer safety standards.

A major part of the Act regulates mergers. Approval of mergers and takeovers are now the responsibility of the Authority and not the Minister of Finance as was the case under the RTPA. A merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the

business of another undertaking. Mergers may be achieved by a purchase or lease of shares, acquisition of an interest, or purchase of assets (where an asset is any real or personal property, whether tangible or intangible, intellectual property, goodwill, chose in action, right, licence, cause of action or claim and any other asset having a commercial value) of an entity, exchange of shares between or among undertakings which results in a substantial change in ownership structure through whatever strategy or means adopted by the concerned undertakings or even through amalgamations and vertical integration. The acquisition of a controlling interest in a section of the business of an undertaking capable of itself being operated independently is also considered as a merger whether or not the business in question is carried on by a company.

Furthermore, any acquisition of an undertaking under receivership by another undertaking either situated inside or outside Kenya or an acquisition by whatever means of the controlling interest in a foreign undertaking that has a controlling interest in a subsidiary in Kenya, constitutes a merger. Mandatory approval by the Authority for a merger is required if a transaction falls within the scope of the Act. An application should be made at any time prior to the consummation of the merger or takeover – this is understood to mean before completion or closing of the deal takes place. The Authority is bound, subject to certain exceptions and time extension rights, to make a determination on a merger application within 60 days of receipt of the notification by the Authority.

Any merger carried out in the absence of an authorising order by the Authority, will be of no legal effect, and no obligations imposed on the participating parties by any agreement in respect of the merger are enforceable in legal proceedings. In addition, failure to observe this requirement could lead to imprisonment for a term not exceeding 5 years or to a fine not exceeding KShs 10,000,000 or both. In addition to these penalties, the Authority may impose a financial penalty in an amount not exceeding 10% of the preceding year's gross annual turnover in Kenya of the undertaking or undertakings in question.

EAST AFRICAN COMMUNITY (EAC) COMPETITION ACT

The EAC Competition Act came into effect on 1st December 2014 by an EAC gazette notice dated 23rd January 2015. It has been ratified by five of the EAC member states but the enforcement and operationalisation of the EAC Competition Act has not yet commenced. This is primarily linked to the delay in constituting the EAC Competition Authority which is established under the EAC Competition Act and charged with enforcing the EAC Competition Act. The Commissioners, approved since February 2016, were sworn in at the beginning of November 2016, at the East African Commission's Headquarters in Arusha, Tanzania. The Commissioners comprise one from each partner state (Burundi, Kenya, Tanzania, Rwanda and Uganda).

These are the very first Commissioners to serve the EAC Competition Authority. This is a further important step in bringing this new regional regulator online.

The EAC Competition Authority will have jurisdiction over economic activities and sectors that have a cross-border effect in the EAC. It will apply initially to five EAC partner states: Burundi, Uganda, Kenya, Rwanda and Tanzania and subsequently to the EAC's newest member, Southern Sudan.

2

BUSINESS ENTITIES

TYPES OF BUSINESS ENTITIES AND THEIR FORMATION PROCEDURES

In Kenya, an investor may establish or participate in a business venture in a number of ways. The principal types of business enterprises in Kenya are:

- Registered companies (private and public);
- Branch offices of companies registered outside Kenya;
- Partnerships;
- Sole proprietorships; and
- Societies.

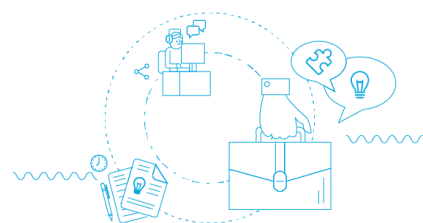
REGISTERED COMPANIES (PRIVATE AND PUBLIC)

Companies with liability limited by shares or by guarantee or with unlimited liability are regulated by the Companies Act, 2015.

Limited liability companies may be public or private. A private company is prohibited from inviting the general public to subscribe for its shares, must restrict a member's right to transfer shares, and cannot have more than 50 shareholders. A member does not include a member who is an employee of the company and a person who was a member while being an employee of the company who continues to be a member after ceasing to be such employee. A public company may offer its shares to the general public, there is no maximum number of shareholders, its shares must be freely transferable, and its name must end with the words "public limited company" or the abbreviation "plc". It may be able to raise capital by listing its shares on a stock exchange.

The process of registering a company in Kenya may take up to one week and includes:

- The registration of a company is one step online process i.e. application for reservation of the proposed name(s) and submission of the required forms are done at the same time.
- The forms generated during company registration include: Company Registration Form, Memorandum of Association, Notice of the Residential Address of the Directors, Statement of Nominal Capital and Register of Beneficial Owners (Form BOF 1).
- Submission of a Memorandum of Association (setting out amongst other things the names, addresses and occupation of the subscribers, number of shares taken, nominal value of shares taken, class of shares taken and rights (if any) attached to each class of shares). A company may not be registered unless the memorandum is in the form prescribed by the regulations and signed by each subscriber.
- Submission of its proposed Articles of Association. In so far as they do not exclude or modify the relevant model articles prescribed in regulations, the model articles will also apply. If no Articles of Association are submitted, the relevant model articles will apply by default.



- The details of the ultimate beneficial owners are required to be disclosed at the incorporation stage. The beneficial owner is a natural person who meets any of the following conditions in relation to the company:
 - a) holds at least 10% of the issued shares in the company either directly or indirectly;
 - b) exercises at least 10% of the voting rights in the company;
 - c) holds a right to directly or indirectly appoint or remove a director of the company; or
 - d) exercises significant influence or control over the company (whether directly or indirectly).
- The initial nominal share capital of a company registered or to be registered with limited liability shall be exempt from ad valorem stamp duty. 1% stamp duty is charged on any subsequent increases in Nominal Capital.

A Certificate of Incorporation together with a CR 12 (confirming the directors, shareholders, authorised and issued share capital and the address of the registered office of the company) will be issued by the Registrar of Companies. If the new company provides an email address that has never been used on the iTax platform, it is able to get a Kenya Revenue Authority Personal Identification Number (PIN) via email within 3–5 working days after the Certificate of Incorporation is issued. If the email address has been used on iTax, a KRA PIN will need to be applied for separately. The NHIF and NSSF registration certificates are obtained separately from the respective regulatory bodies.

The Companies Act also allows for the formation of a company limited by guarantee and not having a share capital. These are normally used for the formation of charitable foundations and not-for-profit entities. There are special requirements for the formation of such companies, and the period of formation may take up to 1 year.

BRANCH OFFICE OF A FOREIGN COMPANY

A company incorporated outside Kenya may carry on business in Kenya through a branch. In order to establish a branch, the following documents and details must be submitted to the Registrar of Companies:

- A certified copy of a current certificate of the foreign company's incorporation or registration in its place of origin, or a document of similar effect.
- A certified copy of its constitution.
- A list containing the names of its directors and shareholders and their personal details. If the list includes directors who reside in Kenya and are members of a local board of directors, a memorandum duly executed by or on behalf of the foreign company should state the powers of those directors.
- A list of all existing charges entered into by the company affecting properties in Kenya;
- Names and postal addresses of one or more persons resident in Kenya authorised to accept, on behalf of the company, service of notices required to be served on the company;
- Full address of the registered or principal office of the company in its home country; and
- Full address of the company's place of business in Kenya.

Once the process is complete, the Registrar will issue a Certificate of Compliance. The process may take up to 4 weeks. Companies that may want to have representative or liaison offices are required to register using the above process.

PARTNERSHIP

A Partnership Act, 2012, has been passed, but has not yet been brought into force. The law relating to partnerships is therefore largely contained in the Partnership Act (Chapter 29 of the Laws of Kenya).

A partnership may be formed by any kind of agreement. This need not be formal but is usually in writing. If the partnership does not trade under the names of the partners, the business names to be used by the partnership must be registered under the Registration of Business Names Act.

A Partnership is required to file the Statement of Particulars form with the Registrar of Companies together with a filing fee. The form has to be signed by all the partners. Partnership agreements do not have to be filed with the Registrar of Companies. The Registrar will then issue a Certificate of Registration. The process may take up to two weeks.

A limited liability partnership may be formed under the Limited Liability Partnership Act, 2011. A limited liability partnership is a body corporate with perpetual succession with a legal personality separate from that of its partners. A partner is not personally liable for the partnership's obligations other than as a result of a wrongful act or omission by that partner, and other partners are not liable for the wrongful act or omission of another partner.

A limited liability partnership can be governed by a partnership agreement, but if there is no such agreement or if there is an agreement that does not deal with a particular matter, it will be governed by the default provisions set out in the First Schedule to the Act. A limited liability partnership must have at least one manager, who must be resident in Kenya.

Two or more persons (individuals or body corporates) may form a limited liability partnership by lodging with the Registrar of Companies a statement in the prescribed form including the name of the partnership and the general nature of its proposed business, the address of its registered office, the name, nationality and address of each person who will be a partner, and the name, nationality and address of each person who will be a manager of the partnership. The name of the partnership must end with the words "limited liability partnership" or the abbreviation "LLP" or "llp". It is possible for partnerships or private companies to convert themselves into limited liability partnerships.

SOLE PROPRIETORSHIP

A sole proprietor is personally liable for all debts incurred. Where a proprietor does not trade under his personal names, the business names used by the proprietor have to be registered under the Registration of Business Names Act. The proprietor is required to file the Statement of Particulars form with the Registrar of Business Names together with a filing fee. The Registrar will then issue a Certificate of Registration. The process may take up to two weeks.

SOCIETIES

Societies are usually formed for the purposes of trade associations and similar organisations. They are regulated under the Societies Act. A society can either be registered or exempted from registration, at the discretion of the Registrar of Societies. An exempted society is one whose procedure is the same as that of a registered society but differs in that it is not required to file Annual Returns with the Registrar as is required of registered societies.

The society must submit the application and the notification of registered office or postal address of the society together with the society constitution in duplicate accompanied by a registration fee. The application is considered by the Registrar within a statutory period of not more than 120 days. Upon registering a society or exempting it from registration, the Registrar shall issue to the society a certificate of registration or exemption in the prescribed form.

PERSONAL IDENTIFICATION NUMBER AND VAT REGISTRATION

All businesses are required to obtain a Personal Identification Number (PIN). This is the tax registration number. An application for a PIN is to be made to the Kenya Revenue Authority (KRA) online. Such application can only be done after completing the company registration formalities and obtaining the Certificate of Incorporation/Registration. A taxpayer is required to personally take the original and a copy of the Certificate of Incorporation/Registration to KRA offices for approval of the PIN registration.

When undertaking the PIN registration, the taxpayer is required to endorse the tax obligations which are applicable to the taxpayer. These include corporation tax, VAT, PAYE, income tax, etc.

All employees and directors/partners/sole proprietors are also required to have an individual PIN. This registration is done online.

A PIN is required for certain transactions including opening accounts with financial institutions and investment banks, importation of goods and customs clearing and forwarding, registration of titles and stamping of instruments, among others. An application may be made to the Commissioner by a person who may be exempt from the requirement for a PIN for the transactions listed above.

ACCOUNTING PERIOD ENDS

The financial period end needs to be agreed at the time of submission of the application for the PIN. The Income Tax Act permits incorporated businesses to choose any period end. The Companies Act, 2015, requires notice to be given of any change in period end, and does not allow a change to be made within 5 years of a previous change. However, certain laws e.g. the Banking Act and the Insurance Act require banks and insurance companies to have an accounting period ending on 31st December of each year.

Unincorporated businesses (partnerships and sole proprietors) are also required to have accounting periods ending on 31st December. Incorporated businesses which are not required to have a 31st December ending, can change their period end with prior written approval of the Commissioner by giving at least 6 months' notice before the date to which the financial statements are intended to be made up to.

Unless required by law e.g. for financial institutions, the first period end for the preparation of audited financial statements can be up to 18 months from the date of commencement of business.

INVESTMENT APPROVAL PROCESS

To facilitate the investment approval process, the Investment Promotion Authority (IPA) operates a one-stop office as the focal point for investor assistance in the acquisition of relevant licences and permits from various Government Ministries, among other services.

Potential investors are required to submit their project applications to the IPA in a prescribed form and submit it together with the Certificate of Incorporation, Memorandum and Articles of Association and PIN.

CAPITAL CONTRIBUTION

CAPITAL

The form "Statement of Nominal Capital" indicates the authorised capital of the company. The directors can issue a company's authorised capital in full or can leave a certain amount of the authorised capital unissued. Shares can be issued at par (the nominal value of the shares) or at a premium. Shares cannot be issued at a discount without the sanction of the Court. A company can also not decrease its capital without the sanction of the Court. A public company cannot decrease its capital without the sanction of the Court. Section 419 of the Companies Act provides an option for private companies to reduce capital without going through court. The special resolution for reduction of capital must be supported by a solvency statement.

The authorised capital can be increased by an ordinary resolution of members in a general meeting. A Statement of Increase of Nominal Capital has to be submitted at the Lands Office for stamping within 30 days from the date of passing of the resolution. The rate of stamp duty payable is 1% of the amount by which the capital is increased. The stamped Statement of Increase of Nominal Capital has to be filed with the Registrar of Companies.

REGULATION OF FOREIGN INVESTMENT

Subject to a few restrictions on owning shares in financial institutions and in the telecoms sector and the owning of agricultural land, there are no restrictions on the percentage of equity that foreign nationals may hold in locally incorporated companies. However, having local partners assists access to local knowledge and market conditions. Subject to certain restrictions in the financial services sector and the owning of agricultural land, there are no regulations restricting joint venture arrangements between Kenyans and foreigners, or prohibiting the acquisition of Kenyan firms by foreign-owned firms. These are matters subject to mutual agreement between partners.

THIN CAPITALISATION

Thin capitalisation arises where a company incorporated in Kenya is controlled by a non-resident person alone or together with 4 or fewer other persons, and the highest amount of all interest bearing loans (defined to include all liabilities on which the company is paying interest, financial charge, discount or premium) to that company at any time during the year are more than three times the sum of the revenue reserves (including accumulated losses) and the issued and paid up capital of that company. Where a company is thinly capitalised, the Income Tax Act provides for the disallowance, for tax purposes, of part of the interest charged in proportion to the amount of debt that exceeds the prescribed ratio of debt to capital. In addition, any foreign exchange loss on such loans is also deferred for tax purposes.

Effective 1st January 2022, the thin capitalisation provisions have been amended to restrict the total interest claimable in a year of income to 30% of earnings before interest, taxes, depreciation and amortization ("EBITDA"); provided in the calculation of EBITDA, any income that is exempt from tax is to be excluded. This is applicable both to locally and foreign controlled companies.

The interest restriction will apply to:

- interest on all loans;
- payments that are economically equivalent to interest; and
- expenses incurred in connection with raising of finance.

The restriction of the payment of deemed interest on interest free loans by entities controlled by a non-resident alone or together with not more than four other persons (excluding a licensed bank or a financial institution) still applies. The above interest restriction provisions will not apply to banks or financial institutions and micro and small enterprises registered under the Micro and Small Enterprises Act, 2012.

Control in relation to a person shall now include:

- a) A person holding at least 20% voting rights in a company, directly or indirectly;
- b) A loan advanced by one person to another, constituting at least 70% of the book value of the total assets of the entity, excluding a loan from a financial institution not associated with the person advancing the loan;
- c) A guarantee by a person for any form of indebtedness constituting at least 70% of the total indebtedness of the entity, excluding a guarantee from a financial institution not associated with that guarantor;
- d) The power to appoint more than half of the board of directors of the entity, or at least one director or executive member of the governing board of that entity;
- e) A person who has exclusive rights over the know-how (includes patent, copyright, trademark, license, franchise, and any other business or commercial right) on which the entity is wholly dependent for the manufacture or processing of goods or articles or business carried on by the other person;
- f) The person or another person designated by him supplies at least 90% of the purchases of the entity; or in the opinion of the Commissioner, influences the price or other conditions relating to the supply of the purchases of the entity;
- g) The person or another person designated by him purchases 90% of the sales of the entity; or in the opinion of the Commissioner, influences the price or any other conditions of sales of the entity; or
- h) Any other relationship, dealing or practice that the Commissioner may deem to constitute control.

The new definition of control effective 1st July 2021, will be a consideration in determining the residency status of a corporate body and evaluation of whether a Kenyan entity is an ultimate parent company. In addition, it will be a consideration for compliance with transfer pricing provisions.

In respect to a thinly capitalised company, deemed interest shall apply on loans advanced to the company by a non-resident shareholder or a non-resident associate of the non-resident company controlling the resident company. Withholding tax is payable on the deemed interest, and neither the deemed interest nor the withholding tax paid thereon are deductible for tax purposes.

A bank or a financial institution licensed under the Banking Act is exempt from this provision.

AUDIT REQUIREMENTS

Under the Companies Act, 2015, most companies in Kenya are required to have their financial statements audited at the end of each financial year. The only exception is for small private companies that are not part of a larger group, and that have turnover of not more than KShs 50 million, and net assets of not more than KShs 20 million.

The Companies Act, 2015 requires that every company that is not exempt from audit, as above, appoints an auditor, qualified as per the Accountants Act. For a public company, the first auditor may be appointed by a resolution of the directors at any time before the first Annual General Meeting. The auditors shall hold office until the conclusion of that meeting. Subsequently, the auditor is appointed at each Annual General Meeting. For a private company, the first auditor is appointed by the directors, and thereafter the auditor should be appointed by the members within 28 days of the date the financial statements of the previous year are approved.

Societies are also required to have their financial statements audited in accordance with Section 29 of the Societies Act. Partnerships and sole proprietors do not have any audit requirements; however, by practice many of the large partnerships and sole proprietors have their financial statements audited.

COMPANY SECRETARY

A private company is required to have a secretary only if it has a paid up capital of KShs 5 million or more. If a company does not have a secretary, anything required or authorised to be done by the secretary may be done by a director or a person authorised generally or specifically for that purpose by the directors. Every public company is required to have at least one secretary. A secretary must be a holder of a practising certificate issued under the Certified Public Secretaries of Kenya Act. The duty of the Company Secretary includes amongst other things maintaining the statutory books of the company and filing the relevant returns.

There are no such requirements for a society, partnership or a sole proprietor, where the returns required in Section 3.5 and 3.6 below can be filed and signed by any three officers, a partner or a sole proprietor respectively.

ANNUAL STATUTORY FILING

Every limited liability company, including companies limited by guarantee, is required to submit to the registrar annual returns made up to a date not later than the anniversary of the company's incorporation or, if the company's last return lodged with the registrar was made up to a different date, the anniversary of that date.

For a public company, audited financial statements should be lodged with the registrar within 6 months after the end of the company's accounting period. Private limited companies should lodge their financial statements with the registrar within 9 months after the end of the accounting period. Directors of a company that is subject to the small companies' regime (see below) must lodge with the registrar for each financial year a copy of a balance sheet drawn up as at the last day of that year. Such companies may also lodge with the registrar a copy of the company's profit and loss account and a copy of the directors' report for that year.

A company subject to the small companies' regime is a private company that is not part of a larger group and that satisfies two or more of the following:

- a) it has a turnover of not more than KShs 50 million;
- b) the value of its net assets as per its balance sheet at the end of the year is not more than KShs 20 million;
- c) it does not have more than 25 employees (based on average of number of persons employed on contracts of service each month).

A foreign company with a branch in Kenya is required to lodge, at least once in every calendar year and at intervals of not more than fifteen months, a copy of the financial statements made up to the end of its last financial year, together with a statutory declaration verifying that the copies are true copies of the original.

Every registered society must also file Annual Returns in respect of the previous year by 31st March each year in the prescribed form signed by 3 officers of the society.

Partnerships and sole proprietors are not required to file any annual statutory returns.

OTHER RETURNS

Entities incorporated under the Companies Act, 2015, Societies Act, Partnership Act, Limited Liability Partnership Act, 2011, and Registration of Business Names Act are required to file forms with the applicable Registrar on the change of directors/partners, change of registered office/principal place of business and changes in nominal and paid up capital amongst other things. All forms are subject to payment of a filing fee and have to be filed within a stipulated time after the change.

ACCOUNTING

STATUTORY FRAMEWORK GOVERNING FINANCIAL REPORTING IN KENYA

In Kenya, the main legislation governing financial reporting by companies is the Companies Act, 2015. However, there is other legislation that impacts on financial reporting. This deals with specialised sectors such as insurance, banks, retirement benefits schemes and listed companies.

The Companies Act, 2015 requires the directors of all limited liability companies to prepare and keep proper accounting records as are necessary to give a true and fair view of the company's assets, liabilities, and profit or loss. The Act further requires that the directors prepare a financial statement for each financial year that is sent to shareholders.

FINANCIAL REPORTING AND AUDITING STANDARDS

The Institute of Certified Public Accountants of Kenya (ICPAK), which is the regulatory accountancy body, requires that all financial statements must be prepared in accordance with International Financial Reporting Standards (IFRS) or the International Financial Reporting Standards for Small and Medium-sized Entities (IFRS for SMEs). Some legislation like the Banking Act has enshrined this requirement in the statute. ICPAK also requires that all audits are to be carried out in accordance with International Standards on Auditing (ISAs).

To be allowed to apply the IFRS for SMEs in Kenya, an entity must be one:

- That does not have public accountability;
- That publishes general purpose financial statements for external users (e.g. owners not involved in day to day management, KRA, existing and potential creditors, credit rating agencies);
- Whose debt and equity instruments are not traded in the public market (a domestic or foreign stock exchange or an over-the-counter market); and
- That does not hold funds in a fiduciary capacity for a broad group of outsiders as one of its primary businesses such as banks, credit unions, insurance companies, securities brokers/dealers, mutual funds and investment banks.

In the context of Kenya, ICPAK has designated the following entities as publicly accountable and therefore not permitted to apply the IFRS for SMEs as a framework for external reporting:

- Companies whose debt or equity instruments are traded in a public market or are in the process of issuing such instruments for trading in a public market;
- Banks and building societies;
- Savings and credit unions including SACCOs;
- Insurance companies;
- Retirement benefit schemes;
- State owned entities including state funded parastatals;
- Mutual funds;
- Investment banks; and
- Stock brokers.

All other entities not listed above and preparing general purpose financial statements for external users and that meet the definition of SMEs above may opt whether to comply with full IFRS or the IFRS for SMEs and should indicate the applicable framework in their financial statements.

3

TAXATION

CORPORATE TAX

BASIS OF TAXATION AND TAX RATES

Taxation of profits made by corporate bodies has its legal basis in the Income Tax Act. Kenyan income tax is payable at the corporation rate of tax by companies and unincorporated organisations and associations (excluding partnerships, sole proprietorships, and interest or dividend paid by a designated co-operative society) that have taxable income. The income of a partnership or a sole proprietorship is taxed on the individual partner or the proprietor. Each partner of a partnership and a sole proprietor is therefore required to declare his business and professional income as part of his personal income and pay tax according to his respective personal tax bracket.



Exemptions from corporation tax, on the application to the Commissioner, may be granted to entities of public character established solely for the relief of poverty or distress of the public, or for the advancement of religion or education. Such exemption is subject to renewal every 5 years.

In addition, income of registered pension and provident funds, certain qualifying organisations and from securities issued by qualifying institutions are exempt from tax under the First Schedule.

The Income Tax Act levies tax, based on the source of the income, on all income of persons, whether resident or non-resident, which accrued in or was derived from Kenya. A resident person in relation to a body of persons (body corporate) means:

- that the body is a company incorporated under a law of Kenya;
- that the management and control of the affairs of the body was exercised in Kenya in a particular year of income under consideration; or
- that the body has been declared by the Cabinet Secretary to the National Treasury by notice in the Gazette to be resident in Kenya for any year of income.

Where a business is carried on or exercised partly within and partly outside Kenya by a resident person, the whole of the gains or profits from that business shall be deemed to have accrued in or to have been derived from Kenya. Effective 1st July 2021, tax losses can be carried forward indefinitely. Previously, tax losses could only be carried forward up to 9 years. Dividends received from sources outside Kenya are not chargeable to tax in Kenya.

The tax rates are outlined in the table below.

	% rate
Resident company:	
Effective rate from January 2021	30%
Effective rate from April 2020 to December 2020	25%
Effective rate March 2020 and prior	30%
Dividends distributed out of untaxed gains or profits	30%
Turnover Tax applicable for businesses (including incorporated and unincorporated) with a turnover of KShs. 1 million up to KShs. 50 million (excluding rental, management, professional, training income and any income which is subject to a final withholding tax under Income Tax Act) – applicable from April 2020	1% of gross receipts of business
Permanent establishment of a non-resident company (a branch under a Certificate of Compliance)	37.5%
On gross residential rental income between KShs. 288,001 and KShs. 15 million p.a. (monthly returns filing and tax payable monthly by 20 th of the subsequent month)	10%
Local assembler of motor vehicles	
• First 5 years	15%
• Next 5 years (subject to conditions)	15%
Export Processing Zone enterprises not engaging in commercial activity	
• First 10 years	Nil
• Next 10 years	25%
Special Economic Zone enterprises, developer or operator	
• First 10 years	10%
• Next 10 years	15%
Digital Service Tax payable on income accruing from a business carried out over the internet or an electronic network including through a digital market place (effective 1 st January 2021). Digital marketplace means an online or electronic platform, which enables users to sell or provide services, goods or other property to other users. Effective 1 st July 2021, DST shall be payable by non-residents and excludes income already subject to withholding tax or business carried on for transmitting messages by cable, radio, optical fibre etc.	1.5% of gross transaction value
Income of a registered Unit Trust, Collective Investment Scheme and Real Estate Investment Trusts	Exempt
Minimum Tax (effective 1 st January 2021). Where instalment tax is lower than 1% of gross turnover, a minimum tax is payable quarterly. Excludes businesses whose retail price is controlled by Government, insurance businesses, manufacturing businesses whose cumulative investment in the preceding 4 years from 29 th June 2021 is at least KShs 10BN, businesses licenced under Special Economic Zones and distribution business whose income is wholly based on a commission.	1% of gross turnover

Permanent Establishment

The definition of a permanent establishment includes the following:

- i. A fixed place of business through which business is wholly or partly carried on and includes:
 - A place of management, a branch, an office, a factory, a workshop and a sales outlet;
 - A mine, an oil or gas well, a quarry, or any other place of extraction or exploitation of natural resources;
 - A warehouse in relation to a person whose business is providing storage facilities to others; or
 - A farm, plantation or other place where agricultural, forestry plantation or related activities are carried out;
- ii. A building site, construction, assembly or installation project, or any supervisory activity connected to a site or project if it continues for a period of more than 183 days, provided that:
 - Where a person carries on activities at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days but do not exceed 183 days; and
 - Connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding thirty days, by one or more enterprises closely related to the first-mentioned enterprise; the different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project;
- iii. The provision of services including consultancy services provided by a person through employees or other personnel engaged for that purposes if the period exceeds the aggregate 91 days in any 12-month period commencing or ending the year of income concerned;
- iv. An installation or structure used in the exploration of natural resources provided the exploration continues for a period equal to 91 days or more; or
- v. A dependent agent of a person who habitually concludes, contracts or plays the principal role leading to the conclusion of contracts without material modification by the person, excluding the activities that are of a preparatory or auxiliary character such as:
 - The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
 - The maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display, for the purpose of processing by another enterprise; or
 - The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or collecting information for the enterprise, for the purpose of carrying on any other activity or combination of activities.

Branches of non-resident companies are taxable on all their income derived from or accrued in Kenya. In determining the profits of a permanent establishment, the gains or profits shall be ascertained without any deduction of interest, royalties or management or professional fees paid by the permanent establishment to the non-resident person, and by disregarding any foreign exchange loss or gain with respect to the net assets or liabilities established between the permanent establishment in Kenya and the foreign head office or other offices of a non-resident person. A non-resident person in this context includes the head office and other offices of the non-resident person.

SPECIFIED SOURCES OF INCOME

There are seven sources of income ("specified sources"). Gains or profits derived from one specified source shall be computed separately from the gains or profits derived from any of the other specified sources. Moreover, any losses incurred in any specified source can only be offset against income from the same source in the current and nine subsequent years, unless an extension application is made and approved by CS Treasury.

The sources are:

- Rights granted to other persons for the use or occupation of immovable property (rent);
- Employment and self-employment professional income;
- Wife's employment, self-employment and professional income;
- Agricultural, pastoral, horticultural, forestry and similar activities;
- Surplus funds withdrawn by an employer from registered provident and pension funds;
- Income of a licensee or contractor from one licence or contact area; and
- Other sources of income chargeable to tax (including gains or profit from business; dividend or interest income; pension or annuity charge and amounts withdrawn from a registered home ownership savings plan; income accruing through a digital marketplace; capital gains; natural resource income and the net gain derived from a disposal of an interest in a mining right or petroleum agreement which derives 25% or more of its value from Kenya) and not specified above.

EXPORT PROCESSING ZONE ENTERPRISES

An Export Processing Zone (EPZ) enterprise is an enterprise which is operated in a designated export processing zone defined under the Export Processing Zones Act, 1990. Such enterprises are exempt from paying any corporation tax for a period of 10 years from commencement of activities for which the enterprise has been licensed, and such activities shall not include any commercial activities. The corporation tax rate of 25% shall apply thereafter for a further period of 10 years.

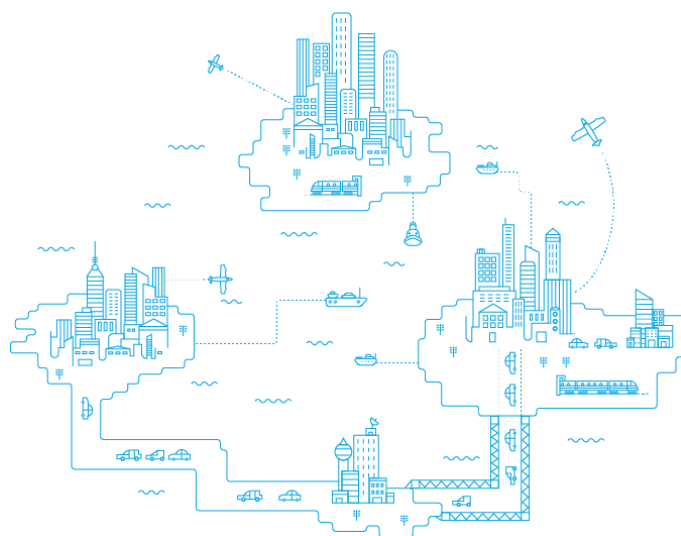
"Commercial activities" include trading in, breaking bulk, grading, repacking, or relabelling of goods and industrial raw materials.

During the first 10 years where an EPZ enterprise is exempt from taxation:

- It shall be deemed to be a non-resident for withholding tax purposes, and subject to the non-resident rate of withholding tax on payments made to such an enterprise and, such payments shall be final tax.
- Payments by it to any person other than a resident person shall be deemed to be exempted from tax.

Other benefits enjoyed by EPZ enterprises include:

- Exemption from VAT and customs import duty on inputs – raw materials, machinery, office equipment, certain petroleum fuel for boilers and generators, building materials and other supplies. VAT exemption also applies on local purchases of goods and services supplied by companies in the Kenyan customs territory or domestic market. Motor vehicles which do not remain within the zone are not eligible for tax exemption.
- Perpetual exemption from payment of stamp duty on legal instruments.
- Exemption from any quotas or other restrictions or prohibitions on imports or exports with the exception of trade in firearms and military equipment.
- Exemption from certain licensing requirements.



Employees and directors, other than non-residents, of an EPZ enterprise are however liable to personal income tax, and the EPZ enterprise is required to comply with rules and regulations in relation to the operation of PAYE.

SPECIAL ECONOMIC ZONE ENTERPRISES

In Kenya, an SEZ is a designated geographical area where business-enabling policies are implemented and sector-appropriate on-site and off-site infrastructure and utilities are provided for by the Kenyan Government.

An SEZ has the potential to be developed, whether on a public, private or public-private partnership basis. SEZs are considered to be outside the customs territory of Kenya.

The Special Economic Zones Act, 2015 (the "Act") that establishes SEZs came into force on 15th December 2015.

Corporation tax for an SEZ enterprise (whether the enterprise sells its products to markets within or outside Kenya), developer and operator shall be 10% for the first 10 years from the date of first operation and 15% for another 10 years.

Payments made for management or professional fees or training fees, royalty fees and interest arising from Government bearer bond of at least 2 years by an SEZ enterprise, developer or operator to a non-resident persons, a rate of 5% of the gross amount is payable.

DEDUCTIBILITY OF EXPENSES

Subject to certain restrictions, all expenditure which is wholly and exclusively incurred in the production of that income shall be deducted in arriving at the taxable income including capital allowances and investment deductions.

The following expenses are specifically allowable:

- Specific bad debts written off which are deemed justifiable to the satisfaction of the Commissioner (the Commissioner has issued guidelines to assist in the determination of what is a qualifying bad debt);
- Investment allowances (see Section 4.1.6 below);
- 150% of the salaries and wages paid to 10 university graduates hired as apprentices, with the written approval of the Director-General of the National Industrial Training Authority, for a period of six to twelve months during any year of income;
- Expenses incurred prior to the commencement of business where these would have been deductible if incurred after the date of commencement;
- Legal fees incurred in connection with recovery of bad debts and acquisition of a lease not exceeding ninety-nine years for premises used for business;
- Capital expenditure incurred by an owner or occupier of farmland for the prevention of soil erosion;
- Structural alterations to premises incurred by the landlord where such expenditure is necessary to maintain the existing rent;
- Amount considered by the Commissioner to be just and reasonable as representing the diminution in value of any implement, utensil or similar article, not being machinery or plant;
- Capital expenditure incurred by the owner or tenant of agricultural land on clearing that land, or on clearing and planting thereon permanent or semi-permanent crops;
- Expenditure on scientific research or payment to a university or scientific research association for scientific research;
- Interest paid on borrowings made to generate investment income; limited to the amount of investment income. Investment income comprises dividends and interest, but excludes qualifying dividends and qualifying interest;
- Expenditure incurred in mining a specified mineral;
- Sums contributed by an employer to a national retirement benefit scheme created by a written law;
- Expenditure, which the Commissioner considers just and reasonable, incurred on advertising and promoting goods and services provided by that business;
- Operating and finance lease payments paid by the lessee under a lease contract where the title of the asset leased always remains with the lessor;
- Donations made, subject to certain conditions, to a charitable organisation registered or exempt from registration under the Societies Act or the Non-Governmental Organisations Co-ordination Act, 1990, and whose income is exempt from tax under the Income Tax Act, or to any project approved by the Minister of Finance; and
- Realised foreign exchange gains or losses.

The following expenses are specifically disallowed:

- Non-business and personal expenses (expenses not wholly and exclusively incurred in the production of income for a year of income);
- Expenditure or loss which is recoverable under an insurance contract;
- All donations with the exception of those specified above;
- School fees;
- All legal fees with the exception of those specified above;
- Legal and other professional fees of a capital nature (e.g. in relation to borrowings, stamp duty, valuation etc.);
- General and other provisions for bad debts with the exception of those specified above;
- General provision for gratuities/leave pay/staff dues (specific provisions are allowed provided these have been taxed on the recipient);
- Other general provisions;
- Capital expenditure, or any loss, diminution or exhaustion of capital;
- Capital repairs and maintenance including costs of extensions or replacements of buildings unless specified above;
- Principal tax payments including compensating tax and any interest and penalties thereon;
- Employer contributions to a registered fund where these exceed the stipulated limits;
- Unrealised foreign exchange losses;
- Restricted interest and foreign exchange losses and withholding tax paid on deemed interest calculated in accordance with the thin capitalisation rules applicable to foreign controlled companies (Section 3.2.3); and
- Depreciation and amortisation.

CAPITAL ALLOWANCES

While depreciation on property, plant and equipment and amortisation on pre-paid operating lease rentals and computer software are specifically disallowed expenses, the Income Tax Act prescribes the following capital allowances.

Effective 1st January 2022, the basis of investment allowance will change from reducing balance to straight line wherever applicable.

Wear and Tear and Miscellaneous Allowance – applicable to the year of income prior to April 2020

Where during a year of income, machinery owned by a person is used by him for the purposes of his business, there shall be made in computing his gains or profits for that year of income a deduction referred to as a "wear and tear deduction". The deduction is calculated on cost, net of any investment deduction allowance and input VAT claimed, on a reducing balance basis.

Nature	Rate
Class I: Tractors, combine harvesters, heavy earth-moving equipment and similar heavy self-propelling machines (lorries over 3 tonnes included by practice)	37.5%
Class II: Computer and peripheral hardware, calculators, copiers and duplicating machines	30%
Class III: Motor vehicles (if not commercial, limited to a cost of KShs 2 million per vehicle) and aircrafts	25%
Class IV: All other machinery including ships (by practice, also includes furniture, fittings and office equipment)	12.5%
Computer software (calculated on cost) – straight line	20%
Indefeasible right to use a fibre optic cable – straight line	5%
Telecommunications equipment purchased and used by a telecoms operator – straight line	20%
Capital expenditure incurred on the construction of public school, hospital, road or any similar social infrastructure (with the approval of CS Treasury)	100%
Concessionary arrangements (on purchase of machinery or construction of roads, bridges or similar infrastructure employed in the arrangement)	Equally over the concession period
Any implement, utensil or similar article, not being machinery or plant, employed in the production of gains or profits – straight line	What is just and reasonable to the Commissioner's satisfaction – $33\frac{1}{3}$ by practice but can be adjusted based on the use and nature of the tool

Investment Deductions applicable to the year of income prior to April 2020

Nature	Rate
Industrial building allowance (calculated on cost, net of investment deduction, on a straight-line basis):	
<ul style="list-style-type: none"> Industrial building including staff welfare buildings, but excluding office buildings, retail shops and dwelling houses except prescribed dwelling houses e.g. quarters for employees. Where the disallowed proportion is less than 10% of the total cost, the entire cost qualifies. Land does not qualify. 	10%
<ul style="list-style-type: none"> Hotel including any building directly related to the operations and contained within the grounds of the hotel complex (including staff quarters, kitchens, and entertainment and sporting facilities) 	10%
<ul style="list-style-type: none"> Hostel, an educational building or a building used for training, certified by the Commissioner 	50%
<ul style="list-style-type: none"> A building used for training film producers, actors or crew, certified by the Commissioner 	100%
<ul style="list-style-type: none"> Rental residential building in a planned development area approved by the Cabinet Secretary responsible for Housing; 	5%
<ul style="list-style-type: none"> and with stipulated infrastructure provided by the developer 	25%
<ul style="list-style-type: none"> Commercial building with stipulated infrastructure provided by the developer 	25%
Farm works allowance on structures excluding machinery necessary for proper operation of a farm including farm buildings, fences, dips, drains, water and electricity works, windbreaks and farmhouses (only 1/3 rd of the cost of farmhouse may be claimed)	100%
Investment deduction on eligible cost of building and machinery used for manufacturing (including manufacturing under bond), workshop machinery used for factory maintenance, hotel buildings, filming equipment, and electricity generation for national grid. Buildings used for design, storage, showrooms, transport or administration do not qualify unless their cost does not exceed 10% of the total cost. Land does not qualify.	100%
Investment deduction on construction of buildings or purchase and installation of machinery exceeding KShs 200 million outside Nairobi, Mombasa or Kisumu	150%
Shipping investment deduction on purchase of a new unused, or the purchase and re-fitting of a used, power-driven ship of more than 125 tonnes	100%
Mining and Petroleum Operations:	
<ul style="list-style-type: none"> on plant and machinery employed 	100%
<ul style="list-style-type: none"> extraction and development expenditure 	20%

The Second schedule of the Income Tax Act was repealed and replaced with a new second schedule effective April 2020 onwards. Only provision 24E was not repealed and shall be in force until 31st December 2022. Section 24E was introduced on 18th March 2020 and provides for investment deduction of 150% where a person incurs capital expenditure of at least KShs 5 billion on the construction of bulk storage and handling facilities for supporting the SGR operations. The said facilities must have a minimum storage capacity of 100,000 metric tonnes of supplies.

Any investment allowances from 1st July 2021, on any written down values, shall be claimed on a straight-line basis

The new rates of investment allowances are as follows:

Investment Allowances applicable to the year of income ended April 2020 onwards (calculated on cost)	Rate & method
Hotel (licenced by competent authority)	50% in the first year of use, and 25% reducing balance method
Building used for manufacture	50% in the first year of use, and 25% reducing balance method
Hospital (licenced by competent authority)	50% in the first year of use, and 25% reducing balance method
Petroleum or gas storage facilities	50% in the first year of use, and 25% reducing balance method
Educational buildings including student hostels (licenced by competent authority)	10% Reducing balance method
Commercial building	10% Reducing balance method
Machinery used for manufacture	50% in the first year of use, and 25% reducing balance method
Hospital Equipment	50% in the first year of use, and 25% reducing balance method
Ships or aircrafts	50% in the first year of use, and 25% reducing balance method
Motor vehicles (restricted to KShs 3m if not a commercial vehicle) and heavy earth moving equipment	25% Reducing balance method
Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines	25% Reducing balance method
Furniture and fittings	10% Reducing balance method
Telecommunications equipment	10% Reducing balance method
Filming equipment by a local film producer licenced by the Cabinet Secretary responsible for filming	25% Reducing balance method
Machinery used to undertake operations under a prospecting right	50% in the first year of use, and 25% reducing balance method
Machinery used to undertake exploration operations under a mining right	50% in the first year of use, and 25% reducing balance method
Other machinery	10% Reducing balance method
Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator	10% Reducing balance method
Farm works	50% in the first year of use, and 25% reducing balance method
Any implement, utensil or similar article, not being machinery or plant, employed in the production of gains or profits – straight line	What is just and reasonable to the Commissioner's satisfaction – 33 ¹ / ₃ by practice but can be adjusted based on the use and nature of the tool

BUSINESS WITH RESIDENT AND NON-RESIDENT PERSONS, TRANSFER PRICING AND ANTI-TAX AVOIDANCE PROVISIONS

The Income Tax Act empowers the Commissioner to adjust profits accruing to a Kenyan resident where such a person enters into transactions with non-residents and the transactions are such that they produce either no profits or less than the ordinary profits which might be expected to accrue to the resident person if the transactions had been conducted by independent persons dealing at arm's-length. The Act also gives powers to the Minister to issue guidelines for the determination of the arm's-length value of a transaction.

The Income Tax (Transfer Pricing) Rules, 2006 (Rules) came into operation on 1st July 2006. The Rules mirror the principles set out in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrators which were published on 13th July 1995 (OECD Guidelines), and requires related parties to develop an appropriate transfer pricing policy based on one of the following methods:

- Comparable uncontrolled price method;
- Cost plus method;
- Resale price method;
- Profit split method;
- Transactional net margin method; and
- Any other method prescribed by the Commissioner.

Transactions between resident entities operating in preferential tax regimes and related entities operating outside preferential tax regimes will also be subject to the Transfer Pricing Rules effective 1st January 2018.

In addition, the Income Tax Act includes the following provisions in respect of business with non-residents:

- Where a non-resident person carries on a business in Kenya which consists of manufacturing, growing, mining, producing, or harvesting, whether from land or from water, a product or produce, and sells or utilises outside Kenya that product or produce in a business carried on by him outside Kenya, the gains or profits for the Kenya business for tax purposes shall be such amount as would have accrued if that product or produce had been sold wholesale to the best advantage.
- Income derived from deposits, assets or property acquired outside Kenya from operations in Kenya by the permanent establishment of a non-resident bank shall be deemed to be income derived in Kenya.
- For the purpose of ascertaining taxable profits for a business carried on in Kenya, no deductions shall be allowed in respect of expenditure incurred outside Kenya by a non-resident person other than expenditure for which the Commissioner determines that adequate consideration has been given. In particular, there are restrictions on the amounts which can be charged by a non-resident person to a business carried on in Kenya in respect of directors' fees and executive and general expenses.

Where the Commissioner is of the opinion that the main purpose for which a transaction was effected was the avoidance or reduction of liability to tax, he may direct that such adjustments as he considers appropriate be made to that transaction for tax purposes to counteract the tax avoidance or reduction of liability to tax.

Moreover, where the Commissioner is of the opinion that a company has not distributed to its shareholders as dividends within a reasonable period (not exceeding 12 months from the end of the accounting period) that part of its income that could have been distributed without prejudice to the requirements of the company's business, he may direct that such excess be treated for tax purposes, on a date 12 months after the end of the accounting period, as having been distributed as dividends to the shareholders.

COUNTRY BY COUNTRY REPORTING

- A Kenyan resident company who is an ultimate parent company who owns or controls a multinational enterprise group is now required to submit to the Commissioner a return describing the group's financial activities in Kenya, where its gross turnover exceeds the prescribe threshold, and in all other jurisdictions where the group has a taxable presence.
- The return needs to be submitted by the Kenyan parent company not later than 12 months after the last day of the reporting financial year of the group.
- The information required in the group return in relation to each jurisdiction in which the group operates shall consist the group's aggregate information relating to:
 - revenue;
 - profit or loss before income tax;
 - income tax paid;
 - income tax accrued;
 - stated capital;
 - accumulated earnings;
 - number of employees; and
 - tangible assets other than cash or cash equivalents.

TAX RETURNS

Each corporate entity (including an EPZ enterprise) is required to file a Self-Assessment Return (SAR). The SAR is to be filed on-line using the iTax system. A SAR is due for each entity holding a PIN irrespective of whether it is dormant or active.

A SAR (together with the audited financial statements for active corporations) is due within 6 months after the end of the accounting period. For partnerships where the period-end is prescribed to be 31st December, the partnership return is due by 30th June of the following year.

TAX COMPLIANCE CERTIFICATE

A tax compliance or tax clearance certificate is an official document issued by KRA to a taxpayer as proof of having filed all returns and paid all taxes. A tax compliance certificate is valid for 12 months and an application is required to be lodged by the taxpayer on the iTax platform 7 days before the expiry of the previous one.

ADVANCE, INSTALMENT, MINIMUM AND FINAL TAX PAYMENTS AND DEADLINES

Tax payments are made by the payment of:

- Advance taxes and other taxes deducted at source e.g. withholding tax;
- Instalment taxes;
- Minimum taxes; and
- Final tax (being the difference between the total tax liability for the year less advance and other taxes deducted at source and instalment taxes paid).

Instalment taxes and minimum taxes (effective 1st January 2021) are payable by the 20th day of the respective month after the start of the accounting period (or the last working day before the 20th where this falls on a Saturday, Sunday or a public holiday unless payment is made electronically then due date shall remain as specified in the law) as follows:

Instalments / Minimum	Due date	Rate
Non-agricultural companies		
1 st instalment	4 th month	25%
2 nd instalment	6 th month	25%
3 rd instalment	9 th month	25%
4 th instalment	12 th month	25%
Agricultural companies		
1 st instalment	9 th month	75%
2 nd instalment	12 th month	25%

The basis of assessing instalment tax is the lower of the preceding year's tax liability multiplied by 110% and the current year's estimate.

The basis of assessing minimum tax is the higher of instalment tax or 1% of gross turnover.

The final tax due is required to be paid on or before the end of the fourth month after the year-end or the last working day before the month-end where it falls on a Saturday, Sunday or a public holiday unless payment is made electronically, then the due date remains as specified in the law.

Motor Vehicle Advance Tax

Applicable to all commercial vehicles and PSV's and payable on or before the 20th day of the first month of the year of income or before registration:

- For vans, pickups, trucks, prime movers, trailers and lorries (except tractors and trailers used for agricultural purposes), the higher of KShs 1,500 per ton of load capacity p.a. or KShs 2,400 p.a.
- For saloons, station wagons, mini-buses, buses and coaches, the higher of KShs 60 per passenger capacity p.m. or KShs 2,400 p.a.

TURNOVER TAX

Turnover tax is payable monthly for incorporated and unincorporated entities with a turnover of KShs 1 million, up to KShs 50 million. The applicable rate is 1% of the gross receipts of the business. Turnover tax is not applicable to:

- Rental income and management, professional or training income;
- Any income which is subject to a final withholding tax.

PERSONAL INCOME TAX

INTRODUCTION

The Income Tax Act contains the rules for the ascertainment of income, entitlement to personal relief and the assessment and collection of tax in relation to personal income.

BASIS OF TAXATION AND TAX RATES

A Kenyan resident is taxed on his worldwide employment income, while a non-resident is taxed on income from employment with a Kenyan resident employer or a permanent establishment in Kenya of a non-resident employer. Pension received by a resident individual from a pension fund established outside Kenya will be deemed to have been derived from Kenya to the extent to which it relates to employment or services rendered in Kenya.

An individual is resident in Kenya if he has a permanent home in Kenya and was present in the country at any time during a particular year of income, or if he has no permanent home in Kenya but was present in Kenya for a period or periods amounting in the aggregate to more than 183 days in that year of income. Furthermore, an individual is also resident if he has no permanent home in Kenya but was present in Kenya in that year of income and in each of the 2 preceding years of income for periods averaging to 122 days or more in each year of income.

Taxable income from employment includes wages, salary, commission, bonus, allowances and directors' fees. Travelling, entertainment and other similar allowances are taxable unless they are purely a reimbursement of expenses incurred by the employee in the course of their employment. The first KShs 2,000 per day received by an employee towards subsistence and travelling allowance for a person working outside the usual place of work is not construed as a benefit and therefore not subject to tax.

Each employer is required to operate the Pay As You Earn (PAYE) system of withholding tax at source from employment income paid to employees and remitting the same to KRA. The PAYE rules set out the manner in which the system is to be operated and also prescribes the returns that are to be provided to KRA or to the employees.

The Personal Income Tax rates for the year 2020 are as follows:

Taxable Income – Tax Year 2019 and up to 31st March 2020 KShs p.a.	Rate %	Cumulative Tax KShs p.a.
0 – 147,580	10	14,758
147,581 – 286,623	15	35,615
286,624 – 425,666	20	63,424
425,667 – 564,709	25	98,185
Over 564,709	30	

Taxable Income – From April 2020 to December 2020 KShs p.a.	Rate %	Cumulative Tax KShs p.a.
0 – 288,000	10	28,800
288,001 – 488,000	15	58,800
488,001 – 688,000	20	98,800
Over 688,000	25	

Taxable Income – From January 2021 KShs p.a.	Rate %	Cumulative Tax KShs p.a.
0 – 288,000	10	28,800
288,001 – 388,000	25	53,800–
Over 388,000	30	

PERSONAL AND OTHER RELIEFS

Other reliefs granted as a deduction against employment income include:

- Life, health and education insurance relief – 15% of premium subject to a maximum of KShs 60,000 p.a. Where a policy is surrendered before its maturity, the tax on the relief granted to the policy holder is refundable. Contributions made to National Hospital Insurance Fund shall be eligible for insurance relief effective 1st January 2022. This relief will be equivalent to 15% of the amounts paid toward NHIF and other insurance premiums, not exceeding KShs. 60,000 per annum.
- Mortgage interest relief on owner occupied property (purchase or improvement) subject to a maximum of KShs 300,000 p.a.
- Home ownership savings plan – a maximum of KShs 96,000 p.a. for a maximum period of 10 years. Interest earned on deposits of up to KShs 3,000,000 over the ten year period is also exempt. The money shall be held with an approved institution (bank, insurance company or a building society). Any withdrawal from the plan will be subject to tax at the individual rates of tax in the year of withdrawal. This relief is no longer available from 1st January 2021.
- Affordable housing relief – 15% of gross emoluments to a maximum of KShs 108,000 p.a.

TAXATION OF BENEFITS

As a general rule, all non-cash benefits exceeding KShs 36,000 p.a. in aggregate are taxable at the higher of cost to the employer of providing the benefit or their fair market value.

Personal relief represents the amount which can be deducted by an eligible person from the tax payable by him. The personal relief up to April 2020 is KShs 16,896 while that for April 2020 onwards is KShs 28,800. The relief is apportioned proportionately in a year of income in the case of death or in the case of an individual who arrives in Kenya or leaves Kenya permanently.

Tax Free Benefits

- Non-cash benefits not exceeding KShs 36,000 p.a. in aggregate.
- Meals provided at the employer's canteen or by a third party registered taxpayer both at the employer's and third party premises where the value of the meal does not exceed KShs 48,000 p.a. per employee.
- Daily allowance of the first KShs 2,000 paid to an employee whilst on official duty.

- Bonus, overtime and retirement benefits paid to low income earners (those in the lowest tax bracket). This benefit is taxable effective 30th June 2020.
- Medical benefits provided to a full-time employee and a whole-time service director (who spends substantially all of his time on company business and does not own or control more than 5% of the company shares or voting power), including their beneficiaries (spouse and up to 4 children below 21 years).
- Medical benefits provided to a director, other than a whole-time service director, partners and sole proprietors including their beneficiaries subject to a maximum value of KShs 1,000,000 p.a.
- Amounts paid by an employer into a registered pension scheme subject to a maximum of KShs 240,000 p.a. However, employees of organisations not chargeable to tax will be taxed on contributions that the employer makes to an unregistered fund or on the excess contribution made to a registered fund.
- Payment by an employer not exceeding KShs 240,000 p.a. of gratuity or similar payment paid into a registered pension scheme.
- International passage cost for non-citizen employees recruited outside Kenya solely for the purpose of serving the employer.
- Education fees of an employee's dependants or relatives, if taxed on the employer.
- The first KShs 150,000 p.m. of total income, and deduction of up to KShs 50,000 p.m. of non-reimbursable hospital admission costs, drugs treatment and home care services for disabled persons registered with the National Council for Persons with Disabilities, and approved by the Commissioner. Exemption is valid for 5 years.
- A deduction of one-third of employment income claimed by a non-citizen resident employee of a non-resident company or a partnership trading for profit approved by the Commissioner, who is absent from Kenya for an aggregate of 120 days or more in a year of income and whose employment income is not deductible in ascertaining the employer's income chargeable to tax.
- Premiums paid for group life policy cover where they do not confer a benefit on the employee or his dependents.
- Income earned by individuals registered under the Ajira Digital Program for a period of 3 years beginning 1st January 2020, provided qualifying members remit the KShs 10,000 subscription upon registration.

Taxable Employment Benefits

a) Motor Vehicles

- Where a company car is provided to an employee, the benefit is taxed at the higher of 2% p.m. of the initial cost of the vehicle and the value prescribed by the Commissioner.
- Leased and hired vehicles provided to an employee are taxed at the cost of hiring or leasing the vehicle.
- Where the employee has restricted use of the car, the Commissioner may upon application determine a lower rate based on usage.

b) Domestic Benefits

Benefits including staff meals (except to low income employees), club subscriptions, house helps, water, security, electricity, etc. are taxable at the higher of cost or fair market value.

The Commissioner has prescribed the value of benefits where the cost to the employer is difficult to ascertain. The prescribed rates are:

- Telephone (incl. mobile) – 30% of cost to employer
- Furniture – 1% p.m. of cost to employer
- Water (provided communally) – KShs 500 (KShs 200 for agricultural employees)
- Electricity (provided communally) – KShs 1,500 (KShs 900 for agricultural employees)

c) Housing

- The higher of market rental, actual rent paid and:
 - For directors: 15% of total income excluding the value of the premises.
 - For whole-time service directors: 15% of total employment income excluding the value of the premises.
 - For employees: 15% of total employment income excluding the value of the premises.
- Agricultural employees: 10% of total employment income.
- Where the total employment income exceeds KShs 600,000 p.a., the housing benefit is the higher of rent paid and the fair market value.
- Rent received from an employee is deducted in calculating housing benefit.

d) Employee Loans

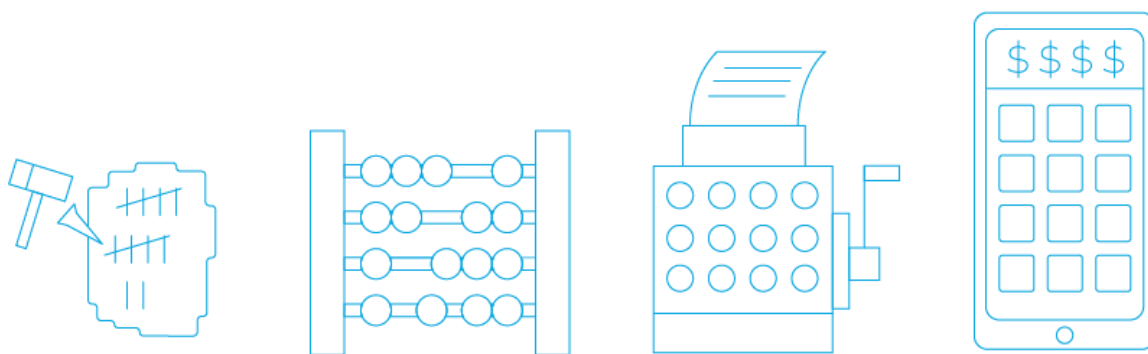
Loans granted after 11th Jun 1998 are subject to Fringe Benefit Tax payable by the employer at the resident corporate tax rate on the difference between the market interest rate (average 91-day Treasury Bill interest for the previous quarter) and the interest paid by the employee.

e) Registered Employee Share Ownership Plan

Taxable on the employee based on the difference between the offer price and the market price per share at the date the option is granted. The benefit accrues at vesting.

f) Pension and Provident Funds

- The amount that is deductible against taxable income of an employee for contributions made by an employee to a registered fund, including the National Social Security Fund (NSSF), is the lower of 30% of pensionable income, actual contribution paid or KShs 240,000 p.a.
- Insurance premiums paid by an employer to a registered fund on the life of, and for the benefit of an employee or his dependents are not a taxable benefit on the employee. However, where they are paid to another underwriter, they become taxable on the employee.
- An individual who is not a member of a registered fund may contribute to a registered individual retirement fund operated by a bank or an insurance company. Such a person is entitled to claim contributions made to such a fund against his taxable income subject to the limits prescribed above.
- Contributions made by employers to registered or un-registered funds are not chargeable to tax on the employee. However, employees of tax exempt bodies will be taxed on contributions that the employer makes to an un-registered fund or on the excess contribution to a registered fund.
- The first KShs 300,000 p.a. of the total pension or retirement annuities received by a resident taxpayer is exempt from tax.
- Monthly pension payments to persons of 65 years of age or above are tax exempt Lump sum pension payments to persons of 65 years of age or above are taxable effective 30th June 2020.
- Tax exempt lump sum withdrawals:
 - Lump sum commuted from a registered pension fund – the first KShs 600,000.
 - Withdrawal from a registered pension fund upon termination of employment – KShs 60,000 for each year of pensionable service subject to a maximum of KShs 600,000.
 - Withdrawal from a registered provident fund (or defined contribution fund) – KShs 60,000 for each year of pensionable service subject to a maximum of KShs 600,000, plus all lump sums from segregated funds on contributions made prior to 1st Jan 1991 and notified to the Commissioner prior to 31st Dec 1991.
 - A one-off final lump sum payment from a registered fund to the estate of a deceased – the first KShs 1,400,000.
 - The first KShs 600,000 of NSSF benefits.
 - Total pension and retirement annuities received by a resident individual from an un-registered fund or scheme, where no tax benefit has been claimed on the contributions and the income of the fund has been taxed.
 - Withdrawals above these limits are subject to withholding tax based on length of service.
- Any surplus refunded to/withdrawn by an employer from a registered fund is taxable on the employer.
- Registered funds require the written approval of the Commissioner, and must comply with conditions laid down including limits on contributions and circumstances in which benefits can be paid out. The income of registered funds and pooled funds is exempt from tax.



TAX RETURNS AND PAYMENT DEADLINES

Every person with income chargeable to tax including a partner in a partnership and a sole proprietor, including individuals earning only employment income which is fully taxed at source, is required to file a Self-Assessment Return (SAR). The SAR is due for filing by 30th June of the following year.

A married woman may opt to file a separate tax return and declare income from arms-length employment, professional services, rent, dividend and interest separately from her husband. Income is not considered arms-length for a married woman (and therefore deemed to be that of the husband) if it is earned from a company or a partnership in which the husband or the husband and wife jointly own directly or through a nominee of 12.5% or more of the capital or the voting power.

Every employer operating the PAYE system is required to file returns as follows:

- Complete the Monthly Payment PAYE return and submit it online on the iTax platform by 9th of the month following the month of income. iTax is the online system used by KRA in administration and collection of taxes. The iTax return is very comprehensive and covers details such as employer PIN, disability status, residency status, type of employee (primary or secondary), allowances, lump sum payments, relief, overtime and arrears among other details.
- Upon filing of the return, generate a Payment Registration Number (PRN) for PAYE and Fringe Benefit Tax (FBT) from the iTax portal. The PRN is used as the reference number to credit the payments in the employer's KRA account. The payments should be submitted by 9th of the month following the month in which the taxes relate. Payments can be made through cash, cheque, RTGS or mobile money transfer.
- The tax deduction card, previously known as P9A, P9A (HOSP) and P9B is automatically generated in each of the employee's iTax accounts upon submission of the return and payment of the PAYE and FBT by the employer.

ADVANCE, INSTALMENT, MINIMUM AND FINAL TAX PAYMENTS AND DEADLINES

Under the PAYE rules, all deductions made by an employer (including fringe benefit tax payable by the employer) must be paid on or before the 9th day of the following month.

PAYE deducted at source is included in the individual's self-assessment return and deducted from the tax liability due on the total income.

Where the tax liability for an individual is greater than the tax deducted at source (PAYE and withholding tax) and instalment tax, the balance of tax is payable by 30th April of the following year or the last working day before the 30th where this falls on a Saturday, Sunday or a public holiday unless the payment of tax is made electronically then the due date shall remain as specified in the law.

In the case of individuals, where the final tax liability (after deduction of taxes at source) is KShs 40,000 or less, no instalment tax is payable. Where instalment tax is payable, the basis of calculation and the due dates for payment are similar to a non-agricultural company (Section 4.1.8). Minimum tax provisions have been introduced effective 1st January 2021 where minimum tax is payable where instalment tax is lower.

Where tax is chargeable in Kenya on a Kenya citizen in respect of foreign employment income or on income earned from an appearance at an artistic performance or a sporting event in a foreign country, and that person proves to the satisfaction of the Commissioner that he has paid tax in such other country, he shall be entitled to set-off by way of credit that tax paid in the foreign country against the tax payable in Kenya. The amount of set-off cannot exceed the tax liability in Kenya on the said income.

WITHHOLDING TAX

Withholding tax is deducted on payment by a resident person or a non-resident person with a permanent establishment in Kenya on certain income deemed to have been derived from Kenya (irrespective of whether paid to resident or non-resident persons). Withholding tax deducted is payable by the 20th day of the following month. The rates of withholding tax are as follows:

Withholding Tax Rates	Resident	Non-Resident
Telecommunication services	–	5%*
Artists and entertainers (excluding payment to approved foreign actors and crew)	–	20%*
Royalties (including payment for extraction of natural resources) (15)	5%	20%*
Dividends (1)/(2)/(18)/(20)	5%*	15%*
Dividends paid to companies having 12.5% or more voting power	Exempt	10%*
Renting property other than immovable (3)	–	15%*
Rent – land and buildings (13)	10%	30%*
Interest (including 2-year Gov't bearer bonds) (4)/(16)/(17)	15%	15%*
Interest from other bearer bonds (5)	25%	25%*
Interest on bearer bonds with maturity of 10 years and above	10%	15%*
Housing bond interest (4)/(5)	10%	15%*
Deemed interest on interest free loans in respect of thin capitalisation	–	15%*
Pension and taxable withdrawals from pension/provident funds (6)	10–25%*	5%*
Insurance commissions (7)	10%	Not Specified
Contractual fees (8)/(9)/(17)	3%	20%*
Management, professional or training fees (8)/(9)/(10)/(11)/(14)/(17)	5%	20%*
Surplus pension fund withdrawals	25%	25%*
Shipping business or aircraft	–	2.5%*
Interest income from listed infrastructure bonds	–	–
Insurance and reinsurance premium except insurance paid for aircraft insurance	–	5%*
Gross winnings from betting, lotteries and gaming	20%	20%
Sales promotion, marketing, advertising services and transportation of goods (excluding air and shipping transport services) (19)	–	20%*
Disbursement of deemed income to beneficiaries	25%	–

* Final tax

East African Community partner state citizens at resident rate of 5%.

- (1) Dividends received by a specified financial institution operating in Kenya chargeable to corporation tax.
- (2) Renting of aircraft, aircraft engines, locomotives and rolling stock exempt.
- (3) Final tax for individuals unless received from sources other than financial institutions. Not final tax for resident companies, trusts, clubs etc.
- (4) Limited to income of KShs 300,000 p.a.
- (5) Rates based on graduated PAYE tax bands of KShs 400,000 for withdrawals after a 15-year period or 50 years of age. For early withdrawals, higher rates apply and withholding tax is not final tax.
- (6) 5% if paid to a resident broker.
- (7) 15% if paid to East African Community countries.
- (8) For all payments in excess of KShs 24,000 p.m.
- (9) Exempt on agency fees paid on export of flowers and fruits and vegetables and on audit fees for analysis of maximum residue limits paid to non-resident laboratories or auditors. Also exempt on courses provided by colleges, universities and institutions that promote adult education.
- (10) Extractive industries – the rate is 5.625% for sub-contractors. In the case of petroleum companies, for management, professional and training fees the rate is 12.5%.
- (11) In case of mining and petroleum companies, the net gain arising for a farm-out is subject to tax at a rate based on percentage farmed-out.
- (12) Deducted by tenants and agents appointed by the Commissioner.
- (13) Payments for management, professional and training paid by SEZ, Developer or Operator to a non-resident – 5%.
- (14) Royalty paid by SEZ, Developer or Operator to a non-resident is subject to withholding tax at a rate of 5%.

- (15) Interest paid by SEZ, Developer or Operator to a non-resident is subject to withholding tax at a rate of 5%.
- (16) Payments made by a branch in Kenya to its Head Office is subject to withholding tax provided the Head Office is domiciled in a country with a Double Tax Agreement with Kenya.
- (17) Dividends received by Special Economic Zone enterprises, developers and operators exempted from withholding tax.
- (18) Rate not applicable to East African Community citizens.
- (19) Rate for non-residents prior to April 2020 is 10%.

TAX PROCEDURES ACT

The Tax Procedures Act provides uniform procedures for the administration of the tax laws in Kenya.

Continuous Obligations

Every person carrying on a business is required within 30 days to notify the Commissioner of any changes:

- in the place of business, trading name and registered address; or
- in case of:
 - an incorporated person – persons holding 10% or more of the issued share capital;
 - a nominee ownership – disclose the beneficial owner of the shareholding;
 - a trust – the full identity and address of the trustees and beneficiaries of the trust;
 - a partnership – the identity and address of all partners; or
 - cessation or sale of the business – all relevant information regarding liquidation or details of ownership.

Due Date of Submission of Returns

If the date for submitting or lodging a tax return, application, notice, or other document; the payment of a tax; or taking any other action under a tax law, falls on a Saturday, Sunday or public holiday, the due date shall be the previous working day; provided that a person who submits a tax return in electronic form and pays the tax electronically, the due date remains the date specified in the relevant tax law.

Where a person cannot file a tax return by the due date, the person may seek for an extension of time required to submit the tax return by submitting an application before the due date to the Commissioner. The Commissioner may grant an application if satisfied that there is reasonable cause, and shall notify the applicant in writing. An extension for filing of the tax return shall not alter the due date for payment of any tax due.

Refund of Tax

When a taxpayer has overpaid a tax, the taxpayer may apply to the Commissioner, in the approved form, for a refund of the overpaid tax within five years of the date on which the tax was paid (except for VAT where the refund shall be as provided for in the VAT Act). The Commissioner may subject the validity of the refund to an audit. The Commissioner shall notify the taxpayer within 90 days of the application of the refund.

When the Commissioner has approved a refund claim and the same is to be utilized against any outstanding tax liability, the penalties and interest for the outstanding liability will cease to accrue on the date the Commissioner gives notification that the refund claim has been ascertained.

Any tax liability that remains unpaid or outstanding after the Commissioner has applied the refund amount towards payment of an outstanding tax shall continue accruing interest and penalties in accordance to the provision of the TPA. Any other tax overpayment approved by the Commissioner may be utilized against the taxpayer's future tax liabilities. The Commissioner shall repay overpaid tax within a period of 2 years from the date of application, failing which the amount shall attract interest at 1% per month.

TAX PENALTIES

The Tax Procedures Act and the Income Tax Act provides for various penalties in case of non-compliance. The Commissioner may upon an application or on the Commissioner's own motion and with the approval of the CS Treasury remit, in whole or in part, any penalty or interest payable by a person except a tax avoidance penalty, provided that, in the case of interest remission, it will only be granted if there is uncertainty as to any question of law or fact; consideration of hardship or equity; or impossibility or undue difficulty or expense, of recovery of tax.

Interest is charged at 1% per month or part of a month, calculated as simple interest, on any tax that remains unpaid and shall not exceed the principal tax outstanding.

Some of the penalties levied include: Offence/General Penalties	Penalty/Fine
Failure to apply for registration or deregistration (excluding VAT)	KShs 100,000 for each month or part thereof (max. KShs 1 million)
Failure to retain or maintain documents required	Higher of KShs 100,000 or 10% of tax payable relating to documents
Failure to submit a tax return by the due date	<ul style="list-style-type: none"> ▪ Employment income – higher of KShs. 10,000 or 25% of the tax due ▪ Individual – higher of 5% of the tax payable or KShs 2,000 ▪ Company – higher of 5% of the tax payable or KShs 20,000 ▪ KShs 1,000 for submission under Turnover Tax
Failure to submit a document other than a tax return	KShs 1,000 for each day or part thereof (max KShs 50,000)
Knowingly making a false or misleading statement or omitting from a statement any matter that leads to a tax shortfall	<ul style="list-style-type: none"> ▪ 75% of the tax shortfall when statement or omission made deliberately ▪ Increased by 10% on second application and 25% on third or subsequent applications ▪ Reduced by 10% on voluntary disclosure
Tax avoidance or fraudulent claim for a refund	Double the amount of tax avoided/claimed
Failure to submit a tax return or pay tax due electronically	KShs 100,000
Failure to pay the tax by the due date	5% of the unpaid tax
Failure to submit a tax return by an EPZ	KShs 2,000 per day for as long as the failure continues
Specific Income Tax Penalties	
Penalty on unpaid tax	5% of unpaid tax Unpaid PAYE – 25%
Underestimation of instalment tax	5% of unpaid tax
Specific VAT Penalties	
<ul style="list-style-type: none"> ▪ Failure to apply for registration or deregistration ▪ Failure to display the tax registration certificate at all premises ▪ Failure to notify the Commissioner of any change in name, address, place of business and nature of business 	Fine not exceeding KShs 200,000, or imprisonment not exceeding 2 years, or both
Issue of a tax invoice for a non-vatable supply or by a non-registered person	KShs 1 million, or imprisonment not exceeding 3 years, or both
Failure to maintain proper records, using an ETR or provide access to an authorized officer	KShs 1 million, or imprisonment not exceeding 3 years, or both
Failure to submit a return on time	5% of tax due (min. KShs 10,000)
Failure to withhold the whole amount of VAT which should be withheld	10% of the tax due
Failure to remit withheld VAT by twentieth day of the following month	10% of the tax due
VAT on excise duty	5% of the tax payable or KShs 10,000

TAX OBJECTION AND APPEALS

Where a taxpayer receives an assessment from the Commissioner, he may within 30 days of the service of the assessment object to the assessment. A notice of objection is validly lodged if it states precisely the grounds of the objection; the amendments required; and the reasons for the amendments and provided that the taxpayer has paid the entire amount of tax due that is not in dispute.

The Commissioner shall consider the objection and decide either to allow the objection in whole or in part, or disallow it (Objection Decision) and notify the taxpayer of the objection decision. An objection decision shall include a statement of findings on the material facts and the reasons for the decision. Where an objection decision is not made within 60 days, the objection shall be allowed.



Where the taxpayer disputes the objection decision, he may appeal to the Tax Appeals Tribunal. The taxpayer is required to give a Notice of Appeal in writing to the Tribunal within 30 days of receipt of the objection decision and paying a non-refundable fee of KShs 20,000. The Notice of Appeal is required to be served on the Commissioner within 2 days of serving it on the Tribunal. A Notice is valid if the taxpayer has paid the tax not in dispute or entered into an arrangement with the Commissioner. The burden shall be on the taxpayer to prove that a tax decision is incorrect and the taxpayer shall rely only on the grounds stated in the objection.

Within 14 days of filing the Notice, the taxpayer is required to submit enough copies, as advised by the Tribunal, of a memorandum of appeal, statements of facts, and the tax decision. Unless the Tribunal orders otherwise, an appeal is limited to the grounds stated in the appeal. The documents are also required to be served on the Commissioner within 2 days of filing them in the Tribunal.

The Commissioner is required to, within 30 days after being served, submit to the Tribunal enough copies as may be advised by the Tribunal of the statement of facts including the reasons for the tax decision and any other document which may be necessary for review of the decision. The Commissioner is also required to serve the documents on the taxpayer within 2 days of filing them in the Tribunal.

Either party who is dissatisfied with the decision of the Tax Appeals Tribunal may within 30 days of being notified of the decision or within such further period as the High Court may allow, appeal the decision to the High Court. A further right of appeal against a High Court decision exists to the Court of Appeal. An appeal to the High Court or Court of Appeal shall be on a question of law only.

Where the Tribunal or Court permits the parties to settle a dispute out of the Tribunal or Court using the ADR process, the settlement shall be made within 90 days from the date the Tribunal or the Court permits the settlement. Where parties fail to settle the dispute within 90 days, the dispute shall be referred back to the Tribunal or the Court that permitted the settlement.

VALIDITY AND ENFORCEMENTS OF INTERNATIONAL TAX AGREEMENTS

Multilateral agreements and treaties that have been entered into by or on behalf of the Government of Kenya relating to international tax compliance and prevention of evasion of tax or exchange of information on tax matters to take effect in the manner stipulated in such agreements or treaties.

Any information obtained pursuant to agreements shall not be disclosed except in accordance with the conditions specified in the agreements.

This amendment is a stepping stone into Kenya entering into common reporting standards regime pursuant to the signing and depositing the required instruments under the Multilateral Convention on Mutual Administrative Assistance.

COMMON REPORTING STANDARDS PROVISIONS

The Act has introduced due diligence procedures and record keeping requirements as set out in the common reporting standards (“CRS”) regulation to be developed by the CS Treasury to:

- Any financial institution that is resident in Kenya (excluding any branch located outside Kenya); or
- A branch of a foreign financial institution located in Kenya.

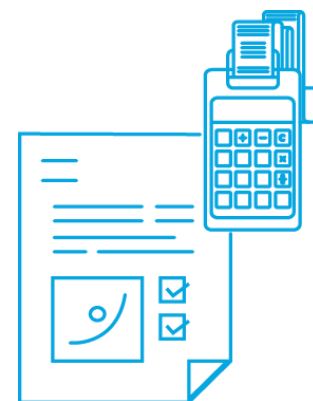
The CRS is a global initiative developed by the Organization for Economic Co-operation and Development (“OECD”). Its objective is to enable tax authorities to obtain more information about their residents' tax affairs.

The reporting requirements under CRS include furnishing the Commissioner with all reportable accounts held, managed or administered by the reporting institution; or nil accounts if no account is held by a date to be set out under the regulations.

It also prescribes anti-avoidance provisions to circumvent reporting.

The penalty for non-compliance with the CRS obligations are as follows;

- Making a false statement or omission of any information required – KShs. 100,000 for each false statement or omission, an imprisonment for a term not exceeding 3 years or both (unless reasonable effort was made to obtain information);
- Failure to file an information return or nil return by a financial institution – KShs. 1 million for each failure;
- Failure to comply with a duty or obligation, where no other penalty is prescribed – penalty of KShs. 20,000; and KShs. 20,000 per day for each day of non-compliance, however, not exceeding 60 days.



DOUBLE TAXATION TREATIES

Kenya has entered into double taxation treaties which mitigate the tax chargeable on the income of persons derived from a country other than the country in which they are resident. Lower rates may apply where tax treaties are in force. Currently with Canada, Denmark, France, Germany, India, Iran, Norway, South Korea, South Africa, Sweden, Qatar, United Arab Emirates, United Kingdom and Zambia. For persons to be entitled to DTA benefits, at least 50% of the ownership has to be enjoyed by the residents of the contracting state. DTA with India amended with effect from 1st January 2018.

The withholding tax rates for countries with which Kenya has Double Tax Taxation Agreements (DTA's) are:

Payment in respect of DTA rates:	Canada	Denmark	France	Germany	India (re-negotiated)	Norway
Management or professional fees	15%	20%	**	15%	10%	20%
Royalties	15%	20%	10%	15%	10%	20%
Rent from immovable property	30%	30%	30%	30%	30%	30%
Rent from movable property	15%	15%	15%	15%	15%	15%
Dividends	15%/25% b	20%/30% a	10%	15%	10%	15%/25% a
Interest (including from Government bonds)	15%	20%	12%	15%	10%	20%
Pension and annuities	15%	5%*	5%*	5%*	5%*	5%*
Entertainment and sporting events	20%***	20%***	20%***	20%***	20%***	20%***

Payment in respect of DTA rates:	South Africa	South Korea	Sweden	Qatar	UAE and Iran	UK	Zambia
Management or professional fees	**	**	20%	**	**	12.5%	20%
Royalties	10%	10%	20%	10%	10%	15%	***

Payment in respect of DTA rates:	South Africa	South Korea	Sweden	Qatar	UAE and Iran	UK	Zambia
Rent from immovable property	30%	30%	30%	30%	30%	30%	30%
Rent from movable property	15%	15%	15%	15%	15%	15%	15%
Dividends	10%	8%/10% ^a	15%/25% ^a	5%/10% ^b	5%	15%	****
Interest (including from Government bonds)	10%	12%	15%	10%	10%	15%	****
Pension and annuities	5%*	5%*	5%*	5%*	5%*	5%	5%*
Entertainment and sporting events	20%***	20%***	20%***	20%***	20%***	20%***	20%*

NOTES

The above rates are the maximum rates of taxation applicable if the income derived from Kenya by a non-resident.

* – Withholding tax applicable on pension and annuities paid to non-residents.

** – Professional fees are exempt from taxation in Kenya unless the non-resident has a fixed base regularly available on Kenya or the stay in Kenya exceeds 183 days in any year.

*** – Where activities are exercised in Kenya, provided that their visit to Kenya is not wholly or substantially supported from public funds of their State or local authority, withholding tax rate is applicable on such activities paid to non-residents.

**** – Exempt from taxation in Kenya provided the income is subject to tax in the non-resident's State.

a – where company owns 25% or more voting rights/ in any other case.

b – where company owns 10% or more voting rights/in any other case.

VALUE ADDED TAX

BASIC CONCEPTS AND RATES

The operation of Value Added Tax (VAT) has its legal basis in The Value Added Act, 2013 (No. 35 of 2013). VAT is to be charged on:

- a taxable supply made by a registered person in Kenya;
- the importation of taxable goods;
- the importation of taxable services; and
- supply of services made on a digital marketplace.

In the case of importation of taxable goods or services, the onus to pay VAT is on the importer. An importer, in the case of goods, includes any person who owns the goods, or any other person who is, for the time being, in possession of or beneficially interested in the goods.



Where a non-resident person with no fixed place of business in Kenya is required to register for VAT, the non-resident person shall appoint in writing a tax representative in Kenya. Where the person fails to do so, the Commissioner may by notice in writing, appoint a person who is normally resident in Kenya, as an agent for collecting the tax payable on the service and remitting the same to the Commissioner.

The VAT rates applicable in Kenya are:

	Rate
Standard rate (including on sale and rental of non-residential premises)	
Tax year 2019 up to 31 st March 2020	16%
1 st April 2020 to 31 st December 2020	14%
1 st January 2021 and subsequently onwards	16%
Zero-rated supply, which includes:	0%
<ul style="list-style-type: none"> • Export of goods • Supply of taxable services in respect of goods in transit • Supply of goods and taxable services to an Export Processing Zone Business (EPZ) and to a Special Economic Zone Enterprise (SEZ) • Supply of coffee or tea for export to coffee or tea auction centres • Shipstores and taxable services supplied to international sea or air carriers on international voyage or flight • Transportation of passengers by air carriers on international flights • Supplies before the imposition of tax or imported before clearance through customs to designated public bodies and institutions, privileged persons and first arrivals persons subject to any limitations imposed 	
Catering levy for hotels and restaurants	2%
VAT as a fraction of inclusive price (standard rate) – 16%	4/29
14%	7/16
Petroleum products listed in Section B of Part 1 of the First Schedule (taxable value now includes excise duty, fees and other charges)	8%

- An **exempt supply** is a supply specified in the First Schedule to the VAT Act. Where a person makes exempt supplies:
 - no tax is charged on the exempt supplies;
 - the value of exempt supplies is disregarded in determining the annual registration threshold; and
 - any input VAT suffered in the provision of exempt supplies is not deductible as input VAT and is therefore a cost to the person.
- A **zero-rated supply** is a supply listed in the Second Schedule to the VAT Act including supplies to designated public bodies and institutions, privileged persons and first arrivals persons subject to any limitations which enjoy a zero-rated status. Where a person makes zero-rated supplies:
 - no tax is chargeable on the supply; but
 - the supply shall in all other respects be treated as a taxable supply (included in determining the registration threshold).
- **Taxable supply** is a supply, other than an exempt supply, made in Kenya by a person in the course or furtherance of a business carried on by that person, and such supplies are deemed to be taxable at the standard rate of 14% or are zero-rated.
- A hotel or a restaurant is required to charge 2% catering levy in addition to the VAT. A hotel includes premises commonly referred to as service flats, service apartments, beach cottages, holiday cottages, game lodges, safari camps, bandas or holiday villas and other premises or establishments used for similar purposes, excluding premises on which the only supply is under a lease or licence of not less than one month and premises operated by education, training or medical institutions for use by staff and students of that institution.



APPLICATION FOR REGISTRATION

A person who in the course of business makes or intends to make taxable supplies of taxable goods or services, or both, the value of which is KShs 5 million or more in any period of 12 months is liable for registration under the VAT Act. The registration threshold excludes any taxable supply of capital assets of the person, and a taxable supply made solely as a consequence of the person selling the whole or part of his business.

A person who meets the registration requirements should, within 30 days of becoming so liable, apply for registration. Such registration is done electronically through the iTax system administered by KRA.

A group of companies which is owned or substantially controlled by another person, subject to the discretion of the Commissioner, may apply to be registered and treated as one person. In the absence of a group registration, all taxable transactions between group companies are subject to VAT. The Cabinet Secretary to the National Treasury has yet to develop regulations for the registration of a group of companies as one registered person.

Under the recently introduced "digital market place supply" VAT regulations, a non-registered person providing a business to consumer supply of services through a digital marketplace to a recipient in Kenya shall register for tax through a simplified tax registration framework or shall elect to appoint a tax representative in Kenya.

PRE-REGISTRATION INPUT VAT

Where a person has incurred input VAT on supplies which were exempt and which have now become taxable, or on the date he is registered, a person had incurred tax on taxable supplies which are intended for use in the making of taxable supplies, the person may within 3 months from that date, claim relief on any tax incurred on such supplies. The input can only be claimed on trading stock on hand at the date the person becomes registered.

The claim for relief shall be made in the prescribed form and shall be limited to supplies that are purchased within the period of 24 months immediately preceding registration or the exempt supplies becoming taxable.

The claim shall be deducted from the next return due after the Commissioner has authorised the person to make the deduction of relief claimed, having satisfied himself that the claim for relief is justified.

DE-REGISTRATION

A person may apply to be de-registered if he does not meet the annual registration threshold. On receipt of the application, the Commissioner, if satisfied that the person is not required to be registered:

- shall cancel the registration where the person has been registered for more than 12 months, or
- may cancel the registration where the person has been registered for less than 12 months.

Where one ceases to make taxable supplies, the person shall within 30 days of ceasing write to the Commissioner for the cancellation of registration. The Commissioner shall cancel the registration if he is satisfied that the person has ceased to make taxable supplies. The Commissioner can also cancel the registration where a person has not applied, but the Commissioner is satisfied that the person has ceased to make taxable supplies.

The cancellation of the registration shall take effect from the date specified in the notice of cancellation. The notice may be issued through the online iTax portal. Where a person's registration is cancelled, the person shall immediately cease to hold out as a registered person (including on any documents used by the person) and submit a final return and pay all tax due including output tax on stock at hand at the date of cancellation of registration within 15 days of the date of cancellation of registration.

The Commissioner may also de-register a person if he has failed to keep proper records or furnished regular and reliable returns or failed to comply with the obligation under other tax laws.

In practice, the Commissioner will conduct a VAT audit before granting de-registration.

Notwithstanding the cancellation of registration, a person shall be liable for any acts done or omitted to be done while registered.

CONTINUING OBLIGATIONS OF A TAXPAYER

A registered person is required to display the tax registration certificate at the principal place at which the person carries on business, and a copy at every other place at which the business is carried on. A registered person is required to notify to the Commissioner of any of the following changes within 21 days following the change:

- name (including business names);
- address;
- place of business; or
- nature of business.

OUTPUT TAX IN RELATION TO SUPPLY OF GOODS AND SERVICES

Output Tax and Supply

Output tax is tax which is due on taxable supplies. Supply means a supply of goods and services. Supply of services means anything done that is not a supply of goods or money, including:

- the performance of services for another person;
- the grant, assignment, or surrender of any right;
- the making available of any facility or advantage; or
- the toleration of any situation or the refraining from the doing of any act.

A supply of services is made in Kenya if the place of business from which the services are supplied is in Kenya. If the place of business of the supplier is not in Kenya, the supply of services will be deemed to be made in Kenya if the recipient of the supply is not a registered person and:

- the services are physically performed in Kenya by a person who was in Kenya at the time of supply;
- the services are directly related to immovable property in Kenya;
- the services are radio or television broadcasting services received at an address in Kenya;
- the services are electronic services delivered to a person in Kenya at the time of supply; or
- the supply is a transfer or assignment of, or grant of a right to use, a copyright, patent, trademark or similar right in Kenya.
- Supply of goods means:
 - a sale, exchange, or other transfer of the right to dispose of the goods as owner; or
 - the provision of electrical or thermal energy, gas or water.
- A supply of goods occurs in Kenya if:
 - the goods are delivered or made available in Kenya by the supplier;
 - the supply of the goods involves their installation or assembly at a place in Kenya; and
 - the goods are delivered outside Kenya the goods were in Kenya when their transportation commenced.

The supplies chargeable to VAT include supplies made over the internet or an electronic network, in addition to the supplies made through a digital marketplace.

The definition of a digital marketplace means an online platform which enables users to sell or provide services, goods or other property to other users, rather than the existing definition which defines a digital marketplace merely as a platform that allows direct interaction between buyers and sellers.

Taxable supplies made through a digital marketplace include:

- downloadable digital content including downloadable mobile applications, e-books and films;
- subscription based media including news, magazines and journals;
- over-the-top services including streaming television shows, films, music, podcasts and any other form of digital content;
- software programmes including software, drivers, website filters and firewalls;
- electronic data management including website hosting, online data warehousing, fire sharing and cloud storing services;
- music and games;

- search engine and automated help desk services including customisable search engine services;
 - tickets for live events, theatres or restaurants;
 - distance teaching through pre-recorded media or e-learning including online courses and training;
 - digital content for listening, viewing or playing on any audio, visual or digital media;
 - services that links the supplier to the recipient including transport hailing services or platforms;
 - electronic services;
 - any other service provided through a digital market place that is not exempt under the Act.
- A supply on a digital marketplace shall be deemed to have been made in Kenya where the recipient of the supply is in Kenya. In determining whether a recipient of a supply is in Kenya, the Commissioner shall consider:
 - Whether the payment proxy including credit card or debit card information and bank account details of the recipient of the digital supplies is in Kenya; or
 - Whether the residence proxy including the billing or home address or access proxy including internet address, mobile country code or SIM card of the recipient is in Kenya. Where a registered person carried on business both in Kenya and outside Kenya, the part of the business carried on outside Kenya shall be treated as if it were carried on by a person separate from the registered person.
 - Where taxable supplies are used outside the business, they shall not be treated as taxable unless the person has been allowed a deduction for input tax.

In case of goods, exportation shall take place when the goods are exported under the East African Community Customs Management Act and are delivered to a recipient outside Kenya for use, consumption or enjoyment outside Kenya. In case of services, an exportation occurs when the service is provided to a recipient outside Kenya for use, consumption or enjoyment outside Kenya.

Exportation of service shall not include taxable services consumed on the exportation of goods unless the services are in relation to transportation of goods which terminates outside Kenya.

Time of Supply

The time of supply is generally referred to as "the tax point". The tax point in respect of a supply, including imported services, shall be the earlier of:

- the date on which the goods are delivered or the services performed;
- the date a certificate is issued by an architect, surveyor, or any other person acting as a consultant or in a supervisory capacity;
- the date on which the invoice or receipt for the supply is issued; or
- the date on which the payment for the supply is received, in whole or in part.

In the case of supply of imported goods, the tax point shall be:

In case of goods cleared for home use at the port of importation or from an inland station – at the time of customs clearance.

In case of a licensed warehouse – at the time of final clearance from the warehouse for home use.

In case of an EPZ – at the time of removal from the EPZ for home use.

In other cases – at the time the goods are brought into Kenya.

Where goods are supplied under a rental agreement, are made by metered supplies, or under an agreement or law that provides for periodic payment, the tax point shall be the earlier of the date on which the payment for the successive supply is due or received.

In the case of supply by means of a vending machine, meter, or other devices operated by use of a coin, note, or token shall be on the date that the coin, note, or token is taken from the machine, meter or other device by or on behalf of the supplier.

Value of Supply

The taxable value of a supply including imported services shall be:

- the consideration for the supply, or
- the open market value of the supply if the supplier and the recipient are related.

The taxable value of imported goods comprise:

- The value of the goods as ascertained for the purpose of customs duty, in accordance with the East African Community Customs Management Act, 2004 (whether or not any duty of customs is payable).
- A supply of services that is ancillary or incidental to the importation of goods shall be treated as part of the importation.
- To the extent not included above, the:
 - cost of insurance and freight incurred in bringing the goods to Kenya; and
 - cost of services treated as part of the imported goods under this section.
- The amount of customs duty paid on those goods.

The open market value would be the price that the supply would be expected to fetch in an arm's length transaction and where the open market value cannot be determined. It shall be an objective approximation of the consideration that the supply would fetch in an arm's length transaction as determined by the Commissioner based on generally accepted principles of valuation.

The consideration for the supply shall include:

- The amount paid or payable, directly or indirectly for the supply, reduced by any discounts and rebates allowed and accounted for at the time of supply.
- Where the payment is made in kind, directly or indirectly, the open market value of the supply at the time the supply is made reduced by any discount or rebate allowed and accounted for at the time of supply.
- Any taxes, duties, fees and charges (excluding VAT) paid or payable on or by reason of the supply.
- Amount charged for wrapper, package, box, bottle, or other container in which the goods are supplied including other goods contained in or attached thereto.
- Any amount charged for any liability that has to be paid in respect of the supply in addition to the amount charged as price.
- Incidental costs incurred by the supplier of the services in the course of making the supply to the client (excluding disbursements to a third party as an agent of the client).
- In the case of mobile cellular services, the value of the service shall be the value as determined for the purpose of calculating excise duty.

Other provisions in relation to determining the value of supply

- Consideration for a supply shall not include:
 - In case of goods supplied under a hire purchase agreement, any financial charges payable in relation to supply of credit under the agreement.
 - Any interest incurred for late payment of the consideration of supply.
 - Tourism Levy imposed under the Tourism Act.
 - Service charge charged by a hotel or restaurant provided it is distributed directly to the employees in accordance with a written agreement with the employer and does not exceed 10% of the price of the service, excluding such service charge.
- In the case of imported services, reverse VAT is only payable by the importer of such services where the importer is not entitled to claim the full amount of the VAT paid as input VAT. Where an importer can claim part of the VAT paid as input credit, the value of the taxable service shall be reduced by an amount equal to the supply that is entitled for the input tax credit.
- Where taxable goods are sold in returnable containers then:
 - if the registered person has purchased or imported those containers, the amount of any tax payable as part of determining the taxable value in respect of the containers shall be remitted (i.e. no tax will be chargeable in respect of the containers); or
 - in any other case, the amount of tax so payable upon those containers which are returned to the registered person, and upon which he has given a credit to the purchaser, shall be remitted by means of a credit taken by the registered person on his next succeeding tax return.
- In the context of rental of non-residential premises where service charge is levied for such services like security, cleaning, electricity, garbage collection etc., it shall form part of the taxable value and is subject to tax.

- Disbursements include costs recovered from a customer purely as an agent of that customer and which are incurred on their behalf and recovered on an actual basis from the customer without any mark-up. Where a mark-up is added, such disbursements are vatable, in which case any input VAT suffered on the disbursement can also be claimed as input to the extent allowed.
- The taxable value of hotel accommodation and restaurant services shall exclude any catering levy.
- No VAT shall be charged on the disposal of items of property, plant and equipment by an exempt person or on a supply where no input tax deduction was allowed.
- By practice, insurance proceeds received as compensation for the loss of taxable supplies and loss of profits are not deemed to be a supply and not chargeable to output tax.

RECORDS, INVOICES, CREDIT AND DEBIT NOTES



Records

Each registered person is required to keep full and true written records in the course of business, in English or Kiswahili, covering every transaction made by the business and such records shall be kept in Kenya for a period of 5 years from the date of the last entry made therein.

The records to be kept include:

- Copies of all invoices and simplified tax invoices issued in serial number order;
- Copies of all credit and debit notes issued, in chronological order;
- A VAT account showing totals of output and input tax in each period and the tax payable or the excess tax carried forward at the end of the period;
- Original or certified purchase invoices, copies of customs entries, receipts for payments of customs duty or tax, and original or certified credit notes and debit notes received, to be filed chronologically either by date of receipt or under each supplier's name;
- Details of the amount of VAT charged on each supply made or received (including fixed assets, scrap sales etc.);
- Copies of stock records kept in a chronological order (in practice, also for goods manufactured and delivered from the factory);
- Details of each supply of goods and services from the business premises; and
- Any other records as may be specified in writing by the Commissioner (in practice, includes journals, ledgers, cash/petty cash books, bank statements, delivery notes and audited accounts).

The records shall be made available, at all reasonable times, to an authorised officer for inspection and there is a requirement to give the officer every facility necessary to inspect the records. The Commissioner may require a person to use an ETR of such type and description as he may prescribe for the purpose of assessing the information regarding any matter or transaction which may affect the tax liability of the person.

Exports

The following records should be retained in the case of exports:

- A copy of the invoice showing the recipient of the supply is a person outside Kenya;
- Proof of payment for the supply (in practice, a purchase order form or contract with the foreign customer and proof that payment was received in foreign currency);
- In the case of goods, copies of transit documents such as airway bill, road manifest, bill of lading etc.;
- In the case of goods, the export or transfer entry certified by a proper officer of Customs at the port of exit;
- For excisable goods, the documents required under the Excise Duty Act; and
- In the case of services, the Commissioner may require proof that the services have been used or consumed outside Kenya.

In the case of supplies to an SEZ, EPZ or Manufacturing Under Bond (MUB) enterprise or to any organisation enjoying zero-rated status, the records proving the supply shall include:

- In case of SEZ and EPZ, the respective licenses;
- A certificate signed by the recipient stating that the goods have been received and are for use in the approved operations; and
- An export entry duly certified by the proper officer of customs;

Such goods as specified by the Commissioner which are manufactured or purchased for export (including EPZ/MUB), shall be marked with the inscription "FOR EXPORT ONLY".

Tax Invoices

An invoice shall at the time of supply be furnished to the purchaser. The invoice shall be serially numbered and generated through a register or attached to a register receipt containing details of the transaction. Where a registered person is a retailer or is primarily supplying to unregistered persons, the prices of such goods or services shall be quoted or labelled including the amount of tax.

Only one original of invoice, debit note or credit note shall be issued. Any copies of an invoice, credit note or a debit note clearly marked as such, may be provided to a registered person who claims to have lost the original. The tax invoice generated from a register shall contain the following particulars:

- The PIN of the registered user of the register;
- Time and date of the issuance;
- Serial number of the invoice;
- The buyer's PIN;
- The total gross amount;
- The total tax amount;

- The item code of supplies (exempt, zero rated and other rate supplies) as provided by the Commissioner in accordance with the Act;
- A brief description of the goods or service;
- The quantity of supply;
- The unit of measure;
- The tax rate charged;
- The unique register identifier;
- The unique invoice identifier;
- A quick response(QR) code; and
- any other requirement as may be specified by the Commissioner.

Any invoice not containing any of the above particulars is not a tax invoice. Taxable persons require a valid tax invoice before they can claim credit for input tax.

A business-to-consumer supplier on a digital market place from an export country who is registered in Kenya for VAT shall not be required to issue an electronic tax invoice. Provided that the supplier shall issue an invoice or receipt showing the value of the supply and the tax deducted thereon.

Credit and Debit Notes

A credit note may be issued where goods are returned, or for good and valid reasons the registered person decides for business reasons to reduce the value of the supply after the issue of a tax invoice. The amount to be shown on the credit note is the amount of reduction. A credit note must be issued within 6 months after the issue of the relevant tax invoice or where there is a commercial dispute in court with regard to the price payable, within thirty days after the determination of the matter and can only be issued after the registered person has refunded the excess tax to the recipient of the supply, whether in cash or as a credit against any amount owing to the supplier.

Where a user of a register issues a credit note or a debit note, the credit note or debit note shall indicate the PIN and invoice number to which the supply relates.

BAD DEBTS

Where a person has supplied goods or services and has accounted for and paid tax on that supply but has not received payment from the buyer, he may apply for a refund or remission of the tax upon lapse of 3 years from the date of supply or if the buyer has become legally insolvent. An application for refund in respect of bad debts must be made within 4 years from the date of supply. Where the tax refunded is subsequently recovered from the buyers, the person shall refund the tax to the Commissioner within 30 days of the recovery of the debt.

The application should be accompanied by:

- A document, in the case of insolvency, specifying the total amount proved except where 3 years have elapsed since the supply (in practice, a Court decree to prove the insolvency of the debtor); A copy of the tax invoice provided in respect of each taxable supply upon which the claim is based;
- Records or other documents, showing that the tax has been accounted for and paid on each supply upon which the claim for a refund of tax is based;
- Evidence that every reasonable effort has been made to have the debt settled; and
- A declaration by him that he and the buyers are independent of each other.

INPUT TAX

Input tax may be deducted on a taxable supply to, or importation made by a registered person at the end of the tax period in which the supply or importation occurred against the tax payable by him on supplies made in that tax period, but only to the extent that the supply or importation was acquired to make taxable supplies.

The difference between the output tax and input tax is tax payable to KRA or recoverable from KRA (where input exceeds output).

Input VAT is restricted in the following cases:

- Acquisition, leasing, hiring and repairs or maintenance thereof including spare parts of passenger cars or mini buses, unless these are acquired exclusively for the purposes of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling, dealing in or hiring of such automobiles.
- Entertainment, restaurant and accommodation services, unless they are provided in the ordinary course of business and are not supplied to an associate or employee; or while the recipient is away from home for the purposes of business of the recipient or the recipient's employer.

General Rule

VAT paid can be claimed as an input VAT credit:

- Only by a taxable person;
- If it is attributable to taxable supplies;
- If the person claiming input VAT has an original or a certified copy of a valid tax invoice;
- The tax relates to supplies in respect of which the law does not expressly prohibit the claiming of a credit; and

- The registered supplier has declared the sales invoice in a return.

Time Limit

Input tax shall not be allowed until the first tax period in which the person holds valid documents for claim, **which period shall not exceed 6 months after the end of the tax period in which the supply or importation occurred.**

A registered person who receives a credit note shall reduce the amount of deductible input tax in the month in which the credit note is received by the amount of tax credited.

A person receiving a debit note shall claim input VAT to the extent that it has not already been claimed in the month in which the debit note was issued or in the next subsequent month.

Input VAT on Mixed Supplies

Where a taxable person makes both taxable supplies and exempt supplies, then only part of the tax attributable to taxable supplies qualifies as input tax. However, where the tax attributable to exempt supplies is less than 10% of the total input tax, the whole amount of the input tax can be claimed, but where the tax attributable to exempt supplies is more than 90%, no input VAT can be claimed.

Where a person makes both taxable and exempt supplies, the direct attribution method shall be used for claiming input VAT by a registered person providing both taxable and exempt supplies (mixed supplies), in which case:

- Full deduction is made of all input tax attributable to taxable supplies;
- No deduction is allowed for any input tax related to exempt supplies; and
- There shall be an apportionment of input tax attributable to mixed supplies using the formula below.

$A \times (B/C)$; where

- A. Is the total amount of input VAT paid during the tax period on acquisitions that relate partly to making taxable supplies and partly for another use.
- B. Is the value of all taxable supplies made during the period.
- C. Is the value of all supplies made during the period.

COLLECTION AND REFUND OF TAX

VAT Return and Payment of Tax

A taxable person is required to lodge a return for each month to the Commissioner by the 20th of the month. In case of a manual return, where the 20th falls on a Saturday, Sunday or a public holiday, the return is due on the last working day before the 20th.

Tax is due by or on the 20th, and where this falls on a Saturday, Sunday or a public holiday, the payment is due on or by last working day before the 20th.

If the return is filed electronically or tax is paid electronically, the due date shall remain the date specified in the law.

The return (Form VAT 3) must show the following:

- Separately for each tax rate, the total value of the supplies, the rate of tax and the amount of output tax;
- Separately for each rate of tax, the total value of taxable supplies, the rate of tax and the amount of input tax claimed; and
- The tax payable after deducting any overpayment claim from the last return and adjusting any amounts of overpayments submitted for a VAT Refund Claim.

Where there is no tax payable, a 'NIL' return is required. Payments can be made at designated banks using Real Time Gross Settlement (RTGS), banker's cheques or cash. All cheques should be crossed "Account Payee Only" and made to the Commissioner of Domestic Taxes. The following mandatory information is required in respect of the payer – name, taxpayer registration number, e-slip number and amount of VAT remitted.

Refund of Tax

If for any tax month the input tax claimed exceeds output tax, the excess is carried forward in the VAT return to be set-off against the tax payable in the following month. However, in the following circumstances, the Commissioner will refund tax:

- The amount of input tax exceeds the amount of output tax as a result of the supplier making zero-rated supplies; or

Where tax has been paid in error provided that the claim is lodged within 12 months from the date the tax became due and payable.

A person who supplies at both the general rate and zero rate shall be entitled to a refund arising from making zero-rated supplies. In determining the refund, the Commissioner shall use the following formula:

$R = Z / T \times E$; where

- R. is the value of input tax relating to zero-rated supplies
- Z. is total value of the zero-rated supplies
- T. is the total value of the taxable supplies
- E. is the deductible input tax for the month of supply

All refund claims above KShs 1 million shall be accompanied by an Auditors Certificate stating that the application or claim is true, and that the amount is properly refundable under the Act.

An auditor who certifies refund claims is required not later than the 20th of the following month to furnish the Commissioner with a return of all claims certified by him during each month. KRA is no longer accepting auditors

returns for claims certified, however the procedure is still unclear as some KRA officers do demand the auditors certificates.

WITHHOLDING VAT AGENTS

The Commissioner may appoint a person as a withholding VAT agent which include government ministries and departments, county governments and appointed private sector enterprises. An appointed person is required to withhold 2% of the taxable value at the time of paying for the supplies.

VAT withheld by the withholding VAT agent is due to be remitted, together with the return by 20th of the month following in which it was withheld.

Any taxpayer who has excess credits arising after 23rd July 2019 from withholding VAT may apply for an offset/refund within a period of 24 months from the date the tax became due. The application for offset/refund shall be subjected to verification and approval by the Commissioner. All applications for refund/offset must be made through the iTax system.



VAT PENALTIES

The VAT Act provides for penalties in case of non compliance.

Offence	Penalty
<ul style="list-style-type: none"> • Failure to apply for registration or deregistration • Wrongful application for cancellation of registration • Failure to display in a conspicuous place the tax registration certificate at each place where business is carried on • Failure to notify the Commissioner of any change in name, address, place of business and nature of business • Failure to cease holding-out on cancellation of registration 	<ul style="list-style-type: none"> • Fine not exceeding KShs 200,000, or imprisonment not exceeding 2 years, or both
<ul style="list-style-type: none"> • Failure to produce goods imported by air, land or water to a proper officer of customs at the customs station or nearest place of entry 	<ul style="list-style-type: none"> • KShs 1 million, or imprisonment not exceeding 3 years, or both • Forfeiture of goods
<ul style="list-style-type: none"> • Failure to submit a return as required 	<ul style="list-style-type: none"> • The higher of KShs 10,000 and 5% of the tax due
<ul style="list-style-type: none"> • Issue of an invoice for a supply that is not a taxable supply or by a person who is not registered 	<ul style="list-style-type: none"> • KShs 1 million, or imprisonment not exceeding 3 years, or both
<ul style="list-style-type: none"> • Giving false information or failing to give full information in respect of registration or making an application to register a person already registered 	<ul style="list-style-type: none"> • Fine not exceeding KShs 1 million or imprisonment not exceeding 3 years, or both
<ul style="list-style-type: none"> • An auditor issuing a certificate in contravention of the regulations 	<ul style="list-style-type: none"> • Fine not exceeding KShs 1 million or imprisonment not exceeding 3 years, or both
<ul style="list-style-type: none"> • Failing to maintain proper records, using an ETR, or to provide access to an authorised officer 	<ul style="list-style-type: none"> • KShs 1 million, or imprisonment not exceeding 3 years, or both
•	•
•	•
<ul style="list-style-type: none"> • Not refunding to the Commissioner within 30 days of recovery, tax subsequently recovered from the recipient of the supply, where such tax was refunded by the Commissioner 	<ul style="list-style-type: none"> • 1% interest of the tax per month or part thereof. No provision to apply for mitigation
<ul style="list-style-type: none"> • Failure to withhold the whole amount of VAT which should be withheld 	<ul style="list-style-type: none"> • 10% of the amount involved
<ul style="list-style-type: none"> • Failure to remit withheld VAT by the 20th day of the following month 	<ul style="list-style-type: none"> • 10% of the amount involved
<p>Late payment interest calculated on simple interest basis at 1% per month or part thereof; and restricted to a maximum of the principal tax due.</p>	

VALUE ADDED TAX REGULATIONS, 2017

The Value Added Tax Regulations, 2017 were gazetted on 30th March 2017. The rules aim at enabling better carrying of the provisions of the Value Added Tax Act by providing procedural guidance as well as limited substantive provisions with regard to value added tax. Additionally, the VAT Regulations, 2017 have revoked 6 of the existing VAT Subsidiary Legislations.

Subsequently Value Added Tax (Amendment) Regulations 2020 has repealed regulation 9 of the VAT Regulations, 2017. Further Value Added Tax (Electronic Tax Invoice) Regulations, 2020 and Value Added Tax (Digital Marketplace Supply) Regulations, 2020 were gazetted in October 2020 which provide guidance regarding tax invoice and digital marketplace supply respectively.

CUSTOMS DUTY

LEGAL AND ADMINISTRATIVE FRAMEWORK

Customs duties are levied in accordance with the East African Community Customs Management Act 2004 (EACCMA). The law applies uniformly across the East African Community Countries (EAC) which include Kenya, Tanzania, Uganda, Rwanda and Burundi. EAC is a single customs territory.

Tariff classification of goods imported or exported from EAC is based on the EAC Common External Tariff (CET). The CET is available in the EAC website as Annex 1 to the Protocol on the Establishment of the EAC Customs Union.

KRA, through the Commissioner of Customs and the Customs Services Department are in charge of administering and supervising the clearing of goods imported into or exported from the country. Declaration of imports and exports is undertaken through clearing agents licensed by KRA through the Asycuda online system (previously Simba System 2005).

IMPORT DUTIES AND LEVIES

Customs import duty is chargeable on imported goods at the rates outlined in the CET. In addition, VAT, excise duty, import declaration fee, railway development levy are also collected, where applicable, on imported goods cleared for home consumption. Customs duty is paid at the applicable rate or a bond guarantee executed and deposited with the Customs Services Department to secure the duty that may be applicable, if goods are admitted under customs control.

An Import Declaration Form (C63) Entry is prepared and lodged by the importer for clearing the imports. The declaration is usually submitted through customs clearing agents.

The Import Entry is supported by a Certificate of Compliance (COC) issued following a pre-shipment inspection of the goods. An Import Declaration Fee (IDF) is charged on all imported goods at 3.5% of the customs value of the goods imported for home use as per the Miscellaneous Fees and Levies Act ("MFLA"). Goods imported under the EAC Duty Remission Scheme shall be subject to an IDF fee of 1.5% of the customs value. There are goods which are exempted from the IDF fee, if purchased before customs clearance. These are listed in Part A of the Second Schedule to the MFLA and include goods imported from EAC member states that meet the Rules of Origin (ROO) requirements, goods destined for EPZ, approved manufacturers under bond, samples without commercial value, gifts and supplies to UN and diplomatic missions, and goods to official aid funded projects.

In addition, all imported goods attract a 2% Railway Development Levy ("RDL") on the customs value except for goods listed in Part B of the Second Schedule to the MFLA, which are exempt.

Import duties are charged based on an ad valorem (on price paid or payable on the declared good) and specific units (on quantity, weight, number or measurement). The duty rates vary from 0 to 100%. The Chairman of the Council of Ministers (for Finance) may remit, reduce, increase or apply special duty rates subject to specified conditions. He publishes such rates and conditions in the EAC Gazette Notices. Reduced duty rates are applicable on some imports from COMESA region countries.

In summary, import duty rates may be summarised as outlined¹:

- 0% on raw materials and capital goods
- 10% on semi-processed and intermediate goods
- 25% on finished goods
- 3.5% Import Declaration Fees
- 2% Railway Development Levy

¹This summary is for reader guidance only. Specific rates are as per the CET, which is updated yearly by the Chairman of the Council of Ministers.

Goods which meet the conditions stipulated in the EAC Customs Union Rules of Origin (2015) do not attract import duty if from EAC Partner States. EAC is considered as a single customs territory. EAC Partner States issue Certificates of Origin (COO's) where goods are manufactured in their jurisdiction or substantially using materials sourced therein.

Goods that are specifically exempt from duty are listed in the Fifth Schedule to the EACCMA. Conditions for such exemptions are also outlined. They include goods imported by privileged persons (i.e. diplomatic bodies, armed forces and disabled) and other specially exempted items.

Effective 1st July 2021, any goods which the Cabinet Secretary may determine is in the public interest, or to promote investment and the value of which shall not be less than KShs 5 billion will be exempt from IDF and RDL.

Duty is refundable on imported goods which are subsequently exported. Transit goods are not dutiable but the applicable duty is secured by a bond guarantee. Duty may be remitted if goods are destroyed or damaged while under customs control or during voyage or goods are returned unused to the seller, or duty has been paid in error.

Refund claims must be presented within one year from the date of payment of that duty.

DETERMINATION OF CUSTOMS VALUE (VALUATION)

The value of imported goods is the value paid or payable for the goods and is generally based on the price of the specific goods or similar goods if the transaction value is not available. The most applicable of the valuation methods is selected and applied by the Customs Services Department. The methods are as follows:

- **Method 1: Transactional Value Method:** This is based on the value of the goods as indicated in the invoice. It applies in over 90% of transactions. The method may be disregarded if it is shown that it doesn't reflect the price payable.
- **Method 2: Transactional Value of Identical Goods Method:** This is based on the value of identical goods purchased by other importers from same suppliers in the same country of importation.
- **Method 3: Transactional Value of Similar Goods Method:** If data on identical goods is not reliable, the value of similar goods (from the same supplier and country, capable of performing the same functions as that imported) is used.
- **Method 4: Deductive Value Method:** This is applied if the first three methods are inapplicable. The customs value is worked backwards from the unit price of identical or similar goods. Commissions, profits, transportation costs and taxes generally expected to be paid by the importer for similar goods are deducted from such unit price of identical or similar goods.
- **Method 5: Computed Value Method:** This method is applied if the above-listed ones are inapplicable. The customs value is determined based on the cost of producing the goods plus profits and general expenses expected in the country of origin.
- **Method 6: The Fallback Method:** This method is explored when no one method is reliable but a combination of two or more may be more reliable. Customs value should be fair, reasonable, uniform and neutral, and should reflect commercial reality to the extent possible.

EXPORT LEVY

Export levy is payable on specific items listed in Part I of the First Schedule to the MFLA. These items include hides and skins, scrap metal and nuts. The export levy rates are also provided in Part I of the First Schedule to the MFLA. The Commissioner shall adjust export levy rates on 1st July each year to factor inflation. Export levy is not applicable on goods exported to EAC countries.

EXCISE DUTY

DUTY AND APPLICATION

Excise duty is duty imposed under the Excise Duty Act 2015 on specific goods and services. Historically, excise duty was intended to discourage the consumption of certain goods or services which were deemed to be morally, socially or environmentally injurious. However, the duty is no longer only attached to injurious items.

KRA's Domestic Taxes Department enforces excise duty on locally manufactured and supplied excisable goods and services. The Customs Services Department enforces excise duty on imported excisable goods.

The goods and services subject to excise duty are listed in Parts 1 and 2 of the First Schedule to the Excise Duty Act and they include fruit and vegetable juices, (bottled) water and other non-alcoholic beverages, food supplements, beer, cider, alcoholic and spirituous beverages, wine and fermented fruit beverages, cigarettes, cosmetic and beauty products, motor vehicles, motor cycles, imported sugar confectionary, white chocolate, imported gas cylinders, imported glass bottles (excluding glass bottles imported from within EAC), mobile and other wireless telephone services, mobile money transfer services, charges and commissions charged by financial institutions.

The specific duty rates are provided in the First Schedule to the Excise Duty Act and shall be adjusted by the Commissioner annually to cater for inflation. Excise duty is not applicable on exported excisable goods or services. Evidence of exportation has to be submitted. Exported services are those services for use and consumption outside Kenya.

KEY COMPLIANCE ISSUES

The liability for excise duty on excisable goods manufactured in Kenya shall arise at the time of removal of the goods from the manufacturer's factory.

The liability for excise duty on excisable services shall arise at the time of supply of the services. The time of supply may be taken to be the time when the invoice is issued.

The excisable value of excisable goods manufactured in Kenya shall be the ex-factory selling price of the goods, but not including:

- The value added tax payable on the supply of the goods;
- The cost of excise stamps, if any; or
- The cost of returnable containers.

The excisable value of excisable goods imported into Kenya shall be the sum total of the following amounts:

- The customs value of the goods, even if customs duty is not payable on the goods; and
- The amount of duty of customs (if any) payable on the goods.

Excisable value of excisable services shall be:

- If supplied at arm's length, the fee, commission, or charge payable for the services; or
- In any other case (i.e. related parties), the open market value of the services.

The excisable value of excisable services shall not include the VAT payable and any interest or an insurance premium.

4

EMPLOYMENT

FOREIGN VISA

VISA REQUIREMENTS

A Visa is required by all persons, other than Kenyan citizens, wishing to enter Kenya except the persons entitled to privileges and immunities under The Kenya Citizenship and Immigration Act 2011. Applications for visas are submitted to the Immigration Department.

Visitors may be issued with a visa on arrival at a port of entry into Kenya, valid for a period not exceeding 3 months in the first instance, provided that they are in possession of a valid passport or other travel document acceptable to the Government. Nationals of East African Partner States holding valid passports or other acceptable travel documents may be issued with a visitor's pass on arrival at a port of entry into Kenya valid for 6 months. Travellers entering Kenya by road are required to pass through the gazetted entry points and report immediately to an Immigration Officer.

The most important documents needed are:

- Visa application form;
- Passport size photograph of the applicant;
- Valid passport/travel document showing validity of at least 6 months; and
- Medical referral letter from a hospital or a doctor for medical cases.

Following are the types of visas available:

Ordinary/ Entry Visa	Transit Visa	Diplomatic Visa	Multiple Journey Visa	Courtesy Visa	Official/ Service Visa	East Africa Tourist Visa
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ORDINARY/ENTRY VISAS

These are visas issued to all persons whose nationalities require visas to enter Kenya for visits or residence.

TRANSIT VISAS

These are visas required by all persons whose nationalities require visas to enter Kenya and are intending to transit through Kenya for a period not exceeding 3 days to a third destination.

DIPLOMATIC VISAS

Diplomatic (Multiple, Ordinary or Transit) visas are issued gratis to holders of Diplomatic Passports on official visits.

MULTIPLE JOURNEY VISAS

All persons who are nationals of countries which require visas for Kenya and who by nature of their business or circumstances are required to make frequent visits to Kenya may be issued with Multiple Journey Visas for Kenya valid for up to 6 months or part thereof as the case may be, and in the case of American nationals, the period has been extended to five years.

COURTESY VISAS

Courtesy (Transit and Ordinary) visas may be issued gratis in accordance with the Provisions of Categories 1, 2 and 3 of the Visa Regulations, where the applicant is not entitled to a Diplomatic Visa, but where it is considered by the issuing officer to be desirable on the grounds of international courtesy.

The possession of a visa for Kenya is not the final authority to enter Kenya. The Immigration Officer at the port of entry may refuse such a person permission to enter if he is satisfied that such a visitor is unable to fulfil the immigration requirements and that the entry and presence of such a visitor in Kenya would be contrary to national interests even though such a person may be in possession of a valid visa for Kenya.

OFFICIAL/SERVICE VISAS

Official/Service (Multiple, Ordinary or Transit) visas are issued gratis to holders of Official or Service passports on official visits.

EAST AFRICA TOURIST VISAS

This is a joint tourist visa that entitles holders to travel to and within the Republic of Kenya, Republic of Rwanda and Republic of Uganda for the purpose of tourism. Validity of an East Africa Tourist Visa is 90 days with multiple entry.

FOREIGN PERSONNEL

PERMITS AND PASSES

Permits are issued to any non-Kenyans wishing to engage in employment in Kenya, whether in gainful employment or voluntary service. The general requirements for obtaining a permit are a duly filled and signed requisite application form (Form 3), a covering letter from employer, self or organisation depending on the class (as applicable), copies of the applicant's National Passport and two coloured passport size photographs of the applicant.

Permits issued by the Immigration Department are classified from A to M inclusive. The following are some of the pertinent classes of Permits and their respective requirements:

Class A is issued to persons who intend to engage in prospecting for minerals or mining. One is required to obtain or is assured to obtain the necessary licences and registrations. For renewals, a current licence held for prospecting minerals and copy of the applicant's PIN is required. One must also have sufficient capital or resources for investment.

Class B is issued to persons wishing to invest in agriculture and animal husbandry. One is required to present proof of land ownership or leasehold interest in land for the purpose, proof of capital available for the purpose, clearance from relevant bodies and copy of one's PIN.

Class C is issued to persons wishing to practise certain prescribed professions. The applicant must provide proof of membership to a professional body, association or institute to which he belongs in his own country, copies of academic and professional qualifications, proof that he has in his own right and at his full and free disposition sufficient capital and other resources for the purpose, and copies of his PIN.

Class D is issued to a person who is offered specific employment by a specific employer, the Government of Kenya or any other person or authority under the control of the Government or an approved technical aid scheme under the United Nations Organisation or some other approved Agency who is qualified to undertake that employment. One is required to present copies of academic/professional certificates along with the CV, evidence that the organisation failed to fill the vacancy from the local labour market, and Form 25 duly filled, signed and sealed by the company.

Class F is for investors in the manufacturing sector. The applicant is required to present a copy of the licence held, proof that he has in his own right and at his full and free disposition sufficient capital and other resources for the purpose and a copy of the registration certificate of the company. For renewals, audited financial statements for the previous two years and a copy of the company PIN are required.

Class G is issued to investors in specific trade business or consultancy. One is required to present documentary proof of capital to be invested/already invested a minimum of USD 100,000 or equivalent in any other currency, certificate of incorporation/registration, copies of personal and company PIN. For renewals, audited financial statements for the previous 2 years and a certificate of tax compliance from KRA are required.

Class I is issued for approved religious and charitable activities to a person who is a member of an institution registered under the Societies Act who is engaged as a missionary or member of a company limited by guarantee or a member of a trust registered under the Trustees Act and is approved by the Government of Kenya, and whose presence in Kenya will be of benefit to Kenya. One is required to present a copy of the registration certificate of the organisation and academic and professional certificates of the applicant.

Class K is for ordinary residents who are above the age of thirty five years and who have an assured income derived from sources outside and undertake not to accept paid employment of any kind. One must provide documentary proof of assured income.

Class M is issued to Conventional Refugees. One must present recognition letters from UNHCR and the Department of Refugee Affairs. The permit is issued gratis.

Passes are issued to non-Kenyans who wish to stay temporarily in Kenya for reasons specified in such passes.

A Student's Pass is issued to person(s) seeking to enter and remain in the country for the purpose of receiving education or training at an educational or training establishment within the country by which he/she has been accepted as a student/pupil. One must fill and sign the requisite application form (Form 8), submit a letter from the school stating the course and course duration, copy of the passport, two passport size photos, and a commitment letter from parent/legal guardian/sponsor.

For a Dependant Pass, the applicant must be a Kenyan, or holder of a valid entry permit, or an exempted person under Section 34 (3) (a) to (g) of the Kenya Citizenship and Immigration Act 2011. The applicant must fill and sign the requisite application form and provide a copy of the national passport of the dependant, two passport size photos of the dependant and copy of birth certificate or marriage certificate for immediate family members.

A Special Pass is issued to person(s) given specific employment by a specific employer for a short duration not exceeding 3 months. One must submit an application form duly filled and signed, copy of the national passport, two passport size photos, letter from institution/applicant (employer) and clearance from regulatory bodies (Medical and Dentist Board, Pharmacy and Poisons Board, Engineering Board, NGO Council, Ministry of Information).

DUAL CITIZENSHIP

The Kenya Citizenship and Immigration Act 2011, allows a citizen of Kenya by birth who acquires citizenship of another country to retain the citizenship of Kenya. Every dual citizen must disclose his or her other citizenship within three months of becoming a dual citizen. A dual citizen who holds a Kenyan passport and a passport of any other country is entitled to use any of the passports held for entry into or exit from Kenya.

PERMANENT RESIDENCE

Under the Kenya Citizenship and Immigration Act 2011, persons who were citizens by birth but have since renounced or otherwise lost their citizenship status and are precluded by the laws of the countries of their acquired domicile from holding dual citizenship, persons who have held work permits for at least seven years and have been continuously resident in Kenya for the three years immediately preceding the making of the application, children of citizens who are born outside Kenya and have acquired citizenship of the domicile and the spouses of Kenyan citizens married for at least three years are eligible to be issued with a permanent residence certificate.

A permanent resident has the right to enter and remain in Kenya, to be employed in Kenya, to attend educational facilities and the right to own property in Kenya.

LABOUR LAW

Employment relations in Kenya are regulated by a number of sources including constitutional rights, statutory rights, as set out in statutes and regulations; rights set by collective agreements; and individual labour contracts. Following is some of the Kenyan legislation enacted relating to employment and related matters:

- The Employment Act, 2007 (which repealed the Employment Act Chapter 226 of the Laws of Kenya) which came into force on 2nd June 2008.
- The Occupational Safety and Health Act, 2007 (which repealed the Factories and Other Places of Work Act) which came into force on 26th October 2007.
- The Work Injury Benefits Act No. 13 of 2007 (which repealed the Workman's Compensation Act) which came into force on 2nd June 2008.
- The Labour Institutions Act, 2007 (which repealed the Regulation of Wages and Conditions of Employment Act (Chapter 229, Laws of Kenya) which came into force on 2nd June 2008.

The legal requirements under these statutes are interpreted and enforced by the Industrial Court, and in some cases, by the ordinary courts. International standards, especially ILO Conventions ratified by Kenya are used by the Government and courts as guidelines.



EMPLOYMENT CONTRACTS

In Kenya, employment contracts are governed primarily by the Employment Act as well as the principles of common law. The employer is mandated by law to prepare and provide written contracts for all employees hired for more than 3 months at a time.

Employment contracts must contain all employment particulars including the name, age, permanent address and sex of the employee, the name of the employer, the job description of the employment, the date of commencement of the employment, the form and duration of the contract, the place of work, the hours of work, the remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits, and the intervals at which remuneration is paid.

Employment terms are negotiated by the employee and employer subject to the minimum prescribed by the Employment Act.

WAGES

Although the Employment Act does not make any specific provisions for wages, all wages are subject to the minimum wage provided under the Labour Institutions Act 2007 and the minimum wage guidelines issued and revised yearly by the Ministry of Labour. These guidelines outline the occupations and the rate of payment on monthly/daily/hourly basis.

In practice, there are two major classes of employees – the management cadre (who primarily are not unionised by choice) and the junior staff who are unionised. The wages paid to non-unionised staff are negotiated between the employer and the employee and are contained in the employment contract. For employees that opt to join relevant trade unions, wages are normally negotiated by their union and contained in the respective Collective Bargaining Agreement (CBA).

WORKING HOURS

The normal working week is outlined by the specific wage regulations order for the given industry but is not more than 52 hours spread over 6 days of the week.

OVERTIME

For management staff, it is usual practice for the wages negotiated to contain the aspect of overtime and as such it is not paid as a separate entitlement.

However, for junior staff, overtime is paid at the rates of one and one-half time the basic hourly rate on weekdays, and at the rate of twice the basic hourly rate on Sundays and public holidays. There are different Regulations of Wages Orders in force, covering different sectors of the economy.

LEAVE

Annual Leave

Under the Employment Act, every employee shall be entitled to no less than 21 working days of annual leave with full pay. Where the employee works for less than a year, the number of days will be reduced accordingly. This is a minimum and many contracts and collective agreements provide for annual leave of between 30 to 45 days. On average, Kenyan employees enjoy annual leave of 21 days.

Sick Leave

Under the Employment Act, an employee is entitled to paid sick leave after a period of 2 consecutive months of service. The minimum period of entitlement is 7 days with full pay and 7 days with half-pay for every 12 months. The longest period of entitlement is 30 days with full pay and 15 days with half-pay. The employee is, however, expected to produce a certificate of incapacity to work signed by a duly qualified medical practitioner.

Maternity/Paternity Leave

Under Section 29 of the Employment Act, a female employee is entitled to maternity leave of three (3) months with full pay, provided that no female employee will forfeit her annual leave entitlement on account of taking her maternity leave in that year.

A male employee is entitled to two (2) weeks paternity leave with full pay.

PUBLIC HOLIDAYS

The list below outlines public holidays. Where any of these holidays fall on a Sunday, the next working day will be a holiday.

1 st January	· New Year's Day
1 st May	· Labour Day
1 st June	· Madaraka (Independence) Day
10 th October	· Huduma Day
20 th October	· Mashujaa (Heroes) Day
12 th December	· Jamhuri (Republic) Day
25 th December	· Christmas Day
26 th December	· Boxing Day
Undated	· Good Friday and Easter Monday · Eid ul Fitr and Eid ul Adha

STATUTORY DEDUCTIONS

NATIONAL SOCIAL SECURITY FUND

National Social Security Fund (NSSF) is the statutory retirement benefits scheme and operates as a public trust. It provides retirement benefits for employees in the formal and informal sectors. The trustees of NSSF register members, receive contributions, manage funds of the scheme, process and ultimately pay out benefits to eligible members or dependants.

There is compulsory registration for all employers irrespective of the number of employees. The details required for registration include a copy of the Certificate of Incorporation/Registration, PIN, physical location and employee details. In addition, each employee subject to deductions is also required to register individually. Voluntary registrations permitted for casual or self-employed workers.

Contributions are based on 12% of the pensionable earnings of an employee; 50% is payable by the employee and 50% by the employer. Pensionable earnings are defined as the lower of the member's monthly wage and the Upper Earnings Limit. Upper Earnings Limit is the average level of earnings equal to 4 times the National Average Earnings (NAE). Graduated rates apply for the first 4 years.

There is a compulsory contribution to the NSSF of Tier 1 contributions up to a maximum of 6% of the Lower Earnings Limit (set currently at KShs 6,000) while Tier 2 Contributions being the difference between the total contribution and the Tier 1 contribution can be contributed to either the NSSF or any other registered retirement benefit scheme.

The above rates have, however, been suspended by a Court Order and the current rates in force are 10% of monthly income up to a maximum of KShs 400; half paid by the employer and half by the employee.

Deductions have to be remitted by the 15th of the following month or the last working day before the 15th where this falls on a Saturday, Sunday or a public holiday.

NSSF provides the employee with a lump-sum retirement benefit. Historically, the rate of return paid by the state is considerably less than that achieved by private schemes, but participation is mandatory.

NATIONAL HOSPITAL INSURANCE FUND

National Hospital Insurance Fund (NHIF) is a state parastatal which provides limited in-patient medical insurance cover at accredited health facilities to eligible members from both the formal and informal sectors. For those in the formal sector, the employer is required to deduct from the salary and remit contributions for all employees, both permanent and casual. For those in the informal sector and retirees, membership is open and voluntary. For registration, a copy of the Certificate of Incorporation/Registration, PIN, physical location and employee details are required.

Members under the voluntary category pay KShs 500 per month (KShs 6,000 per annum). For those in formal employment, contributions are based on their income.

Gross Income (KShs)	Monthly Premium (KShs)
0-5,999	150
6,000 - 7,999	300
8,000 - 11,999	400
12,000 - 14,999	500
15,000 - 19,999	600
20,000 - 24,999	750
25,000 - 29,999	850
30,000 - 34,999	900
35,000 - 39,999	950
40,000 - 44,999	1,000
45,000 - 49,999	1,100
50,000 - 59,999	1,200
60,000 - 69,999	1,300
70,000 - 79,999	1,400
80,000 - 89,999	1,500
90,000 - 99,999	1,600
100,000 and above	1,700
Self Employed (special)	500

By concession, all contributions are due by the 9th of the following month or the last working day before the 9th where this falls on a Saturday, Sunday or a public holiday.

The medical benefits from the scheme in most cases can only cover a fraction of the actual medical costs. Hence, most companies provide employees with private medical insurance.

NATIONAL INDUSTRIAL TRAINING AUTHORITY (NITA) LEVY

NITA levy is payable by every employer at KShs 600 per employee annually (pro-rated where the case may be) including an apprentice, indentured learner, other trainee, temporary, seasonal and casual worker. The payment is due by the end of every month or at the end of every financial year at 30th June if opting to pay annually. NITA is not applicable to organisations deducting and remitting the Catering Levy.

NATIONAL HOUSING DEVELOPMENT FUND (NHDF)

Employers and employees are required to contribute 1.5% of the employee's monthly basic salary to the National Housing Development Fund subject to a maximum contribution of KShs 5,000 per month. The due date for remittance is 9th day of the following month. The courts have currently suspended the levy until further notice.

PAY AS YOU EARN (PAYE)

An employer is required to deduct PAYE from salary paid to an employee and remit the same to KRA. This is covered under Personal Taxes (Section 4.2).

UNION DUES

Where employees are members of a trade union, the employer is required to deduct and remit the monthly union dues to the respective union.

TRADE UNION

The Constitution of Kenya provides the right of freedom of association to every person in Kenya and specifically recognises the freedom of association to form or belong to trade unions or other associations for the protection of the person's interests. Under the Labour Relations Act, every employee has the right to join a trade union. In Kenya, the general practice is that management staff opt of their own volition, not to join a trade union.

The Central Organisation of Trade Unions (COTU-K) is the sole national trade union centre in Kenya. COTU-K was founded in 1965 upon dissolution of the Kenya Federation of Labour and the African Workers' Congress. COTU-K is registered and operates within the provisions of the Labour Institutions Act (Chapter 12 of 2007) of the Laws of Kenya. Currently, COTU-K has 43 registered and affiliated trade unions in the country, and has a membership of about 2.5 million workers. Since its formation in 1965, the workers umbrella body has endeavoured to create, develop and maintain a comprehensive social framework for championing the rights of workers and advocating for humane and productive work, in conditions of freedom, equity, security and dignity.

The affiliated trade unions are industry based and the industries involved are: commercial, banking, metal works, bakeries and confectionaries, port workers, pilots, building and construction, chemical, engineering, game and hunting, local government, fishermen, petrol and oil, plantations and agriculture, railway workers, scientific research, shipping and clearing, domestic and hotels, entertainment, betting, journalism, printing and publishing, sugar plantations, seamen, tailoring and textile, transport, and post and telecommunications.

Any trade disputes are reported to the Minister for Labour for his reference and decision. If any party to the dispute is aggrieved by the Minister's decision, the party may refer the matter to the Industrial Court in Kenya for further consideration.

5

INTELLECTUAL
PROPERTY
RIGHTS

Kenya is a member of the World Intellectual Property Organisation (WIPO) and of the Paris Union (International Convention for the Protection of Industrial Property) along with the United States and over 185 other countries. Kenya is also a member of the African Regional Intellectual Property Organisation (ARIPO) and a signatory to the Madrid Agreement Concerning the International Registration of Marks. Kenya's existing intellectual property legislations have been drafted in line with those provisions.

Kenya has a comprehensive legal framework to ensure intellectual property rights protection. Three government agencies administer intellectual property rights in Kenya. The Kenya Industrial Property Institute (KIPI), a parastatal under the Ministry of Industrialisation and Enterprise Development, administers the provisions of *inter alia* the Industrial Property Act, 2001 and the Trade Marks Act. These laws govern patents, trademarks, service marks, industrial designs and utility models. Copyright is administered by the Kenya Copyright Board (KECOBO), a State Corporation under the office of the Attorney General established under the Copyright Act, 2001. The Seeds and Plant Varieties Act is administered by the Kenya Plant Health Inspectorate Services (KEPHIS).

The following are the most noticeable forms of intellectual property rights in Kenya:

1. Industrial Property Rights (these include patents, trademarks, service marks, industrial designs, utility models, topography of integrated circuits, and protection against unfair competition).
2. Copyright (these include literary and artistic works).
3. Protection of new varieties of plants.

PATENT

A patent describes an invention for which the inventor claims the exclusive right. The invention must be a new solution to a "technical" problem. It must be new, have an inventive step and be industrially applicable.

The application for a patent should be in triplicate and contain:

- A request in the prescribed form (Form IP 3);
- A description of the invention and at least one mode for carrying out the invention in such full, clear, concise and exact terms as to enable any person having ordinary skills in the art to make use and to evaluate the invention. The description should include any drawing and relevant deposits as in the case of micro-organisms and self-replicable material which are essential for the undertaking of the invention;
- One or more claims which should define the matter for which protection is sought and should be clear and concise and fully supported by the description;
- One or more drawings (where necessary) which should not be in colour and the lines should be uniformly thick and well-defined; and
- An abstract which serves the purpose of technical information.

The application fee is to be submitted together with the application. The application undergoes a formal examination during which it is vetted for conformance to legal requirements and if found to be in order, is accorded a filing date.

The application is then published within 18 months from the filing date in the Kenya Gazette or in the Industrial Property Journal and upon payment of the publication fee.

An application for substantive examination of a patent is required to be made within three years from the filing date of an application by submitting a request vide form IP 8. During substantive examination, an application is examined to check whether the application is patentable as required under the Industrial Property Act, 2001.

If the application is successful, a patent is granted in the prescribed form upon payment of a fee. A patent expires at the end of 20 years from the filing date of the application. In order to maintain the application or the patent, an annual fee is paid in advance to KIPi which shall fall due on the eve of each anniversary of the date of filing of the application or the patent.

UTILITY MODEL

A utility model is an invention that can be utilised in industry, agriculture, education services or environmental conservation and which relates to shape, structure or assemblages of articles. It must be new and industrially applicable. The procedure for registration is the same as for patents. However, a utility model certificate expires at the end of the 10th year after the date of the grant of the utility model, and is not renewable.

INDUSTRIAL DESIGN

An industrial design is defined under the Industrial Property Act, 2001 to be any composition of lines or colours or any three dimensional form which gives a special appearance to a product of industry or handicraft and can serve as pattern for a product of industry or handicraft. An industrial design is registrable if it is new. An industrial design is deemed to be new if it has not been disclosed to the public, anywhere in the world, by publication in tangible form or, in Kenya, by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration.

A person wishing to register an industrial design must send to KIPi the application in the prescribed form, a power of attorney, where the applicant is represented by an agent, drawings, photographs or other graphic representations of the article embodying the industrial design and an indication of the kind of products for which the industrial design is to be used together with the application fee. This should be accompanied with two specimens of the article embodying the industrial design.

The duration of protection conferred by a certificate of registration for an industrial design is 5 years from the date of filing of the application for registration. However, the registration may be renewed for two further consecutive periods of 5 years upon payment of a renewal fee. The fees for the renewal of registration of an industrial design must be paid within 12 months preceding expiration of the period of registration, but a grace period of 6 months is allowed for the late payment of the renewal fees on payment of a surcharge.

TRADE MARKS

A trade mark is a sign which serves to distinguish the goods of an industrial or a commercial enterprise or a group of such enterprises. The sign may consist of one or more distinctive works, letters, numbers, drawings or pictures, monograms, signatures, colours or combination of colours etc. The sign may consist also of combinations of any of the said elements.

Trade marks have become more and more important in recent years. KIPi is mandated under the Trade Marks Act to deal with registration of trade and service marks. The Trade Marks Act helps the producer protect the trade mark. Registering a trade mark is an important first step for everyone towards safeguarding a trade mark and combating imitations. Application for registration of a trade mark can be done directly at KIPi.

The procedure for registering a trade mark is:

- ✓ The applicant must complete the application form and submit it to KIPi together with the prescribed fee.
- ✓ KIPi checks the completeness and accuracy of the information entered and documents submitted and examines the trade mark.
- ✓ If the trade mark is available for registration upon examination and is inherently registrable, it is approved for advertisement, upon payment of a fee, in the Industrial Property Journal to allow for any opposition, within a period of 60 days from the date of the Journal.
- ✓ If nobody challenges the intention to register the advertised trade mark, the trade mark is registered and the applicant is issued with a Certificate of Registration upon payment of a registration fee.

An entry in KIPi's Trademarks Register is valid for ten years from the date of the application. 3 months before the validity lapses, the trade mark holder is notified in writing to this effect so that an application for renewal can be made in good time for another set of 10-year period. Trade mark protection is indefinite as long as it is renewed.

The Trade Marks Act also recognises the right to enforce (unregistered) rights by way of a civil action founded on the common law tort of "passing off". Because of the high legal threshold required to succeed in "passing off" actions, registration provides a better (statutory) mechanism to enforce one's rights against infringement.

COPYRIGHTS

Protection of Copyright is based on the provisions of the Bern Convention of 1883 for protection of literary and artistic works. Copyright protection is obtained by simply expressing the original idea in a fixed form and as such, registration is not mandatory.

The Copyright Act, 2001 provides for the protection of literary, musical, artistic, audio-visual works, sound recordings and broadcasts, and computer programs. The Kenya Copyright Board has the mandate for the overall administration and enforcement of copyright and related rights in Kenya. Any person who infringes another's copyright commits an offence and is liable upon conviction to a fine or imprisonment or both.



Copyright in Kenya is infringed by a person who, without the licence of the owner of the copyright does, or causes to be done, an act the doing of which is controlled by the copyright, or imports, or causes to be imported, otherwise than for his private and domestic use, an article which he knows to be an infringing copy.

6

LISTING RULES

THE CAPITAL MARKETS AUTHORITY

The Capital Markets Authority (CMA), established by the Capital Markets Act, is the Government regulator charged with licensing and regulating the capital markets in Kenya. It also approves public offers and listings of securities traded at the Nairobi Securities Exchange (NSE).

TYPES OF LISTING MARKETS

The following are NSE market segments.

- **Market for issuing shares**
 - ✓ Main Investments Market Segment (MIMS)
 - ✓ Alternative Investments Market Segment (AIMS)
 - ✓ Growth Enterprise Market Segment (GEMS)
- **Market for issuing bonds**
 - ✓ Fixed Income Securities Market Segment (FISMS)

MAIN INVESTMENTS MARKET SEGMENT

The minimum eligibility conditions and listing requirements for the MIMS are:

- Company to be listed must be a company limited by shares and registered under the Companies Act, 2015 as a public company;
- Company must have a minimum authorised, issued and fully paid up share capital of KShs 50,000,000 and net assets of not less than KShs 100,000,000 before the public offering of shares;
- Shares to be listed must be freely transferable and not subject to any restrictions on marketability or pre-emptive rights;
- Company must have published audited financial statements (prepared under the IFRS framework) for an accounting period ending on a date not more than 4 months prior to the proposed date of the offer;
- If more than 4 months have elapsed since the end of the company's last accounting period for which audited financial statements have been prepared and the proposed offer date, the company must prepare a set of unaudited interim financial statements for the period following the end of the financial period;
- The unaudited interim financial statements should not however exceed 6 months, unless the issuer is already listed in any market segment. In this regard, unlisted issuers who have published accounts exceeding a period of 6 months will have to carry out an interim audit for the period, or plan the date of offer to immediately follow the completion of the next annual audit;
- Company must have prepared financial statements for the latest accounting period on a going concern basis and the audited report must not contain any emphasis of matter or qualification/modification in this regard;
- At the date of application, the company must not be in breach of any of its loan covenants particularly in regard to the maximum debt capacity;

- For a period of at least 2 years prior to the date of the application, no director of the company shall have any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director (for individuals), or any winding-up petition pending or threatened against it (for corporate bodies); any criminal proceedings in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceedings, or any other offence or action either within or outside Kenya; or been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction, that permanently or temporarily prohibits such a director from acting as an investment adviser or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction;
- Company must have suitable senior management with relevant experience for at least 1 year prior to the listing, none of whom shall have committed any serious offence in any jurisdiction that may be considered inappropriate for the management of a listed company;
- The board must comprise executive and non-executive directors with a majority of non-executive directors and at least one third of the total number being independent directors;
- The company must have a clear future dividend policy;
- At least 25% of the shares must be held by not less than 1,000 shareholders excluding employees of the issuer;
- The company shall ensure that the existing shareholders, associated persons or such other group of controlling shareholders who have influence over management shall give an undertaking not to sell their shareholding before the expiry of a period of 24 months following listing and such undertaking shall be disclosed in the Information Memorandum;
- Company to be listed must have declared positive profits after tax attributable to shareholders in at least 3 of the last 5 completed accounting periods to the date of the offer; and
- Company must be solvent and have adequate working capital.

ALTERNATIVE INVESTMENTS MARKET SEGMENT

The minimum eligibility conditions and listing requirements for the AIMS are:

- Company seeking listing must be incorporated or registered as a public limited liability company under the Companies Act, 2015;
- Company must have a minimum authorised, issued and fully paid up share capital of KShs 20,000,000 and net assets of KShs 20,000,000 before seeking listing;
- The shares to be listed must be freely transferable and not subject to any restriction on their marketability or pre-emptive rights;
- At the date of application, the company must not be in breach of any of its loan covenants particularly in regard to the maximum debt capacity;
- Company shall not be eligible to list unless:
 - ✓ At least 20% of the paid up capital after listing, excluding any holding by the employees or family members, is held by not less than 100 shareholders excluding employees of the issuer or family members of the controlling shareholders; and
 - ✓ No investor shall hold more than 3% of the 20% shareholding,
- Company must have been in existence in the same line of business for a minimum of 2 years, one of which should reflect a profit with good growth potential;
- The issuer must have audited financial statements complying with IFRS for an accounting period ending on a date not more than four months prior to the proposed date of the offer if the issuer has no securities listed on the market, or six months prior to the proposed date of the offer if the issuer has securities listed on the market;
- Company must be solvent and the auditor's report must be unqualified;
- Company must ensure that the existing shareholders, related persons or such other group of controlling shareholders who have influence over management, undertake not to sell their shareholding before the expiry of a period of 24 months following listing;
- Company must have a board of directors comprising a balance of executive and non-executive members, with a majority of non-executive directors who, together with the independent directors shall comprise at least one third of the total number of board members;
- Company must disclose a clear policy on dividends; and
- Company listed on AIMS may only change from this segment after a minimum of 1 year and on receiving approval from the Capital Markets Authority and satisfying the requirements for MIMS.

GROWTH ENTERPRISE MARKET SEGMENT

The minimum eligibility conditions and listing requirements for GEMS are:

- Company to be listed must be a company limited by shares and registered under the Companies Act, 2015 as a public company;
- Company must have a minimum authorised, issued and fully paid up share capital of KShs 10,000,000 and not less than 100,000 shares should be in issue;
- Shares to be listed must be freely transferable and not subject to any restrictions on marketability or pre-emptive rights;
- The Company must have a board of at least five directors, comprising executive and non-executive members, with a majority non-executive directors who, together with the independent directors shall comprise at least one third of the total number of board members;
- One third of the directors should have undergone the Directors Induction Program prior to listing and the remainder should have completed the same within 6 months of listing; for a period of at least 2 years prior to the date of the application, no director of the company shall have any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director (for individuals), or any winding-up petition pending or threatened against it (for corporate bodies); any criminal proceedings in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceedings, or any other offence or action either within or outside Kenya; or been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction, that permanently or temporarily prohibits such a director from acting as an investment adviser or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction;
- Company must have suitable senior management with relevant experience for at least 1 year prior to the listing, none of whom shall have committed any serious offence in any jurisdiction that may be considered inappropriate for the management of a listed company;
- The company must ensure that at least 15% of the issued shares should be available for trade by the public (excluding those held by a controlling shareholder or people associated with him or in concert with him; or the company's senior management);
- The company shall cease to be eligible for listing upon the expiry of three months of the listing date, if the securities available are held by less than 25 shareholders;
- The issuer should not be insolvent and should have adequate working capital;
- The directors must give an opinion on the adequacy of the working capital for at least twelve months immediately following the share offering, and the auditors must confirm in writing the adequacy of that capital;
- The company must ensure that existing shareholders, associated persons or such other group of controlling shareholders who influence management give an undertaking restricting the sale of their shares before a period of 24 months following the listing. This should be disclosed in the listing Statement; and
- The company must appoint a Nominated Adviser.

FIXED INCOME SECURITIES MARKET SEGMENT

LOCAL ISSUES

Companies intending to list their commercial papers or corporate bonds in the FIMS must satisfy the following eligibility requirements:

- The company to be listed must be a body corporate;
- The company must have a minimum authorised, issued and fully paid up share capital of KShs 50,000,000 and net assets of KShs 100,000,000 before the public offering of the securities. In the event that the issuer does not have net assets of KShs 100,000,000, the issuer must obtain from a bank or any other approved institution a financial guarantee to support the issue;
- The securities to be listed must be freely transferable and not subject to any restrictions on marketability or pre-emption rights;
- The company must have published audited financial statements complying with IFRS for an accounting period ending on a date not more than 4 months prior to the proposed date of the offer;
- If more than 4 months have elapsed since the end of the company's last accounting period for which audited financial statements have been prepared and the proposed offer date, the company must prepare a set of unaudited interim financial statements for the period following the end of the financial period;
- The unaudited interim financial statements should not, however, exceed 6 months, unless the issuer is already listed in any market segment. In this regard, unlisted issuers with published accounts exceeding a period of 6 months will have to carry out an interim audit for the period, or plan the date of offer to immediately follow completion of the next annual audit;
- The company must have prepared financial statements for the latest accounting period on a going concern basis and the audit report must not contain any emphasis of matter or qualification/modification in this regard;
- At the date of the application, the company must not be in breach of any of its loan covenants particularly in regard to the maximum debt capacity;
- The company should have made profits in at least 2 of the last 3 years preceding the issue of the commercial paper or the corporate bond;
- Companies wishing to issue or list debt securities should not be insolvent;
- Total indebtedness of the issuer, including the new issue of the commercial paper or the corporate bond shall not exceed 400% of the company's net worth (or a gearing ratio of 4:1) as at the date of the latest balance sheet;
- The ratio of funds generated from operations to total debt for the 3 trading periods preceding the issue shall be maintained at a weighted average of 40% or more. The above two conditions must be maintained as long as the commercial paper or corporate bond remains outstanding;
- The directors and senior management of an applicant must have collectively appropriate expertise and experience for the management of the group's business for at least one year prior to the listing, none of whom shall have committed any serious offence that may be considered inappropriate for the management of a listed company. Details of such expertise must be disclosed in the issue information memorandum;
- For a period of at least 2 years prior to the date of the application, no director of the company shall have any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director (for individuals), or any winding-up petition pending or threatened against it (for corporate bodies); any criminal proceedings in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceedings, or any other offence or action either within or outside Kenya; or been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction, that permanently or temporarily prohibits such a director from acting as an investment adviser or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction;
- The company must ensure that commercial papers are not transferable or listed at the NSE; and
- Where the company has issued commercial paper, it shall apply for renewal at least three months before the expiry of the approved period of twelve months from the date of approval

REGIONAL ISSUES

Companies intending to list their corporate bonds in more than one jurisdiction in the East African Community must satisfy the following eligibility requirements:

- The issuer shall be an entity incorporated or registered as a foreign entity in all jurisdictions where the offer is to be made;
- Where the issuer is not a company, then the issuer shall be duly established under a written law or recognised under an international treaty;
- The minimum paid-up share capital shall be the local currency equivalent of USD 850,000;
- The issuer's net assets shall be the local currency equivalent of at least USD 1,700,000;
- An issuer, other than a special purpose vehicle, shall be required to have reported profits in at least two of the previous three years preceding the offer provided that the regulatory authorities shall retain the discretion to grant a waiver in circumstances where decline in profitability is not considered to be a consequence of the fundamentals of the company;
- The issuer can be a special purpose vehicle (SPV) without a track record but such SPV shall be subjected to disclosure requirements on performance projections, risk factors and mitigations and on the availability of financial information to assess any projections made;
- An issuer that is an SPV shall be eligible for approval to make offers to institutional or sophisticated investors but not unrestricted offers to the public;
- The minimum size of a regional fixed income security issue shall be the local currency equivalent of USD 850,000;
- An issuer may raise funds in any jurisdiction in the region without restriction on the jurisdiction where proceeds are to be used subject to disclosure of that fact in the information memorandum and subject to obtaining the necessary exemptions on exchange controls, if required;
- Notwithstanding that an issuer has made a regional fixed income security offer, the issuer, may, at any time, raise an additional amount in any one or more jurisdictions in accordance with a further pricing supplement updating the disclosures in the regional information memorandum. In all events, where a green shoe option is available, it shall be made to all countries where the offer has been made available; and
- An issuer may secure credit enhancement provided that:
 - In the case of a guarantee, the guarantor shall be a bank, duly licensed non-bank financial institution, or recognised international financial institution and have a valid credit rating; and
 - a letter of no objection shall be provided by the credit enhancer's primary regulator (other than in the case of an international financial institution).

LISTING BY INTRODUCTION

The minimum eligibility conditions and listing requirements for listing by introduction are:

- If the company is listed on a foreign exchange, it must have been listed for a minimum of two years;
- The company must ensure that immediately prior to the listing on MIMS, at least 25% of the shares must be held by not less than 1,000 shareholders excluding employees;
- The company must ensure that immediately prior to the listing on AIMS, 20% of the shares must be held by not less than 100 shareholders excluding employees of the issuer or family members of the controlling shareholders;
- The Company must ensure that existing shareholders, associated persons or such other group of controlling shareholders who influence management give an undertaking restricting the sale of shares before a period of 24 months following listing. This should be disclosed in the Information Memorandum; and
- The company must have a clear future dividend policy.

PAYABLE FEES

Companies pay an initial fee to join any of the NSE's markets and an annual fee thereafter. If the company issues additional shares, it pays an additional listing fee. The table below provides the fees details.

Initial Listing Fee			
MIMS	AIMS	GEMS	FIMS
0.6% of securities value to be listed, subject to a minimum of KShs 200,000 and a maximum of KShs 1,500,000.	0.06% of securities value to be listed, subject to a minimum of KShs 100,000 and a maximum of KShs 1,000,000.	0.03% of the value of the securities - minimum of KShs 50,000 and a maximum of KShs 250,000 (for SMEs listing securities worth KShs 834 m).	0.0125% of the value of fixed income securities (bonds) to be listed as follows: <ul style="list-style-type: none"> A minimum of KShs 100,000 and a maximum of KShs 1,000,000 for corporate bonds and other fixed income securities. A minimum of KShs 100,000 and a maximum of KShs 500,000 for treasury bonds and other Government securities.
Annual Listing Fee			
0.6% of securities market capitalisation, subject to a minimum of KShs 200,000 and a maximum of KShs 1,500,000.	0.06% of securities market capitalisation, subject to a minimum of KShs 100,000 and a maximum of KShs 1,000,000.	0.015% of the market capitalisation of the listed securities as at the 30 th November - minimum of KShs 25,000 and a maximum KShs 125,000 payable to the NSE. 0.010% of the market capitalisation of the listed securities as at the 30 th November - minimum of KShs 15,000 and a maximum KShs 83,333 payable to the Central Depository and Settlement Corporation. 0.005% of the market capitalisation of the listed securities as at 30 th November - minimum of KShs 10,000 and a maximum KShs 41,667 payable to the CMA.	0.0125% of the market value of outstanding fixed income securities (bonds) listed as follows: <ul style="list-style-type: none"> A minimum of KShs 100,000 and a maximum of KShs 1,000,000 for corporate bonds and other fixed income securities. A minimum of KShs 100,000 and a maximum of KShs 2,500,000 for Treasury bonds and other Government securities.
Additional Listing Fees			
0.1% of the nominal value of the additional securities, subject to a minimum of KShs 50,000 and a maximum of KShs 500,000.	0.1% of the nominal value of the additional securities, subject to a minimum of KShs 25,000 and a maximum of KShs 250,000.	0.05% of the nominal value of the additional securities - minimum of KShs 25,000 and a maximum of KShs 125,000.	N/A

LISTING INCENTIVES

Following are incentives available to a company wishing to list on the NSE:

- No stamp duty is payable on the share capital or increase in share capital of a company listed on the NSE;
- The transfer of listed securities is exempt from the payment of stamp duty and value added tax on the transfer of listed securities;
- Instruments executed pursuant to or in connection with issue of asset-backed securities and approved by the CMA are exempt from stamp duty;
- Instruments used in the transfer of property to listed property investment vehicles are exempt from stamp duty in order to encourage land consolidation and discourage non-productive land use;
- All citizens of the East African Community Partner States who invest in securities listed on the Nairobi Securities Exchange and earn dividend income are treated the same as Kenyan residents and therefore pay withholding tax at 5%;
- The percentage of the equity offer in an initial public offer that is reserved for Kenyans is 40%, and citizens of the other East African Community Partner States can also access this allocation;
- Foreign investors can acquire shares freely in the stock market subject to a minimum reserved ratio of 40% for domestic investors in each listed company;
- Interest income received by an individual or a corporate from a listed bond with a maturity of at least 3 years used to raise funds for infrastructure or social services, and from interest income generated from cash flows and passed to the investors in the form of asset-backed securities is exempt from tax;
- Any gains made from trade in securities listed on any securities exchange operating in Kenya by any dealer licensed under the Capital Markets Act are exempt from tax provided that such securities have been held for a period not exceeding twenty-four months from the date of acquisition;
- The investment ceiling by retirement benefits schemes in fixed income securities (e.g. bonds and commercial papers) has been raised from 15% to 30%;
- To encourage savings, collective investment schemes set up by employers on behalf of employees to invest in listed shares is exempted from income tax;
- Registered venture capital funds are accorded major tax incentives including tax holidays of up to 10 years on the funds income.
- In the case of a company introducing its shares through listing or any securities exchange via introduction, 25% for the period of 5 years commencing immediately after the year of income following the date of such listing.



7

INVESTING
IN KENYA

GENERAL INFORMATION ABOUT INVESTING IN KENYA

GATEWAY TO EAST AFRICA

Kenya is well placed to be the financial and air transport hub of the region, making the country an ideal investment destination for investors targeting regional markets. The country's strategic location provides easy access to the EAC and COMESA markets.

ACCESS TO LARGE POOL OF SKILLED WORKERS

Kenya prides itself in its large pool of professional workers, trained both within the country and in institutions in Europe, North America, Australia and other parts of the world. For years, Kenya has produced well-educated professionals, fluent in English and highly trained in various fields. Kenya holds the distinction of having the highest number of universities and colleges educating English speaking professionals in East Africa.

KENYA: LIVING THE GOOD LIFE

- Kenya offers many advantages that make it a good choice for settlement and investment. There is the spectacular and diverse nature with landscapes ranging from mountains to beautiful beaches. There are the many wild and spectacular animals and birds. All of these can easily be enjoyed due to a professional and very well developed tourism industry, which is very open to investment and partnerships.
- With nature scenes like the Maasai Mara that is branded as the 8th wonder of the world and Tsavo national parks, which draw thousands of visitors every year, and perfect beaches and hotel infrastructure located on the east coast, near Mombasa, suppliers of tourist services have secured a large and expanding market. Kenya also offers a rich cultural experience and many forms of entertainment where residents and visitors alike can gain insight into the many diverse and fascinating cultures found in the country.
- Residents living in Kenya lack nothing. Kenya provides residents with well-stocked supermarkets, a wide range of quality restaurants, world standard primary and secondary schools and high quality health care. Quality housing is also available in all the key towns in Kenya.

FULLY LIBERALISED ECONOMY

Kenya has now fully liberalised its economy by removing all obstacles that previously hampered the free flow of trade and foreign private investment.

MONEY TRANSFERS OUTSIDE KENYA

There are no exchange controls in Kenya after the Exchange Control Act was repealed in 1995.

WELL ESTABLISHED LOCAL AND FOREIGN PRIVATE SECTOR

By African standards, Kenya has a very substantial private sector, including a significant number of foreign investors and is touted as one of the most resilient economies amongst the emerging economies.

TAX-RELATED INCENTIVES FOR INVESTING IN KENYA

TAX TREATIES AND INVESTMENT PROMOTION

Kenya has a number of tax treaties and investment promotion and protection agreements. Exports from Kenya enjoy preferential access to world markets under a number of special access and duty reduction programmes. Kenya is signatory to various agreements aimed at enhancing trade amongst member states.

BILATERAL AND MULTILATERAL TRADE AGREEMENTS

Kenya has signed bilateral trade agreements with several countries around the world. Some of the countries are already members of existing schemes offering market access/duty reduction preferences. Kenya has been a member of the World Trade Organisation since its inception in January 1995.

Under the ACP-EU agreement, exports from Kenya entering European Union are entitled to duty reductions and freedom from all quota restrictions.

Under the Generalised System of Preferences (GSP), a wide range of Kenya's manufactured products are entitled to preferential duty treatment in several countries of the world including USA, Japan, Canada etc.

Kenya qualifies for duty-free access to the USA market under the African Growth and Opportunity Act enacted by USA. Exports from Kenya include textiles, apparels, handicrafts etc.

Kenya is signatory and a member of the Multilateral Investment Guarantee Agency (MIGA), an affiliate of the World Bank which guarantees investors against loss of investment due to political problems in host countries. Kenya is also a signatory to the International Centre for Settlement of Investment Disputes (ICSID), which is a channel for settling disputes between foreign investors and host governments.

Many of Kenya's agricultural products have also gained access in China during the China International Import Exposition (CIIE) where several negotiations were concluded between Kenya and China including the sanitary and phytosanitary (SPS) protocol.

INVESTMENT ALLOWANCES

The capital allowance and other incentives, including Export Processing Zones, available to investors are covered in detail in Section 4 of this Booklet.

CAPITAL GAINS

Capital gains are subject to capital gains tax effective 1st January 2015. Capital gains refers the whole of a gain which accrues to a company or an individual on the transfer of property situated in Kenya. Property is defined in the Eighth Schedule to the Income Tax Act to include land, buildings and marketable securities. The rate of tax is 5% (which is a final tax) of the net gain. There are also several exemptions to this tax and they include gains realised on transfer of shares listed in the NSE, transfer of property between spouses or former spouses, trust related transfers, etc.

RECEIVED DIVIDENDS

Dividends distributed to residents (including citizens of East African Partner States) and non-residents are subjected to a final withholding tax at the rate of 5% and 15% respectively. The 5% tax is applicable to all countries under the East African Community. Dividends received by a resident holding company with a beneficial shareholding of more than 12.5% are exempt from taxation.

FOREIGN OWNERSHIP OF SHARES AND LAND

SHARES IN COMPANIES INCORPORATED IN KENYA

As a result of the repeal of exchange control laws in 1995, there are presently no restrictions on non-Kenyan residents or citizens owning shares in a private limited company incorporated in Kenya. However, there are restrictions on non-Kenyan residents or citizens (excluding citizens of East African Community member states) owning shares in listed companies. There is no restriction for Non-Kenyan residents or citizens with respect to the voting power in a listed company.

RESTRICTIONS ON LAND OWNERSHIP

Any sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area and the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area requires the mandatory consent of the Land Control Board for the land control area or division in which the land is situated in respect of that transaction in accordance with The Land Control Act.

Such land has been defined under the Act as that which is outside the jurisdiction of Nairobi City County Council, a municipal council or township, or where the user has not been changed to a non-agricultural user.

Such land control boards are mandated by the Act to refuse consent in any case in which the land or share is to be disposed of by way of sale, transfer, lease, exchange or partition to a person who is not a citizen of Kenya or a private company or co-operative society all of whose members are not citizens of Kenya.

As regards any other type of land ownership, the Constitution of Kenya provides that any person who is not a citizen of Kenya may hold land on the basis of leasehold tenure not exceeding 99 years. A company is regarded as a citizen only if it is wholly owned by one or more citizens.

INVESTMENT REGULATION

Apart from the restrictions discussed above in relation to "agricultural land", there are generally no laws that bar foreign investors from participating in any specific industry.

THE INVESTMENT PROMOTION ACT

The Investment Promotion Act was enacted by the National Assembly to encourage more inward investment to Kenya, through creation of an Investment Promotion Authority (IPA). The primary aim of the IPA is to reduce the bureaucracy faced by an investor in relation to licensing, immigration and negotiating tax incentives and exemptions from the relevant authorities.

The benefits that can be negotiated by or granted to the holder of an investment certificate are as follows:

- Certain specified licences appropriate to the business of the investor excluding regulated businesses such as the banking, insurance and petroleum sectors;
- Incentives or exemptions under the Income Tax Act, the East African Customs Management Act, Excise Act and the Value Added Tax Act; and
- A certain number of specific classes of entry permits for management and technical staff as well as for owners, shareholders or partners and their dependants.

In deciding whether to issue an investment certificate, the Authority is required to consider the extent to which the investment will contribute to the Kenyan economy by either increasing the number and quality of jobs in Kenya, training of Kenyans in new skills or technology, contributing to economic development, the transfer of technology or increasing tax revenues and foreign exchange.

APPENDIX OF ACRONYMS USED IN THE BOOKLET

"AGOA"	African Growth and Opportunity Act
"AIMS"	Alternative Investments Market Segment
"ARIPO"	African Regional Intellectual Property Organisation
"BPO"	Business Process Outsourcing
"CBK"	Central Bank of Kenya
"CET"	Common External Tariff
"CMA"	Capital Markets Authority
"COMESA"	Common Market for East and Southern Africa
"Commissioner"	Commissioner General or any other Commissioner to which certain powers or functions have been delegated under the KRA Act
"COTU"	The Central Organisation of Trade Unions
"DIT"	Department of Industrial Training
"DTA"	Dividend Tax Account
"EAC"	East African Community
"EPZ"	Export Processing Zone
"EU"	European Union
"FISMS"	Fixed Income Securities Market Segment
"GDP"	Gross Domestic Product
"GSP"	Generalised System of Preferences
"IBD"	Industrial Building Deduction
"ICPAK"	Institute of Certified Public Accountants of Kenya
"ICT"	Information Communication and Technology
"IFRS"	International Financial Reporting Standards
"IPA"	Investment Promotion Authority
"JKIA"	Jomo Kenyatta International Airport
"KEPHIS"	Kenya Plant Health Inspectorate Services
"KIPI"	Kenya Industrial Property Institute
"KM"	Kilometres
"KRA"	Kenya Revenue Authority
"MIMS"	Main Investments Market Segment
"MW"	Megawatt
"Minister"	Minister for Finance
"NGO"	Non-Governmental Organisation
"NHIF"	National Hospital Insurance Fund
"NSE"	Nairobi Securities Exchange
"NSSF"	National Social Security Fund
"OECD"	Organisation for Economic Cooperation and Development
"PAYE"	Pay As You Earn
"PIN"	Personal Identification Number
"PSV"	Public Service Vehicles
"RTPA"	Restrictive Trade Practices, Monopolies and Price Control Act
"SAR"	Self Assessment Return
"KSHS"	Kenya Shilling
"SQ.M"	Square Metres
"UAE"	United Arab Emirates
"UNHCR"	United Nations High Commissioner for Refugees
"USD"	United States Dollar
"VAT"	Value Added Tax
"WIPO"	World Intellectual Property Organisation

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