

This booklet has been prepared based on the proposals outlined in the Finance Bill, 2025, which is yet to be enacted into law. The contents herein remain subject to change pending the presidential assent. This resource is for informational purposes only and should not be relied upon as a substitute for professional advice or the final legislation.

THE POWER OF BEING UNDERSTOOD
ASSURANCE | TAX | CONSULTING

KENYA TAX GUIDE

2025/26



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Key acronym: “FB” – Finance Bill 2025 proposals

Caveat

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PERSONAL TAX

Resident Individual

An individual

- (i) that has a permanent home in Kenya and was present in Kenya for any period in a particular year of income under consideration; or
- (ii) that has no permanent home in Kenya but:
 - (a) was present in Kenya for a period or periods amounting in the aggregate to 183 days or more in that year of income; or
 - (b) was present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income.

Individual Income Tax Rates

Taxable Income From 1 st July 2023 KShs. p.a	Rate %	Cumulative Tax KShs. p.a
0 – 288,000	10	28,800
288,001 – 388,000	25	53,800
388,001 – 6,000,000	30	1,737,400
6,000,001 – 9,600,000	32.5	2,907,400
Over 9,600,000	35	
Reliefs		2024/25 KShs. p.a.
Personal relief		April 2020 onwards – 28,800 p.a (2,400 p.m)
Mortgage interest deduction on owner occupied property (for purchase or improvement) – maximum		December 2024 onwards 360,000
Life, health and education insurance relief – 15% of premium to a maximum of		60,000

Tax Free Benefits

- Medical benefits provided to a full-time employee and a whole-time service director (holding less than 5% shares), including their beneficiaries (spouse and up to 4 children below 21 years).
- Medical benefits provided to a non-whole-time service director, partner and sole proprietor, including their beneficiaries, subject to a maximum value of KShs. 1 million.
- Amounts paid by an employer as gratuity or similar payment in respect of employment into a registered pension scheme subject to a maximum of KShs. 360,000 p.a. (up to November 2024 KShs. 240,000).
- Education fees of an employee's dependents or relatives, if taxed on the employer.
- International passage cost for non-citizen employees recruited outside Kenya solely to serve the employer.
- Non-cash benefits not exceeding KShs. 60,000 p.a. (up to November 2024 KShs. 240,000).
- KShs. 2,000 per day towards subsistence for a person working outside usual place of work (support required) **(FB 2025 proposes to increase this limit to KShs. 10,000 per day effective 1st July 2025)**.
- Travelling allowances received by an employee to perform official duties if the travelling allowances are computed based on the standard mileage rate approved by the Automobile Association of Kenya as they are deemed to be reimbursements.
- Meals provided at employer's canteen or by a third party registered taxpayer both at the employer's and at third party premises where the value of the meal does not exceed KShs. 60,000 p.a. per employee (up to November 2024 KShs. 36,000).
- The first KShs. 150,000 p.m. of total income, and deduction of up to KShs. 50,000 p.m. for non-reimbursed 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 valid for 5 years.
- Deduction of 1/3 of employment income of a non-citizen resident employee, of a non-resident company or 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 costs are not deductible in ascertaining the employer's income chargeable to tax **(FB 2025 proposes to delete this provision effective 1st July 2025)**.
- Premiums paid for group life policy cover where they don't confer a benefit on the employee or any of 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.
- Club entrance and subscription fees if disallowed against the employer's income.
- Contributions made by employee as Affordable Housing Levy are eligible as allowable deductions when computing employee's taxable income effective December 2024.
- Contributions made by employee to a post-retirement medical fund up to a limit of KShs. 15,000 are eligible as allowable deductions when computing employee's taxable income effective December 2024.

- Contributions made by employee to the Social Health Insurance Fund are eligible as allowable deductions when computing employee's taxable income effective December 2024.

Taxable Employment Benefits

All benefits are taxable at the higher of cost to the employer of providing the benefit and the fair market value.

a) Motor vehicles

- Taxed at the higher of 2% p.m. of the initial cost of the vehicle and the prescribed scale rates.

Motor Cars	Engine Size	Month KShs.	Year KShs.
Saloon Hatch Backs & Estates	Up to 1200cc	3,600	43,200
	1201 to 1500cc	4,200	50,400
	1501 to 1750cc	5,800	69,600
	1751 to 2000cc	7,200	86,400
	2001 to 3000cc	8,600	103,200
	Over 3000cc	14,400	172,800
Pickups, panel van unconverted			
	Up to 1750cc	3,600	43,200
	Over 1750cc	4,200	50,400
Land Rover and Cruisers		7,200	86,400

Note: Range rovers and cars of similar nature are classified as saloons.

- Leased and hired vehicles are taxed at the cost of hiring or leasing the vehicle.
 - Where there is restricted use, the Commissioner may upon application, determine a lower rate based on usage.
- ### b) Domestic benefits
- Benefits including staff meals, 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% 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;
 - * For whole-time service directors: 15% of total employment income;
 - * For employees: 15% of total employment income.
 - Agricultural employees: 10% of total employment income.
 - Where the total employment income exceeds KShs. 600,000 p.a., the rental benefit is the higher of rent paid and the fair market value.
 - Rental received from an employee is deducted in calculating housing benefit.
- ### d) Employee loans
- Loans granted after 1st June 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 and the interest paid by the employee.
- ### e) Registered Employee Share Ownership Plan
- Taxable on the employee based on higher of the cost to the employer or the fair market value of the benefit. The benefit accrues when the employee exercises the option.
- ### f) Shares issued in lieu of cash emoluments by start-ups
- Taxation of benefit of shares issued by a start-up to its employees in lieu of cash emolument shall be deferred and taxed within thirty days of the earlier of:
 - a) the expiry of five years from the end of the year of the award of the shares;
 - b) the disposal of the shares by the employee; or
 - c) the date the employee ceases to be an employee of the eligible start-up.
 - The value of the taxable benefit shall be the fair market value of the shares at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c); or where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.
- ### g) Club entrance and subscription fees
- Club entrance and subscription fees allowed against the employer's income are taxable on the employee.

Pension and Provident Funds

- Deductible contributions to registered funds in respect of employees is the lower of 30% of pensionable income, actual contribution or KShs. 360,000 p.a (KShs. 240,000 up to November 2024).
- From 1st July 2004, employees of tax-exempt bodies to be taxed on the contributions made on their behalf by employers to an unregistered fund or on the excess contribution made to a registered fund.
- The first KShs. 300,000 p.a. of the total pension or retirement annuities received by a resident taxpayer are exempt from tax.
- Monthly pension payments to persons who have attained retirement age or withdrawals prior to attainment of retirement age due to ill health or after twenty years from the date of registration as a member of a fund or payment of gratuity or other allowances under public pension scheme are tax exempt effective 27th December 2024.
- 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 January 1997;
 - A one-off final lump sum payment from a registered fund to the estate of a deceased – the first KShs. 1.4 million;
 - The first KShs. 600,000 of NSSF benefits;
 - 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.

EMPLOYER'S OTHER OBLIGATIONS

National Social Security Fund

- 12% of the pensionable earnings of an employee; 50% is payable by the employee and 50% by the employer subject to an upper limit of KShs. 8,640 for employees earning above KShs. 72,000 (Up to January 2025; KShs. 4,320 for employees earning above KShs. 36,000).
- Pensionable earnings are the lower of the member's monthly wage and the Upper Earnings Limit (UEL).
- 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.
- The contributions relating to the earnings below the Lower Earnings Limit (LEL) of the earnings (a maximum of KShs. 960) are credited to Tier I account while the balance of the contribution for earnings between the LEL and the UEL (up to a maximum of KShs. 7,680) will be credited to Tier II account.
- Compulsory contribution to the NSSF of Tier 1 contributions up to a maximum of 6% of the Lower Earnings Limit (set currently at KShs. 8,000).
- 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.
- Payable by 9th of following month. Compulsory registration for all employers irrespective of the number of employees. Voluntary registrations permitted for self-employed workers.

Affordable Housing Levy

- Employers and employees to contribute to the Affordable Housing Levy at the rate of 1.5% of the employee's monthly gross salary.
- The burden is on the employer to deduct and remit the Levy within 9 working days after the end of the month in which the payments are due. Employers who fail to comply with this provision shall be penalized at 3% of the unpaid funds, for every month the funds remain unpaid.
- The due date for remittance is 9th day of the following month.
- Effective date: 19th March 2024.

National Industrial Training Authority (NITA) Levy

- Payable by every employer at KShs. 50 per employee including an apprentice, indentured learner, other trainee, temporary, seasonal and casual worker.
- Due by 9th of the month following the month of deduction.
- Not applicable to those who pay catering levy.

Social Health Authority (From 1st October 2024)

- Employees to contribute to the Social Health Authority at the rate of 2.75% of gross pay.
- The burden is on the employer to deduct and remit the contributions by the ninth day of the month following the month of contribution.

INCOME TAX – CORPORATIONS

Income Tax Rates	
Resident company:	
Tax rate from 1 st January 2021	30%
Dividends distributed out of untaxed gains or profits	30%
Dividends received by Special Economic Zone enterprises, developers and operators to any non-resident person	Exempt
Gain accruing to the non-resident person from financial derivatives contract with a resident person	15% of the gains
Turnover Tax applicable for businesses (including incorporated and unincorporated) with a turnover of KShs. 1 million up to KShs. 25 million (excluding rental, management, professional, training income and any income which is subject to a final withholding tax under Income Tax Act)	1.5% of gross receipts of business
Permanent establishment of a non-resident company	30% (effective 1 st January 2024)
Branch profit repatriation tax	15% (effective 1 st January 2024)
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)	7.5% (effective 1 st January 2024)
Export Processing Zone enterprises:	
First ten years	Nil
Next ten years	25%
Local motor vehicle assembling company	
First five years	15%
Next five years	15%
(provided the company achieves a local content equivalent to 50% of the ex-factory value of the motor vehicles) (FB 2025 proposes to delete this provision which will make these companies taxable at 30% effective 1 st July 2025)	
Special Economic Zone enterprise, developer, or operator	
First ten years	10%
Next ten years	15%
A resident company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority	
First ten years	15%
A resident company operating a shipping business in Kenya	
First ten years from the year of commencement of its operations	15%
Interest and deemed interest arising from a bearer bond issued outside Kenya of at least two years duration and interest, discount or original issue discount for a non-resident person	7.5% of the gross sum payable
Significant Economic Presence Tax payable by a non-resident person on income of KShs. 5 million and above accruing from a business carried out over a digital marketplace	30% of 10% on gross turnover
With effect from 1 st September 2023, Digital Asset Tax ("DAT") will be payable by a person on the income derived from the transfer or exchange of digital assets	3% of the transfer or exchange value of the digital asset
Income of a registered Unit Trust, Collective Investment Scheme or a Real Estate Investment Trust	Exempt
Investee companies of Real Estate Investment Trusts	Exempt
Developers constructing at least one hundred residential units annually (for that year of income) (FB 2025 proposes to delete this provision which will make these companies taxable at 30% – effective 1 st July 2025)	15%
Manufacturers of human vaccine	10% (effective 1 st January 2024)



Tax losses can be carried forward indefinitely effective 1st July 2021. Previously tax losses could be carried forward to a maximum of 9 years. (FB 2025 proposal to delete this provision and replace this with a carry forward of losses limited to a period of 5 years effective 1st July 2025)

Exemption from income tax accorded, on application to the Commissioner, to organisations established solely for the purposes of relief of poverty or distress of the public or for the advancement of religion or education. Tax exemption status is renewable once every 5 years.

* When computing the tax payable, business expenses were only allowable if incurred wholly and exclusively to generate income. However, effective 1st January 2024 any expenditure or loss must be supported by a tax invoice generated from an electronic tax invoice management system (eTIMS) unless the transaction is exempted by the Tax Procedures Act, 2015.

With effect from 27th December 2024, **Minimum Top-up Tax (MTT)** shall be payable by a covered person where the combined effective tax rate (ETR) in respect of that person for a year of income is less than 15% (FB 2025 proposal to provide the due date for payment of MTT to be the end of the fourth month following the end of the year of income – effective 1st July 2025).

$MTT = (15\% \text{ of net income / loss}^2 - \text{combined ETR}) \times \text{excess profit}^3$

Combined ETR = $\frac{\text{Sum of all adjusted covered taxes}^{(4)} \times 100}{\text{Sum of all net income / loss}}$

Sum of all net income / loss

Item	Definition
A Covered Person	A resident person or a person with a permanent establishment in Kenya who is a member of an MNE, and the group has a consolidated annual turnover of 750 million Euros or more in at least 2 of the 4 years of income preceding the tested year of income
Net Income or Loss	The sum of net income or loss for the year of income after deducting the sum of losses of a covered person as determined under a recognised accounting standard in Kenya
Excess Profit	The net income/ loss of a covered person for the year of income less (10% of employee cost + 8% of net book value of tangible assets
Adjusted Covered Taxed	Taxes recorded in the financial statement of a constituent entity for the income, profits share of the income or profits of a constituent entity where the constituent entity own an interest, and includes taxes on distributed profits, deemed profit distribution under Income Tax Act subject to such adjustments as may be prescribed

CAPITAL ALLOWANCES

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

Investment Allowances applicable to the year of income ended April 2020 onwards (calculated on cost)	Rate & method
Machinery used for manufacture	50% in the first year of use, and then 25% straight line
Hospital Equipment	50% in the first year of use, and then 25% straight line
Ships or aircrafts	50% in the first year of use, and then 25% straight line
Motor vehicles and heavy earth moving equipment	25% straight line
Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines	25% straight line
Furniture and fittings	10% straight line

Investment Allowances applicable to the year of income ended April 2020 onwards (calculated on cost)	Rate & method
Telecommunications equipment	10% straight line
Filming equipment by a local film producer licenced by the Cabinet Secretary responsible for filming	25% straight line
Machinery used to undertake operations under a prospecting right	50% in the first year of use, and then 25% straight line
Machinery used to undertake exploration operations under a mining right	50% in the first year of use, and then 25% straight line
Other machinery	10% straight line
Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator	10% straight line
Section 15(2)(G) Claim	
Utensils and loose tools – 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 up to 30 th June 2023. The applicable allowance effective 1 st July 2023 is 100%	
Hotel (licenced by competent authority)	50% in the first year of use, and then 25% straight line
Building used for manufacture	50% in the first year of use, and then 25% straight line
Hospital (licenced by competent authority)	50% in the first year of use, and then 25% straight line
Petroleum or gas storage facilities	50% in the first year of use, and then 25% straight line
Educational buildings including student hostels (licenced by competent authority)	10% straight line
Commercial building	10% straight line
Industrial building	10% straight line
Dock	10% per year on a straight-line basis
Farm works	50% in the first year of use, and then 25% straight line

Investment allowance applicable from 1 st January 2022 (FB 2025 proposes to delete these provisions effective 1 st July 2025 for 100% and 150% allowances)	Rate & method
On cumulative investment value in the preceding 3 years outside Nairobi City County and Mombasa County is at least KShs. 1 billion Provided that where the cumulative value of investment for the preceding 3 years of income was KShs. 1 billion on or before 25 th April 2020, and the applicable rate of investment deduction was 150%, that rate shall continue to apply for the investment made on or before the 25 th of April 2020	100%
On investment value in that year of income outside Nairobi City County and Mombasa County is at least KShs. 250 million on hotel building or building or machinery for manufacture	100%
Where the cumulative investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least KShs. 1 billion (effective 1 st July 2022)	150%
Investment incurred in a special economic zone	100%

TRANSFER PRICING

In Kenya, related parties are required to develop an appropriate transfer pricing policy based on one of the following methods for transactions:

- 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 with non-resident entities, EPZs and SEZs. Documentation of a TP Policy is a mandatory requirement and failure to comply is an offence under Section 82 of the Tax Procedures Act (TPA) which attracts a penalty equal to the higher of:

- (a) 10% of the amount of tax payable by the person under the tax law to which the document relates for the reporting period to which the failure relates; or
- (b) the penalty shall be KShs. 100,000.

CAPITAL GAINS TAX

- Individuals (including unincorporated institutions) – on transfer of land and shares excluding those listed on the NSE.
- Company – on transfer of assets, excluding share listed on the NSE that are not subject to corporation tax. Effective April 2020, a sale of a building on which investment deduction has been claimed will be subject to corporation tax instead of capital gains tax.
- Rate – 15% of the gain effective 1st January 2023.
- On transfer of property – payable at the earlier of receipt of the full purchase price by the vendor or registration of the transfer.
- Transfer of property between spouses, or to a company 100% owned by either or both spouses and immediate family members is exempt.
- Transfer of property within a group as part of a re-organisation is exempt. However, effective 1st July 2023, for a group undergoing an internal restructure to qualify for CGT exemption, the group must have been existing for at least 24 months or more.
- Transfer of property, including investment shares, which is transferred or sold for the purpose of transferring the title or the proceeds into a registered family trust is exempt from capital gains tax.
- Transfer of title of immovable property to a family trust is exempt from capital gains tax.
- Certain other exemptions also applicable.
- In the case of transfer of property to another party within five years of acquisition of the property vide a CGT exempt transfer, the adjusted cost in the transfer to the other party shall be the original adjusted cost as per the first transfer.
- The rate of CGT shall be 5% in the case of a firm that has invested at least KShs. 3 billion in at least one entity incorporated or registered in Kenya within a period of two years and the transfer of the investment is to be made after five years of the date of the investment. This must be certified by International Financial Centre Authority (IFCA).

MOTOR VEHICLE ADVANCE TAX

Applicable to all commercial vehicles and PSVs:

- For vans, pickups, trucks, prime movers, trailers and lorries (except tractors and trailers used for agricultural purposes), the higher of KShs. 1,500 per tonne of load capacity p.a. or KShs. 2,400 p.a. up to 31st December 2023. The new rates effective 1st January 2024 will be the higher of KShs. 2,500 per tonne of load capacity per year or KShs. 5,000 per year.
- 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 up to 31st December 2023. The new rates effective 1st January 2024 is the higher of KShs. 100 per passenger capacity per month or KShs. 5,000 per year.
- Payable on or before the 20th day of first month of the year of income or before registration.



PAYMENT OF TAXES

Instalment Tax

Payable on or before the 20th day of the respective month as follows:

	Fourth Month	Sixth Month	Ninth Month	Twelfth Month
All other taxpayers	25%	25%	25%	25%
Agricultural enterprises	–	–	75%	25%

Basis for Instalment Tax: Lower of preceding year's tax multiplied by 110% and current year's estimate. When using the current year basis, the tax liability must be settled in 4 equal instalments. For individual taxpayers, instalment tax payable if preceding year's tax liability is KShs. 40,000 or more.

Agricultural enterprises		
Payment	Applicable Turnover	Date Payable
1 st Payment	1 st to 8 th months	By 20 th of the 9 th month
2 nd Payment	9 th , 10 th & 11 th months	By 20 th of the 12 th month
Balance of Tax	12 th month	By last day of the 4 th month after the accounting period

Final Tax

Due on or before end of the fourth month after the year-end.

SELF ASSESSMENT RETURN (SAR)

Due for filing as follows:

- Corporations – within six months after the end of the accounting year-end;
- Individuals and partnerships – by 30th June of the following year; and
- A married woman can now only file a separate tax return and declare income from arms-length employment, professional services, rent, dividend and interest separately from the husband.

COUNTRY BY COUNTRY REPORTING

- An ultimate parent entity or a constituent entity of a multinational enterprise group with a gross turnover of KShs. 95 billion (including extraordinary or investment income) that is resident in Kenya shall file a country-by-country report with the Commissioner of its financial activities in Kenya and for all other jurisdictions where the group has a taxable presence ([FB 2025 proposes that all MNE groups with a consolidated group turnover exceeding KShs. 95 billion will be required to file a CBC report in Kenya, irrespective of any parallel reporting obligations or exemptions in other jurisdictions – effective 1st July 2025](#)).
- 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 of 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.
- A person who fails to comply with the country-by-country reporting commits an offence and shall be subject to the penalties prescribed under the Tax Procedures Act, 2015.



GAINS OR PROFITS OF BUSINESS IN A PREFERENTIAL TAX REGIME

Effective 1st January 2023 where –

- (a) a resident person carries on business with a related resident person operating in a preferential tax regime; or
- (b) a resident person carries on business with –
 - (i) a non-resident person located in a preferential tax regime; or
 - (ii) an associated enterprise of a non-resident person located in a preferential tax regime; or
 - (iii) a permanent establishment of a non-resident person operating in Kenya where the non-resident person is located in a preferential tax regime and the business produces no gains or produces less gains than those which would have been expected to accrue from that business if the business activity was not with a party in a preferential tax regime, the gains of that resident person from that business shall be deemed to be the amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm's length, or if none of the parties were located in a preferential tax regime.

Effective 1st January 2024, income derived from Intellectual Property (IP) will be subject to a preferential tax rate. The income from the IP that will be subject to the preferential tax rate will be computed as follows:

$$\begin{array}{rcl}
 \text{Income receiving tax} & & \text{R\&D expenses excluding} \\
 \text{benefits} & = & \text{acquisition costs and related} \\
 & & \text{party outsourcing costs} \\
 & & \text{All R\&D expenses inclusive of} \\
 & & \text{acquisition costs and related} \\
 & & \text{party outsourcing costs} \\
 & \times & \text{IP income including} \\
 & & \text{royalties, capital gains} \\
 & & \text{and any other income} \\
 & & \text{from the sale of an IP} \\
 & & \text{asset}
 \end{array}$$

** Intellectual property losses shall only be deducted against intellectual property income. However, the Finance Act 2023 did not prescribe the preferential tax rate that will apply on the income from IP. Therefore, taxpayers may not be able to enjoy this new benefit until the ITA is amended to prescribe a specific preferential tax rate.

STANDARDS LEVY, CUSTOMS AND EXCISE

STANDARDS LEVY

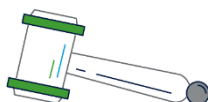
Payable monthly by manufacturers at 0.2% of ex-factory price subject to a minimum of KShs. 1,000 p.m. and a maximum of KShs. 400,000 p.a.

CUSTOMS DUTY

- Customs duties chargeable under the East African Community Customs Management Act for imports outside the EAC region:

Raw materials and certain machinery	0%
Semi-finished goods	10%
Finished goods	25%
Finished goods readily available within the customs territory	35%

- Member countries have powers to levy additional anti-dumping or countervailing duty rates in addition to the normal duty rates.
- Certain capital goods, subject to Treasury approval, are eligible for duty remission.
- Goods imported from COMESA have preferential rates.
- IDF is at 2.5% of customs value.
- Effective 27th December 2024, RDL fees rate is at 2% for all imports.
- 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 Railway Development Levy.
- Additional duty of 2.5% applicable to goods entered for home use from export processing zones enterprises.
- Processing fees of KShs. 10,000 applicable to all motor vehicles excluding motorcycles imported or purchased duty free.



Exemptions from IDF

The following new items are exempted from IDF effective 1st July 2023:

- Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya;
- Liquefied petroleum gas;
- Denatured ethanol of tariff number 2207.20.00;
- Bioethanol vapor (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel); and
- Goods imported for other manufacturing activities including refining of human vaccines.

Exemptions from RDL

The following new items are exempted from RDL effective 1st July 2023:

- Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya;
- Liquefied petroleum gas;
- All goods and parts thereof of Chapter 88 (Aircrafts, Space crafts and parts thereof including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation) ([FB 2025 proposal is to restrict the exemption from RDL and IDF to aircrafts exceeding 2 metric tonnes \(unladen\) and all parts under Chapter 88, when purchased or imported before clearance through customs effective 1st July 2025](#));
- Goods imported for other manufacturing activities including refining of human vaccines;
- Denatured ethanol of tariff number 2207.20.00; and
- Bioethanol vapor (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).

EXCISE DUTY

Excise duty is charged on a variety of products:

Item	Duty Rate FY 2024/25
Fruit and vegetable juices	KShs 14.14 per litre
Water (bottled and similarly packaged waters) and other non-alcoholic beverages	KShs. 6.41 per litre
Food supplements	10%
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages and alcoholic beverages of alcoholic strength not exceeding 6% Provided that, Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages manufactured by licenced small independent brewers shall be subject to the rate of KShs. 10 per centilitre of pure alcohol	KShs. 22.50 per centilitre of pure alcohol
Powdered beer	KShs. 129.53 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	KShs. 22.50 per centilitre of pure alcohol
Spirits of undenatured ethyl alcohols of alcoholic strength exceeding 6%	KShs. 10 per centilitre of pure alcohol
Cigars, cheroots, cigarillos containing tobacco or tobacco substitutes	KShs. 16,260.29 per kg
Cigarettes with filters (hinge lid and soft cap)	KShs. 4,100 per mille
Cigarettes without filters (plain cigarettes)	KShs. 4,100 per mille
Other manufactured tobacco and tobacco substitutes	KShs. 11,382.48 per kg
Cosmetics and beauty products including perfumes, make-ups, pedicure and manicure products, haircare and shaving preparations	15%
Motor vehicle (excluding locally assembled motor vehicles, locally manufactured passenger motor vehicles, locally assembled electric vehicles school buses for use by public schools, motor vehicles under tariff no. 8703.24.90 and 8703.33.90 and imported motor vehicles exceeding 1500cc) of tariff heading 87.02, 87.03 and 87.04	20%
Imported motor vehicles of cylinder capacity exceeding 1500cc to 2500cc of tariff heading 87.02, 87.03 and 87.04	25%
Motor vehicles of tariff no. 8703.24.90 and 8703.33.90 exceeding 2500cc	35%
Motorcycles of tariff no. 87.11 other than motorcycle ambulances, locally assembled motorcycles and electric motorcycles	KShs. 12,952.83
Illuminating Kerosene	KShs. 11,370.99 per 1,000 litres

100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99, 8703.80.00	10%
Imported sugar confectionery of tariff heading 17.04	KShs. 85.82 per kg
Imported white chocolate of heading 1704; imported chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00	KShs. 257.55 per kg
Imported gas cylinders	35%
Imported glass bottles (excluding glass bottles for packaging of pharmaceutical products) Provided that it shall not apply to glass bottles imported from any of the countries within EAC	35%
Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117	15%
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	KShs. 2,000 per kg
Liquid nicotine for electronic cigarettes	KShs. 100 per millilitre
Articles of plastic of tariff heading 3923.30.00 and 3923.90.90	10%
Imported eggs of tariff heading 04.07 excluding fertilized eggs for incubation imported by licenced incubators (FB 2025 proposal to delete this)	25%
Imported onions of tariff heading 07.03 (FB 2025 proposal to delete this)	25%
Imported potatoes, potato crisps and potato chips of tariff heading 07.01 (FB 2025 proposal to delete this)	25%
3907.91.00 unsaturated polyester (imported)	10%
Imported Fully Assembled Electric transformers and parts of tariff codes 8504.10.00, 8504.21.00, 8504.22.00, 8504.23.00, 8504.31.00, 8504.32.00, 8504.34.00	25%
Imported printing ink of tariff 3215.11.00 and 3215.19.00 but excluding those originating from EAC Partner States that meet the EAC Rules of Origin	15%
Imported Ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures of tariff heading 6910	5% of customs value or KShs. 50 per kg
Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked of tariff 7007 (FB 2025 proposal is to amend tariff code from 7007 to 7005 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin)	30% of custom value or KShs. 200 per kg (FB 2025 proposal to amend to 30% of excisable value or KShs 200 per kg; whichever is higher)
Imported ceramic flags and paving, hearth or wall tiles; unglazed ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics of tariff 6907	5% of custom value or KShs. 200 per square meter
Coal	2.5% of the custom value (FB 2025 proposal to amend to 2.5% of excisable value)



Items	Effective 1 st July 2023
Imported fish	10%
Powdered juice	KShs. 25 per kg
Imported sugar excluding imported sugar by a registered pharmaceutical manufacturer and raw sugar imported for processing by a licenced sugar refinery	KShs. 7.5 per kg
Imported cement	10% of the value or KShs. 1.50 per kg, whichever is higher
Imported furniture of Tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin	30%
Imported cellular phones * Reclassified from excisable services to excisable goods	10%
Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210	15%
Imported non-virgin Test liner of heading 4805.24.00	25%
Imported non-virgin fluting medium of heading 4805.19.00	25%
Condensates per 1000l@ 20degC	N/A
Imported Alkyd	20%
Imported Unsaturated polyester	20%
Imported saturated polyester of heading 3907.99.00	20%
Imported polymers of vinyl acetate/ vinyl esters of heading 3905.21.00	20%
Imported emulsion-styrene acrylic of heading 3903.90.00	20%
Imported Emulsion VAM	20%
Imported Emulsion – styrene Acrylic	20%
Imported Homopolymers	20%
Imported Emulsion B.A.M	20%
Imported Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff number 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 but excluding those originating from EAC Partner States that meet the EAC Rules of Origin (FB 2025 proposal to delete this)	25% or KShs. 75 per kg whichever is higher
Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90	25%
Printed paper or paperboard of tariff heading 4811.41.90 or 4811.49.00 but excluding those originating from EAC Partner States that meet the EAC Rules of Origin (FB 2025 proposal to delete this)	25% or KShs. 200 per kg whichever is higher
Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 but excluding those originating from EAC Partner States that meet the EAC Rules of Origin	25% or KShs. 200 per kg whichever is higher
Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 but excluding those originating from EAC Partner States that meet the EAC Rules of Origin	25% or KShs. 150 per kg whichever is higher



Items (FB 2025 proposals to introduce Excise Duty on the following items)	Effective 1 st July 2025
Imported other self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff number 3919.90.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or KShs. 200 per Kilogramme, whichever is higher
Imported printed polymers of ethylene of other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or KShs. 200 per Kilogramme, whichever is higher
Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.43.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or KShs. 200 per Kilogramme, whichever is higher
Imported printed poly (ethylene terephthalate) of polycarbonates, alkyd resins, poly allyl esters or other polyesters of other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly of tariff number 3920.62.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	10% of the value or KShs. 150 per kg, whichever is higher
Imported furniture of Tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or KShs. 200 per Kilogramme
Imported printed cellular of other plastics of other plates, sheets, film, foil and strip of tariff number 3921.19.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or KShs. 200 per Kilogramme, whichever is higher
Printed self-adhesive paper of tariff number 4811.41.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or KShs. 200 per Kilogramme, whichever is higher
Gummed paper and paperboard of tariff number 4811.49.00, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or KShs. 200 per Kilogramme, whichever is higher
Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages	KShs. 500 per litre



Services Effective 1st July 2023	
Telephone and internet data services	15%
Fees charged for money transfer services by banks, money transfer agencies and other financial service providers	15%
Excise duty on fees charged for money transfer services by cellular phone service providers or payment service providers licensed under the National Payment System Act, 2011 *Fees charged by payment service providers under the NPS Act (other than cellular phone service providers) are currently not subject to excise duty	15%
Fees charged by payment service providers licensed under the National Payment Systems Act, 2011 (other than cellular phone service providers)	15%
Excise duty on betting (on the amount wagered or staked)	15%
Excise duty on gaming (on the amount wagered or staked)	15%
Excise duty on the amount paid/charged to participate in a prize competition	15%
Excise duty on the amount paid/charged to buy the lottery ticket (excluding charitable lotteries)	15%
Fees charged on advertisement on the internet, social media, television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions	15%

- The specified rates shall be adjusted after every year to cater for inflation. The Commissioner is however empowered to exempt from this requirement certain products depending on the prevailing economic circumstances. However, effective 1st July 2023, the Commissioner no longer have the powers to adjust the excise duty rate on excisable goods.
- Excise Stamps now required on bottled water, juices, soda, other non-alcoholic beverages and cosmetics.
- Penalties and interest applicable on late payment of excise duty on imports are charged in line with the rates provided for by the Tax Procedures Act i.e. 5% penalty and 1% interest per month.
- Effective 27th December 2024, manufacturers of alcoholic beverages to remit excise duty by the fifth day of the following month upon removal of the goods from the stockroom. Similarly, betting and gaming service providers to remit excise duty before the end of the following day.
- Effective 1st July 2023, the Commissioner has the power to induct other industries into the 24-hour excise duty payment regime.

WITHHOLDING TAX RATES

Withholding Tax Rates	Resident	Non-Resident
Telecommunication services	–	5%*
Artists and entertainers (excluding payment to approved foreign actors and crew)	–	20%*
Royalties (15)	5%	20%*
Dividends (1)/ (2)/ (18)	5%*	15%*
Dividends paid to companies having 12.5% or more voting power	Exempt	15%*
Renting property other than immovable (3)	–	15%*
Rent – land and buildings (13)	7.5% (10% prior to 1 st January 2024)	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 capitalization	–	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 (FB 2025 proposes to shift the burden of withholding tax on the resident who procures services of a non-resident ship owner to pay 2.5% WHT)	–	2.5%*

Withholding Tax Rates	Resident	Non-Resident
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)	(5% effective 1 st July 2023)	20%*
Disbursement of deemed income to beneficiaries	25%	–
Gains accruing to non-residents where a resident person enters a financial derivative arrangement	–	15%
Digital content monetisation	5%	20%
Payment made by public entity for supply of goods to a public entity	0.5%	5%
Making or facilitating payment on digital marketplace	5%	20%
Sale of scrap	1.5%	1.5%

* Final tax

- (1) East African Community partner state citizens at resident rate of 5%.
- (2) Dividends received by a specified financial institution operating in Kenya chargeable to corporation tax.
- (3) Renting of aircraft, aircraft engines, locomotives and rolling stock exempt.
- (4) Final tax for individuals. Not final tax for resident companies, trusts, clubs etc.
- (5) Limited to income of KShs. 300,000 p.a.
- (6) 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.
- (7) 5% if paid to a resident broker.
- (8) 15% if paid to East African Community countries.
- (9) For all payments in excess of KShs. 24,000 p.m.
- (10) 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.
- (11) Extractive industries – the rate is 10% for sub-contractors. In the case of petroleum companies, for management, professional and training fees the rate is 10%.
- (12) 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.
- (13) Deducted by tenants and agents appointed by the Commissioner.
- (14) Payments for management, professional and training paid by SEZ Developer or Operator to a non-resident – exempt for the first 10 years.
- (15) Royalty paid by SEZ, Developer or Operator to a non-resident is exempt from withholding tax for the first 10 years.
- (16) Interest paid by SEZ, Developer or Operator to a non-resident is exempt from withholding tax for the first 10 years.
- (17) 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.
- (18) Rate not applicable to East African Community citizens.
- (19) Rate for non-residents prior to April 2020 is 10%. Resident rate of 5% introduced effective 1st July 2023.

Payment Date: 20th following the month after it becomes payable up to 30th June 2023. Effective 1st July 2023, withholding tax payments are due within 5 working days after payment.

Double tax treaties: 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 must 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%	***
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.

Any exemption from tax or a reduced tax rate in Kenya as a result of the application of the arrangement in a DTA shall not be applicable to person who, for the purposes of the arrangement, is a resident of the other contracting state if 50% or more of the underlying ownership of that person is held by a person or persons who are not residents of that other contracting state for the purposes of the agreement.

Thin capitalisation/Interest restriction: Thin capitalisation arises where a person's gross interest payable to non-resident related persons and third parties exceeds thirty percent of their earnings before interest, taxes, depreciation and amortization in any financial year.

Where a person is thinly capitalised, the Income Tax Act provides for the disallowance, for tax purposes, of part of the interest that exceeds the thirty percent of EBITDA. In addition, any foreign exchange loss on such loans is also deferred for tax purposes. Effective 1st January 2022, the thin capitalisation provisions were 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.

With effect from 1st January 2024, the restriction based on 30% of the EBITDA will only apply to foreign loans. This means that interest expense with respect to local loans will not be subjected to the restriction. The interest expenses on foreign loans in excess of 30% of the EBITDA shall be an allowable deduction in the subsequent three years of income provided that the interest expense claimed in each year shall not exceed 30% of the EBITDA.

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, small enterprises registered under the Micro and Small Enterprises Act, 2012, Microfinance institutions licensed and non-deposit taking microfinance businesses under the Microfinance Act, 2006, entities licensed under the Hire Purchase Act, non-deposit taking institutions involved in lending and leasing business, Companies undertaking the manufacture of human vaccines, and Holding companies that are regulated under the Capital Markets Act.

Companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least five billion shillings; companies engaged in manufacturing whose cumulative investment is at least five billion shillings, provided that the investment shall have been made outside Nairobi City County and Mombasa County were not subject to this restriction up to 1st July 2023 after which they are no longer exempt. Further, the interest restriction shall however not apply where the interest is exempt from tax under the Income Tax Act.

Deferral of Foreign Exchange Losses

Further to interest restriction, effective 1st July 2023, forex losses for persons whose gross interest paid or payable to non-residents exceeds 30% of the EBITDA will be deferred (and not taken into account) and claimed over a period of five years from the date the losses were realized. Prior to 1st July 2023 changes, the Income Tax Act was not specific on how long a taxpayer would defer the realised forex losses.

Effective 1st July 2023, a thinly capitalized person shall be required to defer their forex losses (for tax purposes) and claim them for a period not exceeding 5 years from the date the loss was realised. However, the determination of thin capitalization for forex restriction purposes includes local loans.

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 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.

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.

REFUND OF OVERPAID TAX

- Where a taxpayer has overpaid tax, the taxpayer may apply to the Commissioner for a refund of the overpaid tax. If the Commissioner is satisfied with the refund, the overpayment shall be applied to payment of any other future tax or issue cash refund to the taxpayer.
- Prior to 1st July 2023, the Commissioner has 90days to make a determination failure to which the application shall be deemed ascertained and approved. This timeline has however been extended to 120days effective 1st July 2023 after which if a determination is not made, the application is deemed as ascertained.
- The Commissioner has introduced a new provision on approved refunds pending payment. The provision states that 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 any outstanding tax shall continue accruing interest and penalties in accordance with the provision of the TPA prior to 1st July 2023. However, effective 1st July 2023, where a taxpayer makes an application for refund of overpaid taxes, the Commissioner will be required to refund the cash within 6 months from the date of ascertainment of the refund, failure to which the overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities.
- Where a taxpayer overpays an instalment tax due under Section 12 of the Income Tax Act, the Commissioner shall apply the overpaid tax to offset the taxpayer's future instalment tax liability. This therefore means that a taxpayer cannot apply for a refund of overpaid instalment taxes. Where a taxpayer prefers a refund of overpaid tax, the same will be receivable by a taxpayer within 2 years from the date of application.
- The refund application timeline for Value Added Tax is 12 months effective 27th December 2024.

SET-OFF OF TAX

- Any tax or duty payable to the Kenya Revenue Authority may be offset on request against any refund of tax or duty confirmed by the Authority upon application by the taxpayer.
- Tax paid in another country on employment income by a Kenyan citizen can be offset against tax payable on that income in Kenya to the maximum of tax payable in Kenya on the said income.

STAMP DUTY

Creation or increase of share capital	1%
Transfer of stock or marketable security (except quoted securities, which are exempt)	1%
Registration of debentures, mortgages and charges	0.1%
Transfer of immovable property:	
Within a municipality	4%
Outside a municipality	2%
Lease:	
Between 1 and 3 years	1% of annual rent
Over 3 years	2% of annual rent



Exemptions

- New or expanded listing on stock exchange.
- Transfer of immovable property between husband and wife or transfer of a family property to a limited liability company wholly owned by the family.
- Land acquired for construction or expansion of educational institutions.
- Purchase of a house by a first-time house owner under affordable housing scheme.
- Instruments creating asset-backed securities through a scheme approved by the Capital Markets Authority.
- Transfers between holding and subsidiary companies with shareholding exceeding 90%.
- Sukuk arrangement – transfers of title from the original owner to the entity representing the interest of sukuk holders then back to the original owner as a requirement of the agreement.
- Instruments executed for purposes of collection and recovery of tax.
- An instrument relating to the business activities of special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act 2015.
- Instruments executed in favour of a mortgage refinance company effective 1st July 2022.

VALUE ADDED TAX

Rates

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%
Supply of specified taxable goods and services; export of goods and taxable services including provision of transit services; supply of goods and taxable services to EPZ enterprises, and ship stores and taxable services to international sea and air carriers	0%
Catering levy for hotels and restaurants	2%
VAT as a fraction of inclusive price (standard rate) –16%	4/29
Fuel (petrol, kerosene and spirits)	16%
Liquefied petroleum gas including propane (taxable value now includes excise duty, fees and other charges)	0%

Registration threshold – KShs. 5 million turnover p.a. excluding taxable supply of capital assets and taxable supply resulting from sale of whole or part of the business.

Non-resident persons supplying imported digital services over the internet or an electronic network or through a digital marketplace are required to register for VAT regardless of their turnover (**FB 2025 proposed to remove the threshold of KShs. 5 million and all non-residents supplying digital services over the internet, electronic network or through a digital marketplace will be required to register for VAT on digital services**).

- (1) A person who is required to register in Kenya but does not have a fixed place of business in Kenya shall appoint a tax representative in Kenya.
- (2) Disposal of items of property, plant and equipment by an exempt person is not subject to VAT.

Due date – 20th of the following month.

VAT on imported services– payable, at the standard rate on taxable services, by the importer where the supply is made by a non-registered person to any person, the supply would have been taxable if it had been made in Kenya and the tax paid on such service would not be available for claim as input VAT credit.

Taxable supplies made over the internet or an electronic network or through a digital marketplace are however not subject to reverse VAT.

Time of supply – the earliest of the date on which the goods are delivered or services performed; the issuance of a certificate by an architect; the issuance of an invoice or the receipt of payment. Regarding the national carrier (Kenya Airways), the time of supply shall be the date of delivery of goods or performance of services.

Value of supply including supply of imported services – shall be a total of the amount in money paid or payable, or open market value at the time of the supply of an amount paid or payable for the supply and any taxes, duties, levies, fees and charges paid or payable on, or by reason of the supply. This now includes mobile cellular services.

Withholding VAT – 2% of the taxable value to be withheld at the time of paying for supplies by Government ministries and departments, County Governments and appointed withholding VAT agents and prior to 1st July 2023 was to be remitted on or before the twentieth day of the following month. With effect from 1st July 2023, withholding VAT should be remitted within five working days after payment.

Input VAT – recovery of VAT restricted on acquisition and repairs of passenger cars or minibuses unless used in supplying taxable services; and entertainment, restaurant and accommodation services, unless they are provided in the ordinary course of business or while the recipient is away from home for the purposes of business. Input VAT deduction will not be allowable where the person does not hold the relevant documentation, or the registered supplier has not declared the sales invoice in a return.

VAT refunds – Where input VAT exceeds output VAT, the excess is refundable if such excess arises from making zero-rated supplies or where tax has been paid in error (application to be made within 24 months from the date the tax becomes due and payable).

- Effective 1st July 2022, VAT credits arising from input tax incurred by a manufacturer in respect to taxable supplies made to an official aid funded project approved by the Cabinet Secretary in accordance with the First Schedule to the VAT Act, 2013 will now qualify for VAT refunds.
- Effective 27th December 2024, credits arising on account of permanent credit position for a registered person dealing in zero rated or exempt supplies, where the credit is due to difference between the rate applicable on 1st July 2022 and a lower rate of tax and that credit position existed on the date that the taxable supply became zero rated or exempt (application to be made within six months after 27th December 2024).
- **FB 2025 proposes to amend the VAT Act by removing the provision that allows the utilization of excess withholding VAT credits to be offset other tax obligations, while retaining the taxpayer's right to apply for a refund of the excess credits. This means that taxpayers who do not apply for a refund of these credits would only be able to utilise the credits against future VAT liabilities, and therefore risk being in a perpetual credit position with no recourse.**

Insurance compensation – Compensation for the loss of taxable supplies for which a person had claimed input VAT shall be subject to VAT. If the compensation does not include VAT, the compensation shall be declared and subjected to VAT.

Bad debts – within a period of 3 to 10 years from the date of supply, subject to approval by the Commissioner (**FB 2025 proposed to reduce the period from 3 years to 2 years**).

VAT on exported taxable services

- Effective 1st July 2023, exportation of taxable services is zero-rated prior to which it was subject to VAT at 16%.

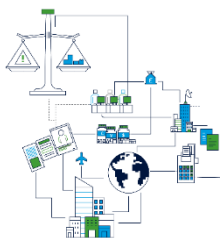
TAX PENALTIES AND INTEREST

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. 1million)
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 ▪ EPZ Company – KShs 2,000 per day ▪ 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 electronically or pay tax due electronically and where the Commissioner is not satisfied with the reasons for non-failure	Two times the tax due

Offence	Penalty/Fine
General Penalties	
Failure to pay the tax by the due date	5% of the unpaid tax
Failure to issue an Electronic Tax Invoice (ETIMs)	Double the amount of tax due
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 due date	10% of the tax due
VAT on excise duty	5% of the tax payable or KShs. 10,000
Specific Excise duty 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. 5,000,000, or imprisonment not exceeding 3 years, or both

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. There are no provisions for mitigation of interest.



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