Kenya

Individual Taxation

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Latest Information:

This chapter is based on information available up to 4 October 2017. Please find below the main changes made to this chapter up to that date, as passed by the Finance Act 2017:

Tax brackets widened.

Tax rates on specified pension withdrawals revised.

Personal relief increased from KES 15,360 to KES 16,896.

Dividends paid by SEZ enterprises, developers or operators to non-residents exempted from tax.

Withholding tax on specified payments by SEZs to non-residents to be reduced from 10% to 5%.

Donations made to specified institutions responsible for the management of national disasters deductible.

Further guidance issued regarding tax amnesty on foreign income.

2016 treaty with India enters into force, replacing 1985 treaty; withholding tax rates reduced.

2016 treaty with India enters into force, replacing 1985 treaty; tax sparing credit expired.

Abbreviations, Terms and References

Abbreviations

ITA	:	Income Tax Act, Chapter 470 of the Laws of Kenya
KES	:	Kenya shilling
KRA	:	Kenya Revenue Authority
NHIF	:	National Hospital Insurance Fund
NSSF	:	National Social Security Fund
PAYE	:	Pay-as-you-earn
VAT	:	Value added tax

References

Constitution of Kenya, 2010

Excise Duty Act, No. 23 of 2015

East African Community Customs Management Act

Income Tax Act, Chapter 470 of the Laws of Kenya

Interpretation and General Provisions Act, Chapter 2 of the Laws of Kenya

Kenya Revenue Authority Act, Chapter 469 of the Laws of Kenya

National Hospital Insurance Fund Act, No. 9 of 1998

National Social Security Fund Act, No. 45 of 2013

Stamp Duty Act, Chapter 480 of the Laws of Kenya

Tax Procedures Act, No. 29 of 2015

Value-Added Tax Act, No. 35 of 2013

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1. Individual Income Tax

1.1. Introduction

The taxation of domestic income of resident individuals is discussed in sections 1. and 2. The taxation of foreign income of resident individuals is discussed in section 7.1.1., and the taxation of non-resident individuals in section 7.3. For special rules on expatriates, *see* section 7.2.

1.1.1. Geographical jurisdiction

See Corporate Taxation section 1.1.1.

1.1.2. Statutory framework

The Constitution of Kenya is the supreme law of the land. Article 209 of the Constitution vests the national government the right to levy the following taxes:

- income tax;
- value-added tax;
- customs duties and other duties on import and export goods; and
- excise tax.

The Constitution limits the powers of the counties to levy the following taxes:

- property taxes;
- entertainment taxes; and
- any other tax that may be authorized by Parliament.

The main forms of direct taxes are levied under the Income Tax Act, Chapter 470 (ITA and its schedules, rules and regulations). These taxes include income tax and capital gains. The commencement date for the ITA was 1 January 1974.

The ITA is subject to annual amendment through the Finance Acts. The amendments are consolidated in the ITA so that references need to be made only to one statute to establish the latest applicable law.

Value Added Tax (VAT) is levied under the VAT Act, No. 35 of 2013 (the VAT Act). The VAT Act commenced in September 2013 effectively repealing the VAT Act 1990 (Chapter 476 of the Laws of Kenya). As with the ITA, the VAT Act is subject to annual amendments. Regulations and rules are issued under the VAT Act to mainly deal with administrative matters.

Customs is charged under the East African Community Customs and Management Act (EACCMA). EACMMA governs the administration of import duty within the East African Community (EAC) and applies a common external tariff on goods brought into any member state from outside the EAC. EACCMA accords uniform treatment to goods originating from the member states. The Excise Duty Act 2015 deals with excise duties and it states that the laws on export duty and import declaration fee (IDF) provided under the now repealed Customs and Excise Act (Chapter 472 of the Laws of Kenya) remain in force until new laws are passed on the same. EACMMA is amended at the EAC level through gazette notices while the Excise Duty Act is amended by parliament.

The Stamp Duty Act imposes stamp duty on certain financial instruments and transactions.

Kenya adopts the common law system. Disputes are settled through the various quasi-judicial institutions set up under the various Acts with a further appeal lying with the High Court. The rulings of various bodies carry precedential value and are binding upon both the taxpayers and the KRA. The High Court may overrule the quasi-judicial bodies. Similarly, subsequent amendments to the law also override previous rulings of both the High Court and the quasi-judicial bodies provided they do not conflict with the provisions of the Constitution. The subsequent amendments do not have a retrospective effect.

1.1.3. Type of tax system

Kenya imposes a national income tax on income earned in Kenya. According to the Constitution, income tax may only be imposed by the national government (article 209 of the Constitution). The ITA does not make a distinction between individual income tax and corporate income tax.

As is the case with companies, the tax system is generally territorial with individuals being subject to income tax in respect of taxable income derived from or accrued in Kenya (section 3 of the ITA). However, the territorial system does not apply in respect of employment income earned by resident individuals. Resident individuals are subject to tax on their worldwide employment income.

Individual income tax is generally imposed at progressive rates. In certain cases, investment income is subject to a final withholding tax (*see* section 1.10.).

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The income derived by an individual from different sources must be computed separately depending on its source with only expenses relating to that source of income being deductible.

Effective 1 January 2015, capital gains are subject to tax following an amendment contained in the Finance Act 2014 (*see* section 1.7.). Investment income is in some cases subject to a final withholding tax while in others it is taxed at the progressive rates of tax (*see* section 1.5.). Tax on income from employment is collected monthly through the PAYE system at progressive rates. Individual entrepreneurs are also subject to tax at the progressive rates (*see* section 1.4.1.) collected quarterly through instalments.

Individuals are also required to make monthly social security contributions. The rates are based on prescribed percentages of the monthly income (*see* section 3.1.).

There is no specific tax regime applicable to expatriates (*see* section 7.2.).

1.1.4. Taxable persons

1.1.4.1. Definition of residence/domicile

The statutory definition of residence for income tax purposes differentiates between natural persons and any person other than a natural person (section 2 of the ITA).

Under the ITA, an individual is considered a resident if:

- he either has a permanent home in Kenya and is present for any period in a particular year of income; or
- he has no permanent home in Kenya but was present in a given year of income for 183 days or more, or for an average of more than 122 days in any 3-year period.

With respect to dual residence situations involving individuals, Kenyan income tax treaties normally follow the wording of article 4(2) of the UN Model Double Taxation Convention.

There is no special expatriate tax regime in Kenya. Expatriates are taxed based on the same rules applicable to Kenyan residents (*see* section 7.2.).

1.1.4.2. Family unit

The income of a married woman living with her husband is deemed to be the income of the husband and tax is assessed on the husband (section 45 of the ITA). In such a case, the income of the wife will be treated as one of the separate sources of income and the tax due must be computed separately from the tax on the husband's income (section 15(7) of the ITA) (*see* section 1.2.1.). However, a married woman may opt to file a separate self-assessment return (section 45 (1) of the ITA).

Where a husband and wife do not live together (i.e. they are separated) or one is non-resident, each person will be taxed separately (*see* section 1.10.2.). Where the couple is jointly taxed, personal relief and insurance relief would still be claimed by both parties except where the wife has no income taxable separately on her. Mortgage relief can only be claimed in respect of one residence, thus there is no loss of relief under joint assessment for spouses living together. If the wife incurred a loss prior to getting married, the loss may be carried forward and included in ascertaining the income earned by her husband for a period not exceeding 9 years.

The main effect of joint taxation (for husband and wife) is that the combined income would be subject to tax at higher rates due to the graduated rate of tax for individuals.

The ITA does not provide for joint taxation for registered couple and same-sex units.

The income of minors is assessed on the guardian (section 46 of the ITA).

1.2. Taxable income

1.2.1. General

Individual income tax is generally territorial. Only income derived in or accrued in Kenya is taxable (section 3 of the ITA). This, however, does not apply to employment income. Income earned by a resident person from employment or services is taxable on a worldwide basis (section 5 of the ITA).

Kenyan-sourced income is categorized as follows (section 15(7) of the ITA):

- business income;
- income from employment;
- income from property;
- dividend and interest income;

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- farming income;
- natural resource income; and
- pension income.

Computation of taxable income is on a scheduler basis. That is, a separate computation is prepared for each source of income and any expenses incurred in generating the income are deductible against that specific income. For example, expenses incurred in generating business income cannot be allowed against rental income, and tax losses in relation to business income cannot be offset against the taxable rent income.

Qualifying dividends and interest are subject to withholding tax as a final tax and thus not included in the computation of taxable income.

Capital gains are taxed separately (*see* section 1.7.).

For foreign-source income, *see* section 7.1.

1.2.2. Taxable period

For individual income tax purposes, the taxable period is the calendar year (section 2 of the ITA).

1.2.3. Exempt income

The First Schedule to the ITA provides for individual income that is exempt from tax. Exempt income includes:

- interest income earned on savings with the Kenya Post Office Savings Bank (paragraph 35 of the ITA);
- income of a non-resident person or a person who is resident solely for purposes of performing duties in Kenya in connection with technical assistance or any other agreement for development services. The exemption applies only if the funds are payable out of foreign sources and the Government is a party to the agreement and the agreement provides for the exemption of that income (paragraph 27 of the ITA);
- pension paid to a person who is aged 65 years or older (paragraph 53 of the ITA);
- income from employment paid in the form of bonuses, overtime and retirement benefits where the taxable income before the bonus and overtime allowance does not exceed the lowest tax band (with effect from 1 January 2017);
- effective 1 January 2010, the first KES 300,000 per year of pensions and retirement annuities received by resident individuals from a registered fund or the National Social Security Fund (section 8(4) of the ITA);
- in the case of a lump-sum payment made from a registered pension fund, the first KES 600,000 (section 8(5)(d) of the ITA);
- individual contributions to a registered pension scheme up to a limit of KES 240,000 for each year of service (section 5(4)(g) of the ITA). This does not, however, apply where the employer is exempt from tax;
- income of disabled persons to a limit of KES 150,000 per month (paragraph 4, Persons with Disabilities (Income Tax Deductions And Exemptions) Order, 2010);
- interest earned from all listed bonds, notes or similar securities used to raise funds for infrastructure and other social services provided that such securities have a maturity of at least 3 years is exempt from tax (paragraph 51 of the First Schedule to the ITA);
- interest earned from cash flows passed to the investor in the form of asset-backed securities (paragraph 52 of the First Schedule to the ITA); and
- interest income on bonds issued by the East African Development Bank.

The Finance Act 2017 exempts dividends paid by a special economic zone (SEZ) enterprise, developer or operator to any non-resident person (effective 1 January 2018).

1.3. Employment income

1.3.1. Salary

Salaries are taxed through the monthly pay-as-you-earn (PAYE) system where the employer is mandated to deduct and remit the tax due upon payment of monthly emoluments to his employee (section 37 of the ITA). The PAYE system is discussed further in section 1.10.3.1.

Taxable employment income is deemed to include salary, wages, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity or subsistence, allowance for travelling and all other allowances in respect of employment (section 5(2) of the ITA).

However, if the allowance is a reimbursement to the employee of an amount expended by him wholly and exclusively in the production of his employment income, then, for purposes of determining the employment income, the allowance or expense is not taken into account. This rule relates to reimbursements of expenses incurred by an employee while performing his official duties and there is a requirement

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that the employee should account for these expenses. If, however, the allowance is given to an employee for official duties in respect of a period spent outside his usual place of work, then the employee will not be required to account for the first KES 2,000 per day granted to him.

Any other costs incurred by the employee which are of a personal nature are not deductible against employment income, including home to work travel, meals or personal entertainment (section 16(2) of the ITA).

A relocation allowance paid to an employee will be treated as a taxable emolument, except where the allowance is a reimbursement of actual costs incurred by the employee in relocating to a new work location.

The ITA provides for specific deductions that may be allowed when computing the employment income. These include:

- interest of up to KES 150,000 paid on money borrowed for the purchase or improvement of residential property. The deduction is limited to one residence per person and if he occupies the property for only part of the year the deduction will be apportioned (section 15(3)(b) of the ITA);
- the individual's contributions to a registered pension scheme. This amount is limited to the lesser of KES 240,000 per annum or the amount contributed or 30% of the employee's income (section 22A of the ITA);
- insurance relief amounting to 15% of health or life insurance premium payments (up to KES 60,000 annually). However, where a policy is surrendered before its maturity, all the relief granted to the policy holder is taxable. The tax is recovered from the surrender value and remitted to the KRA by the insurer (section 31 and paragraph 2 of the Third Schedule to the ITA);
- the individual's contributions to a registered home ownership savings scheme up to a maximum of KES 4,000 per month (section 22C of the ITA);
- cash donations to charitable organizations that are registered with the Commissioner and are exempt from income tax (section 15(2)(w) of the ITA). For details on deductible cash donations, *see* section 1.8.1.4.;
- one third of the employment income provided that the employee meets the following conditions:
  - he is not a Kenyan citizen;
  - his employer is a non-resident company or partnership;
  - is absent from Kenya for the period amounting to 120 days or more in that year of income; and
  - his employment income is not deductible in ascertaining the taxable income of his employer.

1.3.2. Benefits in kind

Non-cash benefits of a value exceeding KES 36,000 per annum (KES 3,000 per month) are taxable on the employee (section 5 (2)(b) of the ITA). In general, benefits in kind are valued at the higher of the market value or the cost to the employer. In certain circumstances, the value of the non-cash benefit is stipulated under the ITA.

1.3.2.1. Motor vehicle benefit

Where an employee is provided with a motor vehicle by his employer, a taxable benefit accrues. The value of the benefit is the higher of:

- the value determined by the Commissioner; and
- the prescribed rate of benefit.

The current prescribed rate is 2% per month of the initial cost of the vehicle. The Commissioner-determined rates contained in the published KRA Employer's Guide to PAYE are:

Type of vehicle	Engine capacity (cc)			Annual rate/benefit (KES)
Saloons, hatchbacks and estates	Up to		1,200	43,200
	1,201	–	1,500	50,400
	1,501	–	1,750	69,600
	1,751	–	2,000	86,400
	2,001	–	3,000	103,200
	Over		3,000	172,800
Pickups (uncovered)	Up to		1,750	43,200
	Over		1,750	50,400
Land rovers/cruisers				86,400

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In cases where the vehicle is leased from a third party, the value of the benefit will equal to the cost of leasing. If the employee has restricted use of the vehicle, the Commissioner may determine a lower rate of the benefit based on the usage of the vehicle.

1.3.2.2. Housing benefit

Housing benefit paid to an employee who earns less than KES 600,000 is valued at the higher of:

- 15% of the total employment income (excluding the value of housing benefit); and
- the arm's length rent paid by the employer.

If the rent paid is not at arm's length, then the value of the premises will be the fair market rental value.

Where the income of the employee exceeds KES 600,000 per annum, the taxable value of the housing benefit is limited to the higher of the rent paid by the employer or the fair market value when the rent is not at arm's length or the house is owned by the employer (section 5(3)(c) of the ITA).

The housing benefit for a non-full-time director is valued at 15% of total income from all sources, whereas for agricultural employees residing in the farm the value is 10% of employment income. *See also* section 1.3.4. for directors' remuneration.

If an employee pays rent to the employer, the value of the benefit is reduced by the amount of rent paid (section 5(3) of the ITA).

Where furniture is provided, the monthly taxable value is 1% of the cost of the furniture.

1.3.2.3. Employee share option plan

See section 1.3.5.1.

1.3.2.4. Loans

Low interest benefit

If an employee borrows funds from the employer at an interest rate that is lower than the interest rate prescribed by the Commissioner, a taxable benefit accrues. The value of the benefit is the difference between the prescribed rate and the rate at which the loan is offered. This also applies where the loan was taken by a director or the director's or employee's relatives (section 5(2A) of the ITA). Following an amendment introduced on 11 June 1998, the low-interest benefit only applies with respect to loans provided on or before 11 June 1998.

Fringe benefit

Low-interest loans granted to employees or directors or their relatives after 11 June 1998 do not give rise to a benefit taxable on the employee. Instead, a tax known as the Fringe benefit tax, is borne by the employer. The taxable value of a fringe benefit is the difference between the rate of interest at which the employee receives the loan and the interest rate prescribed by the Commissioner. The tax is due on or before the 10th day of the following month (section 12C of the ITA).

1.3.2.5. Telephone

Employees who are provided with telephone benefit accrue a taxable benefit at the prescribed rate of 30% of all the bills per month (KRA Employer's Guide to PAYE).

1.3.2.6. Health insurance and medical expenses

Medical services and health insurance provided to employees, full-time service directors and directors who control more than 5% of the capital or voting rights of a company are not taxable on the employee. This also includes the medical services and insurance provided to the employee's dependants (section 5(4) of the ITA).

1.3.2.7. Club membership

Club memberships are generally not taxable on the employee.

1.3.2.8. Education

Educational fees for the employee's dependants that have been taxed on the employer are not taxable on the employee (section 5(4)(d) of the ITA).

1.3.2.9. Passages

Payment by the employer for passage between Kenya and another country for the benefit of an expatriate employee recruited from outside Kenya is not taxable on the employee (section 5(4)(a) of the ITA).

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1.3.3. Pension income

1.3.3.1. General

In general, pension received by a resident individual from a pension fund or pension scheme established outside Kenya is regarded as having been accrued in Kenya provided it relates to employment or services rendered in Kenya. Similarly, pension derived from Kenya by a non-resident person is deemed to have been accrued in Kenya and therefore subject to the rules on taxation of pension (section 8 of the ITA).

For Kenyan tax purposes, pension schemes are required to be registered with the Commissioner (besides the Retirement Benefits Authority) in order to benefit from tax exemption status. The main difference between a registered and non-registered scheme is that a registered scheme enjoys exemption at the contribution stage and on its investment income whereas a non-registered scheme does not benefit from the exemption. Conversely, withdrawals from a registered scheme are subject to tax on the employee (but with concessions) whereas withdrawals from a non-registered scheme are not taxed.

Thus, pension contributions by the employee to a registered scheme of up to KES 240,000 per year are deductible while determining his employment income. The employer is also allowed to deduct its part of the contribution against its taxable income for corporate tax purposes, provided that the total deductions by both the employer and the employee do not exceed the limit of KES 240,000 per annum. The employee ranks first in claiming a deduction for his contributions against his taxable income. The employer will claim the balance in his corporate tax computation.

Payments to non-registered schemes, including non-resident pension schemes, are not deductible.

Pension income is categorized into lump-sum or monthly pension income.

- If an employee withdraws from a pension scheme due to termination of employment, the lesser of KES 60,000 per full year of pensionable service with that employer on the date the pensionable service started or the first KES 600,000 is exempt from tax. The remaining balance is taxable.
- In the case of lump-sum payments out of a registered pension scheme or individual retirement fund, the first KES 600,000 is exempt (section 8(5)(a) of the ITA), and the remaining balance is taxable.
- If the lump sum is paid out of a registered provident fund, the lesser of:
  - the first KES 600,000; or
  - the first KES 60,000 per year of full pensionable service

  with that employer starting on the later of the date the pensionable service began or the date the employee's pensionable service recommenced after receipt of that lump sum is exempt from tax with the rest being taxable.
- The first KES 300,000 per year in respect of the total pension and retirement annuities received from a registered fund or the National Social Security Fund is tax exempt (section 8(4) of the ITA).
- Monthly or lump-sum pension payments paid to persons over the age of 65 years are exempt from tax (paragraph 53 of the First Schedule to the ITA).
- The first KES 600,000 in respect of benefits paid out of the National Social Security Fund is exempt from tax (section 8(5)(d) of the ITA).
- Pension income received by a resident individual from an unregistered pension scheme where the contributions were not deductible.

The exemptions granted on the withdrawals also apply to amounts received by the beneficiary upon the employee's death. In cases where the registered fund only provides for lump-sum payments, the first KES 1.4 million received by the beneficiary is exempt from tax. The rest of the income received by the beneficiary is treated as if it had been received by the employee and will be subject to tax.

1.3.4. Directors' remuneration

Income received by members of the board of directors is treated as payment for services rendered and is subject to PAYE. The income earned is treated as that of a normal employee except in regards to valuation of certain benefits and deductions. These include:

Housing benefit

Where a director, other than a full-time service director, is provided with premises for residential purposes, the housing benefit is computed as the higher of:

- 15% of the director's total income from all sources, excluding the value of those premises;
- the market rental value of the premises; and
- the rent paid by the employer.

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As is the case with normal employees, the amount of rent paid by the director will be deducted in determining the value of the housing benefit (section 5(3) of the ITA).

Valuation of the housing benefit accruing to a full-time service director is similar to that of a normal employee (*see* section 1.3.2.2.).

Health insurance and medical expenses

Medical services or health insurance provided by an employer to a director, other than a full-time service director, is deductible subject to a limit set by the Commissioner. The current limit is KES 1 million.

Emoluments to directors are subject to PAYE due on the earlier of the 9th day of the month following the month of payment or the 4th month after the accounting date (paragraph 10 of the Income Tax (PAYE) Rules of the ITA).

1.3.5. Other

1.3.5.1. Stock options

The value of a share option granted to an employee or director by the employer under a registered scheme is the difference between the market value per share and the offer price per share at the date the option is granted by the employer. The market value is either:

- in the case of shares listed on any securities exchange in Kenya: the mid-market value of the shares on the date when the option was granted; or
- where the shares are not fully listed: the price which the shares might reasonably be expected to fetch on sale in the open market, which is agreed upon with the Commissioner before the grant of the options.

The value of the share option is deemed to accrue at the end of the vesting period. The vesting period is defined as a fixed period of time between the date of offer by the employer and the date after which the option to purchase can be exercised by the employee (section 5(5) of the ITA).

1.3.5.2. Termination payments

Any amount received as compensation for the termination of an employment contract is treated as normal employment income and subject to tax at the normal progressive rates (section 5(2)(c) of the ITA). Depending on the nature of the contract, the ITA provides for different rules for determining the tax due.

1.3.5.2.1. Contracts for specified term

In cases where the contract was for a specified term, the amount received is deemed to have accrued evenly over the unexpired period of the contract (section 5(2)(c)(i) of the ITA).

1.3.5.2.2. Contracts for unspecified term with termination clause

If the contract is for an unspecified term and provides for compensation upon termination of the contract, the compensation is to be spread forward and assessed at the rate that would apply if the employee would have received the termination payment per annum from the contract immediately before its termination.

1.3.5.2.3. Contracts for unspecified term without termination clause

Where the contract of employment is for an unspecified period of time and does not provide for compensation upon its termination, the compensation paid is treated as if it had accrued evenly in the 3 years immediately following its termination.

1.4. Business and professional income

1.4.1. Business income

1.4.1.1. General

The determination of taxable business and professional income earned by individuals follows similar rules as those applicable to companies (*see* Corporate Taxation section 1.2.).

1.4.1.2. Computation of net business income

The allowable deductions of an individual who carries on a trade in Kenya also follow the same principles as those of a company with all expenses incurred in generating taxable gains being allowed unless specifically disallowed under the ITA (section 15 of the ITA). The ITA, however, specifies that where the business is a sole proprietorship, the deduction allowed with respect to medical expenses or medical insurance cover incurred for the benefit of the sole proprietor is limited to KES 1 million (section 15(3)(g) of the ITA).

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Individual entrepreneurs also qualify for capital allowances which are governed by the same rules applying to companies (*see* Corporate Taxation sections 1.4. and 1.5.). The general rules governing provisions and losses are also applicable (*see* Corporate Taxation sections 1.6. and 1.8.).

1.4.2. Professional income

The rules applicable to computation of business income apply to calculation of professional income (*see* section 1.4.1.).

1.4.3. Partnership income

Partnerships are not considered to be taxable persons (section 3(3) of the ITA). Income earned by the partnership is taxed in the hands of the partners. Individual partners are generally subject to the same rules as individuals in determining taxable income (*see* section 1.4.1.).

The income of a partner as provided under the ITA is the sum of:

- the remuneration paid to him by the partnership;
- the interest on capital payable to him less interest on capital that is payable by him; and
- his share of the total income of the partnership calculated after deducting the remuneration and interest payable to any partner and adding any interest on capital payable by any partner.

If the partnership makes a loss, the income of the partner from the partnership will be the excess, if any, of his remuneration and net interest (computed by deducting the interest payable by him from the interest payable to him) over his share of that loss (section 4(b) of the ITA). In determining his taxable income, each partner is allowed to deduct his share of the loss suffered by the partnership (section 15(3)(d) of the ITA).

As is the case with sole proprietorships, partners are allowed to deduct a maximum of KES 1 million with respect to medical expenses or medical insurance cover paid by the partnership for the benefit of any partner (section 4(b) of the ITA).

The Income Tax (Turnover Tax) Rules, 2007, allow partners to opt for a simplified tax known as turnover tax (paragraph 2 of the Turnover Rules). Turnover tax is a tax applied on the revenue earned by a person. The same rules that apply to individuals in regard to turnover tax apply to partners. For more information regarding turnover tax, *see* section 2.2.1.).

1.4.4. Other

1.4.4.1. Farming income

Income derived by an individual from agricultural activities is separately sourced and subject to income tax at the progressive rates. It is computed separately and follows the same principles that are applicable to companies (*see* Corporate Taxation section 1.5.3.1. for the applicable deductions). Individuals qualify for farm works deduction and any other capital allowance available (*see* Corporate Taxation section 1.5.).

1.5. Investment income

1.5.1. Dividends

1.5.1.1. Definition of dividends

Dividends are defined as “any distribution (whether in cash or property and whether made before or during winding up) by a company to its shareholders with respect to their equity interest in the company”. The definition specifically excludes distributions made upon complete liquidation of the company, of capital that was originally paid into the company in connection with issuance of equity interest (section 2 of the ITA).

Section 7 of the ITA further lists the payments that are considered to be dividends. These include:

- distributions of profits made by a company that is winding up;
- the issue of debentures and redeemable preference shares to any of its shareholders for no payment. In such a case, the value of the shares will be equal to the nominal value or the redeemable value of the debentures or redeemable shares, whichever is greater;
- the issue of debentures or redeemable shares to any shareholders for a sum less than their nominal value or redeemable value, whichever is greater. However, the issue will not be considered to be a dividend where the sum paid for the debentures or irredeemable shares is 95% or more of their nominal or redeemable value; and
- the issue of ordinary or any other shares or rights to acquire shares to any of the shareholders in respect of their existing shares in a ratio that is not proportionate to their holding of the existing equity. In such a case, the value of the proportionate increase in their shareholding is treated as a dividend.

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1.5.1.2. Tax treatment of dividend income

The Kenyan taxation system is a classical taxation system in which companies and their owners are separately taxed.

Dividends paid to resident individuals are subject to withholding tax at a rate of 5% on the gross amount (paragraph 5(e) of the Third Schedule to the ITA). The withholding tax on qualifying dividends is a final tax (section 34 of the ITA).

Kenya does not have an imputation system. As such, the shareholders do not receive a credit for the tax paid by the company.

For further details on dividend distribution by Kenyan companies, refer to Corporate Taxation section 6.1.1.

1.5.2. Interest

1.5.2.1. Definition of interest

Interest is defined as "interest payable in any manner in respect of a loan, deposit, debt, claim or other right or obligation". The definition also includes a premium or discount by way of interest and commitment or service fee paid in respect of any loan or credit (section 2 of the ITA).

1.5.2.2. Tax treatment of interest income

In computing the taxable income in respect of interest in the form of investment income, the ITA allows for deduction of interest where the amount borrowed was wholly and exclusively employed in the production of the interest (section 15(3) of the ITA). The deduction should not exceed the interest income generated, and where it does, the excess must be carried forward and deducted only from investment income.

Interest is subject to withholding tax depending on its source and the residence of the recipient (*see* section 1.10.3.3. and Corporate Taxation section 7.3.4.2.).

Interest received from all listed bonds, notes or other similar securities used to raise funds for infrastructure or social services are exempt from tax. The exemption, however, only applies if the listed bonds, notes or other similar securities have a maturity of at least 3 years (paragraph 51 of the First Schedule to the ITA). Interest earned from cash flows passed to the investor in the form of asset-backed securities is also exempt from tax (paragraph 52 of the First Schedule to the ITA).

1.5.3. Royalties

1.5.3.1. Definition of royalties

Royalty is defined as a payment made as a consideration for the use of or the right to use:

- the copyright of a literary, artistic or scientific work;
- a cinematograph film, including film or tape for radio or television broadcasting;
- a patent, trade mark, design or model, plan, formula or process; or
- any industrial, commercial or scientific equipment.

1.5.3.2. Tax treatment of income from royalties

Computation of taxable income derived from royalties follows the general rules used in computation of taxable income. The general rules regarding deductibility of expenses apply in determining the taxable royalty income (*see* Corporate Taxation section 1.4.1.). Therefore, expenses incurred wholly and exclusively in deriving the royalties are deductible. Capital expenses, unless specifically allowed, are not deductible (*see* Corporate Taxation section 1.2.1.).

Royalties are subject to withholding tax at the rate of 5% for resident individuals and 20% for non-resident persons (paragraphs 5(g) and 3(b) of the Third Schedule to the ITA). The withholding tax is an advance tax that is creditable against the income tax payable. The income is taxable at the progressive rates applicable to individuals.

1.5.4. Income from immovable property

Immovable property is not defined in the ITA. However, a definition can be found in the Interpretation and General Provisions Act, Chapter 2. Immovable property under the Interpretation and General Provisions Act includes "land, whether covered by water or not, any estate, right, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property".

The general rule regarding computation of income applies in computing the rental income (*see* Corporate Taxation section 1.2.1.).

The general rules regarding deductibility of expenses apply in determining the taxable rental income. In particular, expenses incurred in making structural alterations for the purposes of maintaining the rent are deductible. Similarly, expenses incurred in respect of legal costs and stamp duty paid in the process of acquiring a lease for the property are deductible (*see* Corporate Taxation section 1.4.). Individuals

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also qualify for capital allowances and investment deductions granted under the ITA and are subject to the same rules as companies (*see* Corporate Taxation section 1.5. and 1.9.2).

1.5.5. Other investment income

Generally, dividends, interest and payments for redemption of units or sale of shares received by individuals from unit trusts, collective investment schemes as well as real estate investment trusts are exempt from income tax (section 20 of the ITA).

1.6. Other income

Scholarships are not subject to tax.

1.7. Capital gains

Capital gains tax was reintroduced through an amendment in the Finance Act 2014. According to the provision of the Finance Act 2014, effective January 2015, capital gains tax will be levied on transfer of property situated in Kenya. Property is defined in the ITA to include land situated in Kenya as well as any interest in land and marketable securities situated in Kenya.

The amount of gains subject to tax is the amount by which the transfer value exceeds the adjusted cost of the property.

Capital gains are not included in the business profits but are instead taxed separately. The only exception is in the case of a gain derived on the disposal of an interest, if the interest derives at least 20% of its value directly or indirectly from mining rights, interest in a petroleum agreement, mining information or petroleum information in Kenya.

The ITA does not provide for rollover relief and indexation relief. The rules applicable to companies on computing capital gains also apply to individuals. *See* Corporate Taxation section 1.7.

1.7.1. Immovable property (including gains on dwellings)

The following capital gains are exempt from tax when realized by individuals:

- capital gains made from the transfer of shares in the stock or funds of the Government, High Commission or Authority established by the Government;
- gains made from the transfer of shares of a county government;
- gains on the transfer of listed securities, following an amendment by the Finance Act 2015;
- gains made from the transfer of a private residence if the individual owner has occupied the residence continuously for a period of 3 years prior to the transfer of the residence. Periods of temporary absence from the property are generally ignored in determining whether the 3 year threshold has been met. The exemption only applies to one residence at a time. Where the residence is used in part for business, the taxable value of the property used for residential purposes is separately determined. The private residence includes the land immediately surrounding the residence provided it is exclusively used for personal purposes;
- capital gains earned from the transfer of land where:
  - the value of the land is not more than KES 3,000,000; or
  - the land is agricultural, less than 50 acres and is located outside a municipality, gazetted township or an area gazetted as an urban area;
- the land that has been adjudicated under the Land Consolidation Act or the Land Adjudication Act when the title to that land has been registered under the Registered Land Act and transferred for the first time;
- property (including investment shares) which is transferred or sold for the purpose of administering the estate of a deceased person where the transfer or sale is completed within 2 years after the death of the deceased or within such extended time as the Commissioner may allow;
- transfer of assets (Finance Act 2016, effective 1 January 2017);
- between spouses;
- between former spouses as part of a divorce settlement or *bona fide* separation agreement;
- to immediate family members;
- to immediate family members as part of a divorce settlement or *bona fide* separation agreement;
- to a company where spouses or a spouse and an immediate family member(s) hold 100% of the company's shares
- capital gains accrued from compensation for property acquired by the government for infrastructure development.

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1.8. Personal reliefs

1.8.1. Deductions

In determining the taxable income of individuals from all sources other than employment, the general rule that expenses incurred wholly and exclusively in the production of taxable income of that source are deductible in determining the tax due and payable on that income applies (section 15 of the ITA). Certain personal expenses are allowed for individuals as discussed below.

There are no other major personal deductions in Kenya.

General deductions are discussed under 1.3. and 1.4.

1.8.1.1. Interest expenses

Interest paid on money borrowed by an individual and applied towards the purchase or improvement of owner-occupied residential property is deductible in determining the taxable income. If the person occupies that premises for only part of the year, then the amount must be reduced accordingly. The deduction is limited to one house per person (section 15(3)b of the ITA). Effective 1 January 2017, the deductible amount is KES 300,000 (previously KES 150,000 per annum). The amount must be borrowed from one of the following institutions:

- a bank or a financial institution licensed under the Banking Act;
- an insurance company licensed under the Insurance Companies Act;
- a building society registered under the Building Societies Act; or
- the National Housing Corporation.

1.8.1.2. Medical expenses

The costs of medical expenses or health insurance coverage incurred for the benefit of an entrepreneur are deductible in computing the taxable income (section 15(3)(g) of the ITA). The deduction, however, is subject to a limit of KES 1,000,000 per annum. Health insurance premiums paid by an entrepreneur for the benefit of his employees are deductible.

For health insurance premiums, *see* section 1.8.1.3.

1.8.1.3. Insurance premiums

Insurance relief is granted as a credit in respect of insurance premiums paid (*see* section 1.8.3.2).

Pension contributions and social security contributions are, subject to a limit, also deductible. Pension contributions to non-resident pension funds are not deductible (*see* section 1.3.3.).

1.8.1.4. Donations

Cash donations made to a charitable organization that is registered with the Commissioner and whose income is exempt from tax or to a project that is approved by the Cabinet Secretary are deductible in arriving at the taxable income of individuals (section 15(2)(w) of the ITA). The Finance Act 2017 expands the deductions to include donations made to the county governments as well as any institutions responsible for the management of national disasters to alleviate the effects of a national disaster declared by the president (effective 3 April 2017).

The Income Tax (Charitable Donations) Regulations 2007, provide for the conditions that must be met for the donation to be deductible.

For the donation to be deductible, it must meet the following conditions:

- the donor must have proof of the donation. The proof must be in the form of a receipt and certified by the recipient. It must also be accompanied by a copy of the exemption certificate issued by the Commissioner to the charitable organization or the Cabinet Secretary's approval of the project to which the donation was made. In addition, the person seeking a deduction must have a declaration from the donee stating that the donation will be used exclusively for the objects of the charity organization (paragraph 3 of Income Tax (Charitable Donations) Regulations, 2007);
- it must be in cash and not repayable or refundable to the donor;
- it must not confer a direct benefit to the donor or any person associated to the donor; and
- it must be non-revocable (paragraph 4 of the Income Tax (Charitable Donations) Regulations, 2007).

1.8.1.5. Other expenses

The ITA provides that personal expenses are not deductible in arriving at the taxable income (section 16 of the ITA). As such, alimony, maintenance payments, education for dependants are not deductible.

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1.8.2. Allowances

There are no personal allowances in Kenya.

1.8.3. Credits

1.8.3.1. Personal relief

Generally, resident individuals are entitled to a personal relief which is applied through a credit to be set off against any tax payable by him. With the exception of individuals whose entire income is subject to PAYE, only individuals who file their returns are entitled to claim the relief (section 29 of the ITA). The amount of relief granted is KES 15,360 per person per annum, effective 1 January 2017 (paragraph 1 of the Third Schedule to the ITA). The Finance Act 2017 increases this amount to KES 16,896 (effective 1 January 2018).

1.8.3.2. Insurance relief

1.8.3.2.1. Life insurance

Resident individuals may claim a life insurance relief. The relief is provided in respect of insurance premiums that meet the following conditions:

- the premiums are paid by the individual for an insurance made by him on his life, that of his wife or his child. The insurance must be taken out with a Kenyan insurance company and the premiums must be payable in Kenya shillings;
- if the individual's employer paid premium for that life insurance and the individual has been taxed for that benefit; or
- if the individual and his employer both pay part of the life insurance premium and the individual is taxed on the benefit accrued (section 31(1) of the ITA).

In addition to the above, the ITA provides rules that determine whether the individual will be entitled to the insurance relief. These include:

- an individual will not be entitled to the insurance premium where part of the premium secures a benefit which may be withdrawn at any time at the option of the insured person. In such a case, the proportion that may be eligible for the insurance relief is determined by the Commissioner; and
- the individual must provide evidence of the nature and conditions of the insurance and any additional requirements to the Commissioner.

1.8.3.2.2. Education policies

Premiums paid in respect of education policies whose term commences on or after 1 January 2003 and with a maturity period of at least 10 years qualify for the insurance relief.

1.8.3.2.3. Health policy

Similarly, premiums paid in respect of a health policy with a commencement date on or after 1 January 2007 qualify for the insurance relief.

1.8.3.2.4. Application of the relief

The relief is granted as a tax credit and is provided at the rate of 15% of the amount of premiums paid but the amount of relief should not exceed KES 60,000 per annum. The excess is not deductible (paragraph 2 of the Third Schedule to the ITA).

If the policy is surrendered before its maturity, the relief granted to the policyholder is recovered from the surrender value of the policy and is remitted to the Commissioner by the insurer.

1.9. Losses

1.9.1. Ordinary losses

An individual, other than an employee, may deduct ordinary tax losses incurred by that business. Tax losses from a particular source of income may only be offset against the income of the same source. Tax losses may be deducted in the year they arose, and carried forward for 9 succeeding years (4 years for the time immediately prior to the amendment by the Finance Act 2015). The Cabinet Secretary may, however, extend the period during which the losses may be so deducted (section 15(4) and (4A) of the ITA). Ordinary losses may not be carried back.

1.9.2. Capital losses

Capital losses may be deducted when computing capital gains. Where the loss arises from the disposal of an asset that qualifies for capital allowances the loss may be deducted from the business profits. The time limit set out in section 1.9.1. also applies to capital losses.

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1.10. Rates

1.10.1. Income

Individuals pay tax at graduated rates. The current tax rates, effective 1 January 2017 are as follows (Third Schedule to the ITA):

Taxable income (KES)		Rate (%)
On the first	134,164	10
On the next	126,403	15
On the next	126,403	20
On the next	126,403	25
On any amount over	513,373	30

The Finance Act 2017 has revised the tax rates as follows (effective 1 January 2018):

Taxable income (KES)		Rate (%)
On the first	147,580	10
On the next	139,043	15
On the next	139,043	20
On the next	139,043	25
On any amount over	564,709	30

The rates applicable before 1 January 2017 (with effect from 1 January 2004) were as follows:

Taxable income (KES)		Rate (%)
On the first	121,968	10
On the next	114,912	15
On the next	114,912	20
On the next	114,912	25
On any amount over	466,704	30

1.10.2. Capital gains

Effective 1 January 2015, capital gains are subject to tax at the rate of 5%.

1.10.3. Withholding taxes

For withholding tax on payments to non-residents, *see* section 7.3.2.

1.10.3.1. Employment income

Employment income is taxed through the PAYE system. PAYE applies to all employment income received as well as director's fees. Where an employee retires and receives his pension from the employer, the pension will be subject to the PAYE rules provided the employee remains in Kenya. The employer is required to compute and deduct the tax due and remit it to the KRA.

The amount must be remitted on or before the 9th day following the month in which the tax was deducted (section 37 of the ITA). The employee is deemed to have paid his tax upon its deduction and the burden to ensure the amount is remitted to the KRA within the stipulated deadline rests on the employer. Failure to deduct and remit the tax results in the employer incurring penalties and interest (section 37(2) of the ITA).

For the applicable rates, *see* section 1.10.1.

1.10.3.2. Dividends

Dividends paid to resident individuals are subject to withholding tax at the rate of 5% (paragraph 5(e) of the Third Schedule to the ITA). The tax is a final tax (section 34 of the ITA).

1.10.3.3. Interest

Interest payable to resident individuals is subject to different rates of withholding depending on its source as provided below:

- interest from bearer instruments: 25%;
- interest from a government bearer bond of at least 2 years duration: 15%;

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- interest from bearer bond with a maturity of 10 years and above: 10%; or
- interest from other sources: 15%.

Withholding tax on the above sources is not a final tax and is creditable against the income tax due.

If the interest is paid by a bank or financial institution, a building society or the Central Bank of Kenya, it will be deemed to be qualifying interest. Similarly, if the interest is earned on an account held jointly by a husband and wife and from housing bonds where the aggregate value of the interest does not exceed KES 300,000, then the interest will be deemed to be qualifying interest (section 2 of the ITA). Qualifying interest is subject to withholding tax at the following rates:

- interest from housing bonds: 10%;
- interest from bearer instruments: 20%; and
- interest from all other sources: 15%.

The withholding tax in respect of qualifying interest is a final tax.

1.10.3.4. Royalties

Royalties paid to resident individuals are subject to withholding tax at the rate of 5% (paragraph 5(g) of the Third Schedule to the ITA). The tax is not a final tax and is creditable against income tax due.

1.10.3.5. Other income

1.10.3.5.1. Management and professional fees

Management and professional fees or a training fee whose aggregate value is KES 24,000 per month or more payable to resident persons is subject to withholding tax at the rate of 5% (paragraph 5(f)(i) of the ITA).

Where the fees are paid in respect of contractual fees paid in relation to building, civil or engineering works of at least KES 24,000 per month, the withholding tax rate is 3%.

The withholding tax is not a final tax and is creditable against the income tax due.

Fees with a value lower than the above described threshold are not subject to withholding tax.

1.10.3.5.2. Rental income

The Finance Act 2016 reduced the withholding tax rate from 12% to 10% in respect of rental payments, premium or similar consideration, made to resident persons, for the use or occupation of immovable property. This is not a final tax.

1.10.3.5.3. Insurance commissions

Insurance commissions paid to resident brokers are subject to withholding tax at the rate of 5%. Those paid to any other agents are subject to withholding tax at the rate of 10% of the gross amount receivable (paragraph 5(c) of the Third Schedule to the ITA).

1.10.3.5.4. Pension

Pension payments or any withdrawal from a registered pension fund made after the expiry of 15 years from the date of joining the fund, or on the attainment of the age of 50 years, or upon earlier retirement on the grounds of ill health or infirmity of body and mind, in excess of the tax-free amount (*see* section 1.3.3.) are subject to withholding tax at the following rates:

Taxable income (KES)		Rate (%)
On the first	400,000	10
On the next	400,000	15
On the next	400,000	20
On the next	400,000	25
On any amount over	1,600,000	30

Pension withdrawals from a registered pension fund made before the expiry of 15 years from the date of joining the fund, in excess of the tax-free amount are subject to withholding tax at the following rates:

Taxable income (KES)		Rate (%)
On the first	121,968	10
On the next	114,912	15
On the next	114,912	20
On the next	114,912	25

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Taxable income (KES)		Rate (%)
On any amount over	466,704	30

The Finance Act 2017 revised the tax rates as follows (effective 1 January 2018):

Taxable income (KES)		Rate (%)
On the first	147,580	10
On the next	139,043	15
On the next	139,043	20
On the next	139,043	25
On any amount over	564,709	30

The withholding tax is a final tax.

1.11. Administration

1.11.1. Tax returns

Every individual taxpayer is required to file a self-assessment return by the last day of the 6th month following the end of the year of income. Since the tax year is the same as the calendar year, the return is due by 30 June of the year following the year of income (section 52A of the ITA).

An amendment introduced in the Finance Act 2012 and effective 1 July 2013 reintroduced the requirement for all individuals to file their annual tax return. Prior to this date, only individuals who had income other than employment income and whose tax had not been withheld were required to file returns.

Generally, individuals are required to file their returns electronically through the KRA tax filing system. In the past the KRA allowed the filing of manual returns. The returns must be accompanied by the signed financial statement of the business (section 54 of the ITA).

Employees filing manual returns must attach a tax deduction card obtained from their employer showing how much tax was deducted by the employer during the year.

For joint taxation of spouses, *see* section 1.1.4.2.

1.11.2. Assessment

Kenya introduced self-assessment returns in 1992. The Commissioner may, however, raise an assessment if:

- the taxpayer fails to file a self-assessment return;
- the Commissioner has grounds to believe that there is an understatement of tax in the self-assessment return;
- the taxpayer fails to pay instalment tax by the due date; or
- findings of tax audit give rise to an assessment.

Generally, the Commissioner will not assess an employee if:

- his entire income for that year was derived from employment income;
- the tax payable by him has already been deducted through the PAYE system.

The Commissioner may, however, assess the employee if the employee applies to the Commissioner to be assessed in relation to a refund claim or if the Commissioner considers it necessary to assess the employee in order to determine the amount of tax payable by the employee (section 76 of the ITA).

The rules governing assessments of corporate taxpayers apply to individual taxpayers in all other cases (*see* Corporate Taxation section 1.11.2.).

1.11.3. Appeals against assessment

The rules governing appeals against assessment by corporate taxpayers apply to individual taxpayers (*see* Corporate Taxation section 1.11.3.).

1.11.4. Payment of tax and refunds

Except for employment income which is taxed through PAYE, all income earned by individuals is payable through instalment taxes. Taxpayers are required to pay taxes through quarterly instalments (section 12 of the ITA). However, if a taxpayer believes to the best of his judgment that he will not have chargeable income for that year of income, he is exempt from the instalment tax system.

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The instalment payments fall due on the 20th of the 4th, 6th, 9th and 12th month of the year of income (accounting period) and each payment represents 25% of the total instalment tax payable during the year in question. In the case of farming income, the tax is payable through two instalment taxes with 75% of the instalment being due in the 9th month and 25% in the 12th month (*see* Corporate taxation section 1.11.4.).

As is the case with companies, the instalment tax payable is determined using either the current year basis or the preceding year basis as follows:

- the tax payable in respect of the current year of income (current year basis); and
- 110% of the tax assessed in the preceding year of income (prior year basis).

The method that produces the lower instalment tax is adopted, but in the case of the current year basis a penalty is charged for underestimation of instalment tax payable. In both cases, the withholding tax expected to be suffered in the current year of income is deductible.

Any balance of tax due is payable by the end of the 4th month following the end of the year of income. The balance of tax is determined once the tax computation based on the actual results for the year of income has been prepared and the final tax liability has been ascertained. Credit is given for tax withheld at source or advance tax payments made (*see* Corporate taxation section 1.11.4.).

The PAYE deducted by an employer from employment income of his employees should be remitted to the KRA by the 9th day following the payroll month.

Claims for refund must be made within 5 years after the expiry of the year of income to which the claim relates (Finance Act 2016). The amendment takes effect 1 January 2017.

1.11.5. Late payment interest and penalties

The rules relating to late payment interest and penalties as set out in Corporate Taxation section 1.11.5. equally apply to individual taxpayers.

Penalties and interest are not deductible in arriving at the taxable income (section 16(2)(c) of the ITA).

1.11.6. Statute of limitations

Prior to consolidation of tax procedures under the TPA, the ITA provided that claims for refund were required to be made within 7 years after the expiry of the year of income to which the claim relates. Through an amendment in the Finance Act 2016, under the TPA, refunds must be claimed within 5 years.

The Commissioner's power to issue an assessment, which was previously limited to 7 years prior to the year of income to which the assessment relates, has been reduced to 5 years under the TPA. This limitation however does not apply where fraud or gross or wilful neglect is committed by the taxpayer or his agent.

1.11.7. Rulings

Prior to the commencement of the TPA, there were no provisions on tax rulings under the ITA. The TPA provides for both public and private rulings. Private rulings are made where a taxpayer seeks the Commissioner's interpretation of a tax law in relation to a transaction entered into or proposed to be entered into by the taxpayer. In seeking a private ruling, the taxpayer must set out in writing all the details of the transaction, specify the question on which the Commissioner's interpretation is required and give a full statement of the taxpayer's understanding of the tax law in question. The rulings can be in any area of tax law. The Commissioner must issue the private ruling within 45 days of receiving the application therefor. Upon issuing the private ruling, the Commissioner is required to publish the private ruling in at least two daily newspapers with national circulation. During such publication, the identity of the applicant must not be published. Upon such publication, any person may rely on the private ruling on a similar set of facts (section 69 of the TPA).

Where the taxpayer has given a complete and accurate disclosure of the transaction, the private ruling is binding on the Commissioner but is not binding on the taxpayer. Where the private ruling is inconsistent with a public ruling that is in existence at the time the private ruling is issued, the private ruling will supersede the public ruling to the extent of the inconsistency.

The Commissioner may withdraw a private ruling if a subsequent law or public ruling is enacted which is inconsistent with the private ruling. Where a private ruling is withdrawn, it will continue to apply to a transaction by the applicant which commenced prior to the withdrawal. Upon withdrawal of a private ruling, the Commissioner must publish a notice of withdrawal in at least two newspapers of national circulation.

For details on public rulings *see* section 1.1.2.

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2. Other Taxes on Income

2.1. Local income tax

The Constitution limits the powers to tax to the central government (article 209 of the Constitution). As such there is no local income tax.

2.2. Other

2.2.1. Turnover tax

Individual entrepreneurs whose business income is less than KES 5 million are subject to a simplified tax known as turnover tax. The tax, which was introduced through the 2006 Finance Act, applies to business income of individuals whose income does not exceed KES 5 million per annum (section 12C of the ITA). The rate of tax is 3% on the gross turnover from business and this is a final tax (paragraph 9 of the Third Schedule to the ITA). A subsequent amendment to the application of turnover tax in the Finance Act 2008 provided that turnover tax does not apply to:

- rental income and management or professional or training fees;
- the income of incorporated companies; and
- any income which is subject to a final withholding tax (section 12C of the ITA).

Turnover tax exempts the individual from any other tax levied under the ITA.

Individuals who do not wish to be taxed under this regime may elect to be exempt from its application. The election must be done through an application for exemption done in writing to the Commissioner. If the application for exemption is granted, the individual is subject to tax under the normal regime at the progressive rates (paragraph 4(4) of the Turnover Tax Rules). The same applies if the individual's income exceeds KES 5 million in which case he is obliged to notify the Commissioner of the same.

2.2.2. Residential rental income tax

In a bid to improve compliance by landlords, the Finance Act 2015 introduced a simplified tax system for rental income earned from residential property. The landlord can opt to be taxed under the simplified tax system or to be taxed under the normal tax rates. The simplified tax is at the rate of 10% of the gross rent paid where the annual rental income is in excess of KES 144,000 but does not exceed KES 10 million. Taxpayers may opt out of the simplified tax system. The principles applicable to companies apply to individuals as well (*see* Corporate Taxation section 2.3.).

2.2.2.1. Tax amnesty

The Finance Act 2015 introduced amnesty on income from the use or occupation of immovable property. The amnesty applies to taxes, penalties and interest in respect of any period before and during the 2013 year of income. It also applies on penalties or interest in respect of the 2014 and 2015 years of income, where returns or amended returns are submitted and tax thereon paid by 30 June 2016. The amnesty will not apply in respect of any tax where a person who should have paid the tax has been assessed or is under audit or investigation or any matter relating to undisclosed income (*see* section 1.11.5.).

The Finance Act 2016 introduced an amnesty on taxes, penalties and interest payable on any taxable income earned from outside Kenya on or before 31 December 2016. The Finance Act 2017 provides that to enjoy the amnesty, the taxpayer must file his returns before 30 June 2018 and must declare that the funds have been transferred to Kenya (effective 3 April 2017).

3. Social Security Contributions

3.1. Employed

All employees are required to make monthly contributions to the National Social Security Fund. Employee contributions made to the National Social Security system are deductible in arriving at the employee's income tax. The employees are also required to make contributions to the National Hospital Insurance Fund.

3.1.1. National Social Security Fund

Contributions to NSSF are mandatory for all employees. Employers are required to contribute 5% of an employee's gross pay, up to a maximum of KES 200 per month (or KES 2,400 per annum). Employees are required to contribute a similar amount.

Kenya reviewed the social security scheme by repealing the National Social Security Fund Act (Chapter 258 of the Laws of Kenya, "the repealed NSSF Act") and replaced it with the new National Social Security Fund Act 2013 (the NSSF Act 2013) which became effective on 31 May 2014. The NSSF Act 2013 seeks to increase the contribution to 6% of the employee's pensionable earnings. Pensionable earnings means the lower of the member's monthly wages and the upper earnings limit. However, the High Court has suspended the application

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of the new rates pending the determination of a suit. Until the suit is finalized, the rates under the repealed NSSF Act (mentioned above) apply.

All employees are required to register with the NSSF. The term "employee" is defined as a person who has attained the age of 18 years and who (section 2 of the NSSF Act 2013):

- is employed in Kenya under a contract of service; or
- is ordinarily resident in Kenya and is employed outside Kenya (or partly in and partly outside Kenya) under a contract of service entered into with an employer who resides in or has a place of business in Kenya; or
- is ordinarily resident in Kenya and is employed under a contract of service as master or a member of the crew of any ship, or as pilot, commander, navigator or member of the crew of any aircraft, where the owner of the ship or aircraft (or managing owner if there is more than one owner) or the manager resides in or has its place of business in Kenya.

The NSSF Act 2013 divides the contributions into two tiers. Tier I is based on the minimum wage and tier II on the national average earnings. Tier I contributions contain contributions paid in respect of pensionable earnings up to the lower earnings limit. The lower earnings limit is the amount gazetted by the Cabinet Secretary as the average statutory minimum monthly basic wage for the top urban centres, second tier urban centres and rural areas for the year. The upper earnings limit subject to the Third Schedule, for each financial year means the level of earnings equal to four times National Average Earnings.

Tier II contributions are based on the amounts above the lower earnings limit. Tier II contributions may be made either to the NSSF or to an approved pension scheme where the employer opts to do so (*see* Corporate Taxation section 4.2.).

As part of the transition period, the NSSF Act 2013 seeks to increase the contributions progressively over the next 5 years. The contributions for the next 5 years will increase progressively and will be based on the following:

Year	Lower earnings limit (KES)	Upper earnings limit
1	6,000	50% of national average earnings
2	7,000	1 time national average earnings
3	8,000	2 times national average earnings
4	9,000	3 times national average earnings
5 onwards	monthly minimum wage	4 times national average earnings

The national average earnings is the average wage earnings per employee as published by the Kenya National Bureau of Statistics in the Economic Survey for the prior year. After the first 5 years, the contributions will be 6% of the employee's pensionable earnings.

The current lower earnings limit is KES 6,000 per month with the higher earnings limit being KES 18,000 per month. Therefore, for the first year, the employee pension contribution based on the limits gazetted will be calculated as follows:

Tier I contributions: 6% × 6,000 = 360

Tier II contributions: 6% × 12,000 = 720

Therefore the maximum contribution under the new NSSF Act for the first year (2014) is KES 1,080 (360 + 720) for the employee.

The employer is required to deduct the employee's contribution from his salary and submit it to the NSSF within 10 days after the end of the month in respect of which the contributions are due and payable (section 27 of the NSSF Act 2013, as amended by the Finance Act 2014).

Contributions made under the NSSF Act 2013 are deductible in arriving at the taxable income up to a maximum of KES 240,000 per annum.

3.1.2. National Hospital Insurance Fund

The National Hospital Insurance Fund (NHIF) is a government-administered and employee-funded medical scheme. Registration and contributions are compulsory for all employees (section 15 of the ITA). With effect from 1 April 2015, the monthly contributions are based on graduated rates depending on the employee's earnings but subject to a maximum of KES 1700 (KES 320 for the time immediately prior to the amendment). The payments are due on or before the ninth of every month.

The monthly contributions are as follows (section 15 of the National Hospital Insurance Fund Act):

Gross monthly income (KES)			Monthly contributions (KES)
Up to		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

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Gross monthly income (KES)			Monthly contributions (KES)
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	–	69,000	1,300
70,000	–	79,999	1,400
80,000	–	89,000	1,500
90,000	–	99,000	1,600
100,000		and over	1,700

3.2. Self-employed

Self-employed persons are allowed to make voluntary contributions to the NSSF and NHIF. Voluntary payments to the NHIF must be paid at a minimum of KES 500 per month. Voluntary payments to the NSSF are a minimum of KES 200 per month.

3.3. Expatriates

Generally, expatriates that are resident in Kenya are required to make NSSF contributions at the standard rate of 6% of the pensionable income per month (*see* section 3.1.1.). However, expatriates who are employed in Kenya for a period not exceeding 3 years at any one time and are liable to contribute to the social security scheme of any other country approved by the Cabinet Secretary of Labour, or who are required to contribute to any scheme associated with their employment under which the benefits are comparable to the benefits provided by the NSSF, may apply in writing to be exempt from making the contributions to NSSF (paragraph 2 of the First Schedule to the NSSF Act).

NHIF, however, does not provide for a similar exemption and expatriates are required to contribute to the fund at the standard rates

4. Tax Calculation Examples

A Kenyan resident individual, married, with two minor children, earns a salary of KES 500,000 per month. He is allowed to use the company car which purchase price was KES 1 million, and his monthly telephone bill of KES 10,000 is paid for by his employer. He pays a medical insurance premium of KES 10,000 per month for himself. He also receives dividends from a Kenyan company of KES 50,000 and interest from government securities of KES 15,000 (subject to 15% withholding tax at source). He makes pension contributions of 10% of his gross salary and is paying an interest of KES 30,000 per month on a mortgage for the purchase of his house.

The tax due will be computed separately depending on its source as required under the ITA and applying the current tax rates (*see* section 1.10.1.).

(1) Employment income		
Salary		500,000
Car benefit 2% x 1,000,000		20,000
Telephone benefit 30% x 10,000		3,000
		523,000
Less:		
Pension contributions + NSSF[1]	(20,000)	
Mortgage interest relief[2]	(25,000)	(45,000)
		478,000
(2) Investment income		
Interest		15,000
Gross dividends[3]		–
(3) Taxable income		493,000
Tax thereon:		

1 Pension contributions are limited to a maximum of KES 240,000 per year (*see* section 1.3.3.1.).
2 Mortgage interest deductions are limited to a maximum of KES 25,000 per month (*see* section 1.8.1.1.).
3 Dividends are taxed through a final withholding tax of 5% (*see* section 7.1.1.4.).

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	First KES 11,180 at 10%		1,118.00
	Next KES 10,534 at 15%		1,580.10
	Next KES 10,534 at 20%		2,106.8
	Next KES 10,534 at 25%		2,633.5
	Balance KES 42,781 at 30%		135,065.70
	Gross tax		142,504.10
	Less tax credits:		
	Personal relief		(1,280)
	Insurance relief 15% x 10,000		(1,500)
	Withholding tax on interest 15% x 15,000		(2,250)
	Net tax on income[4]		137,474.10

1 Pension contributions are limited to a maximum of KES 240,000 per year (*see* section 1.3.3.1.).
2 Mortgage interest deductions are limited to a maximum of KES 25,000 per month (*see* section 1.8.1.1.).
3 Dividends are taxed through a final withholding tax of 5% (*see* section 7.1.1.4.).
4 Tax due from salary income is deducted and submitted by the employer under PAYE (*see* section 1.10.3.1.).

5. Taxes on Capital

Kenya does not levy a tax on capital

5.1. Net wealth tax

Kenya does not levy net wealth tax.

5.2. Real estate tax

Kenya does not levy a real estate tax. However, land rates are imposed by counties at rates which vary from county to county. Land rent applicable to leasehold land is payable to the central government (*see* Corporate Taxation section 5.3.).

6. Inheritance and Gift Taxes

Kenya does not impose inheritance and gift tax.

7. International Aspects

7.1. Taxation of resident individuals

An individual is considered a resident if he meets the following conditions:

- he either has a permanent home in Kenya and is present for any period in any year of income; or
- he has no permanent home in Kenya but was present in a given year of income for 183 days or more, or for an average of more than 122 days in a 3-year period.

7.1.1. Taxable foreign income

7.1.1.1. General

The income tax system in Kenya is territorial with only income derived from or accrued in Kenya being taxable in Kenya (section 3 of the ITA). However, resident individuals are taxed on a worldwide basis as regards their employment income.

7.1.1.2. Employment income

Worldwide employment income of resident individuals is subject to taxation in Kenya. Employment income is taxable in Kenya in the following circumstances:

- if the employee is or was at the time of employment or when services were rendered, a resident person in respect of any employment or services rendered by him in or outside Kenya; and
- if the income is paid to a non-resident person in respect of any employment with or services rendered to an employer who is resident in Kenya or to a Kenyan permanent establishment of a non-resident (section 5(1)(b) of the ITA).

4 Tax due from salary income is deducted and submitted by the employer under PAYE (*see* section 1.10.3.1.).

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7.1.1.3. Business and professional income

Business and professional income is subject to tax under the general rules governing companies as described in Corporate taxation section 7.2.1.2. For the definition of the term permanent establishment, *see* Corporate Taxation section 7.1.2.

7.1.1.4. Investment income

The rules governing taxation of foreign investment income earned by resident companies applies to individuals (*see* Corporate Taxation sections 7.2.1.3. and 7.2.1.4.).

7.1.1.5. Other foreign income

Kenya generally levies income tax on gains and profits accrued in or derived in Kenya. Foreign income is as such, not subject to tax in Kenya.

7.1.1.6. Capital gains

Following an amendment in the Finance Act 2014, capital gains derived from property located in Kenya are taxable. Since the Kenyan tax system is territorial, foreign capital gains are not taxable in Kenya.

7.1.2. Other taxes on income

Kenya only levies income tax at the national level (*see* section 2.).

7.1.3. Taxes on foreign capital

Kenya does not levy tax on foreign capital.

7.1.4. Double taxation relief

Residents are entitled to unilateral relief in the form of a deduction on foreign tax paid (section 16(2)(c) of the ITA).

In certain circumstances, Kenyan citizens are entitled to a unilateral tax relief in the form of a credit. This applies where the income is paid in respect of employment or for an appearance at/or performance for purposes of entertaining, instructing, taking part in a sporting event or otherwise diverting (section 39(2) of the ITA).

If a double tax treaty applies, a credit will be granted for the foreign tax paid. The rules applicable to companies also apply to individuals (*see* Corporate Taxation section 7.2.6.).

The credit method is source by source with foreign tax suffered against any particular type of income being applied against tax charged on that income (section 42 of the ITA).

Bilateral relief under Kenya's tax treaty network is dealt with under Corporate Taxation section 7.4.1.2.

7.2. Taxation of expatriate individuals

There is no special tax regime for expatriates. The ITA contains some provisions regarding when expatriates will be deemed to be residents.

7.2.1. Inward expatriates

Inward expatriates who come into Kenya with the intention of becoming residents will be treated as residents from the first month in which they arrive in Kenya (section 29(4) of the ITA).

Other than the personal relief granted to residents, expatriates will be subject to tax under the provisions governing taxation of employment income (*see* section 1.3.).

7.2.2. Outward expatriates

Kenyan law does not provide for a special expatriate tax regime.

If an individual leaves Kenya permanently, he will be deemed to have been resident for the number of months in that year of income up to and including the month when he leaves. If however, he is entitled to leave with pay following cessation of employment and part of that leave relates to the period before his departure, he will be considered to remain a resident until the leave period expires (section 29(3) of the ITA).

Kenya does not have an exit tax.

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7.3. Taxation of non-resident individuals

An individual is considered non-resident if either he has a permanent home in Kenya but was not present in Kenya during the year of income in question, or he does not have a permanent home in Kenya and was not present in Kenya for periods amounting to an aggregate of 183 days or more in the year of income or 122 days over a 3-year period.

7.3.1. Taxable domestic income

7.3.1.1. General

Unless otherwise indicated, a non-resident is subject to the normal income taxation rules for both the national and local income taxes described in sections 1. and 2., including the rates and the granting of the personal deductions, allowances and credits discussed in section 1.8.

7.3.1.2. Employment income

A non-resident is taxable on employment income if he was employed by a Kenyan resident or by a Kenyan permanent establishment of a non-resident (section 5(1)(b) of the ITA). Such employment income is taxable independent of the period of employment in Kenya. The tax is deducted and accounted for through the PAYE system.

In certain situations, the computation and payment of tax with respect of employment income derived by a non-resident person differs. This is if the non-resident is not a Kenyan citizen and:

- is employed by a non-resident person;
- is in Kenya solely for the performance of his duties in relation to his employer's regional office, which office has been approved by the Commissioner;
- is absent from Kenya for the performance of those duties for a period amounting to 120 days or more in a year of income; and
- whose employment income has not been deducted by his employer or any entity controlled by his employer.

In such a case, the employee is allowed to deduct one third of his employment income in determining his taxable income (section 15(2)(r) of the ITA).

The progressive tax rates apply with respect to employment income earned by non-residents.

Pension income paid to a non-resident is taxable in Kenya if it is paid from a pension fund or pension scheme established in Kenya or under an annuity contract made in Kenya (section 8(2) of the ITA).

Pension payments are subject to withholding tax at the rate of 5% of the gross amount payable.

Directors' remuneration is subject to the same tax treatment as employment income.

Personal allowances to non-residents in respect of employment or services rendered to an employer who is resident in Kenya or a Kenyan permanent establishment of a non-resident company will be taxed in Kenya under employment income.

Hiring out of labour by a non-resident will be regarded as consultancy that is subject to withholding tax.

7.3.1.3. Business and professional income

Since Kenya operates a territorial system, business and professional income derived from Kenya will be subject to tax in Kenya.

The term permanent establishment (PE) is defined in the ITA as "a fixed place of business in which a person carries on business and for the purposes of the definition, a building site, or a construction or assembly project, which lasts for six months or more shall be deemed to be a fixed place of business".

In case the non-resident individual forms a PE, he will be allowed to deduct expenses incurred in relation to generation of income subject to certain limitations as discussed in Corporate Taxation section 7.3.3.1. Deductions are not allowed where the non-resident individual does not have a PE in Kenya (section 16(2)(f) of the ITA).

Where the income is earned through a PE, it will be taxed through the progressive rates. In all other cases, it will be subject to a final withholding tax.

If a non-resident person earns income through the provision of services to a petroleum company in Kenya, the rules relating to taxation of petroleum service subcontractors as discussed in Corporate Taxation section 12.2. apply.

7.3.1.4. Investment income

Dividends paid by a Kenyan company to an individual will be taxable through a final withholding tax.

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Royalties are taxed in Kenya if the payer is a resident or the property giving rise to the royalties is situated in Kenya. The royalties are subject to a final withholding tax.

Interest is taxed on the interest earned on deposits/debt in Kenya. Interest paid to a non-resident will be subject to tax at the different rates depending on its source. The tax is a final withholding tax.

Income from immovable property that is located in Kenya is taxed in Kenya and is taxed through a final withholding tax.

For withholding tax rates on payments to non-resident individuals, *see* section 7.3.2.

7.3.1.5. Other income

Pension income paid to a non-resident is taxable in Kenya if it is paid from a pension fund or pension scheme established in Kenya or under an annuity contract made in Kenya (section 8(2) of the ITA).

Pension payments are subject to withholding tax at the rate of 5% of the gross amount payable (paragraph 3(f) of the Third Schedule to the ITA).

7.3.1.6. Capital gains

Capital gains derived from property located in Kenya by non-residents are subject to capital gains tax. *See* section 1.7.

Property, in the case of taxation of individuals, is defined in the ITA to mean land as well as any right or interest over land and marketable securities situated in Kenya.

7.3.2. Withholding taxes

Generally, non-resident persons who have a PE in Kenya are subject to tax at the resident rates (*see* section 1.10.3.). The rates discussed below apply to non-resident persons without a PE in Kenya.

7.3.2.1. Dividends

Dividends sourced in Kenya are subject to withholding tax at the rate of 10% on the gross amount payable (paragraph 3(d) of the Third Schedule to the ITA).

The Finance Act 2017 amended the ITA to exempt from tax dividends paid by SEZ enterprises, developers or operators to non-residents (effective 1 January 2018).

Dividends paid to citizens of the East African Community Partner States are subject to a preferential withholding tax rate of 5%.

7.3.2.2. Interest

Interest derived from Kenya is subject to withholding tax on the gross amount payable at different rates depending on its source (paragraph 3(e) of the Third Schedule to the ITA).

Interest derived from the government bearer bonds of at least 2 years duration is subject to withholding tax at the rate of 15% when paid to non-residents.

Interest derived from a bearer instrument other than a government bearer bond for 2 years is subject to a 25% withholding tax rate when paid to non-residents.

The Finance Act 2017 amended the ITA to reduce the withholding tax rate on interest paid by an SEZ enterprise, developer or operator to a non-resident person from 10% to 5% (effective 1 January 2018).The withholding tax is a final tax when paid to a non-resident person without a PE in Kenya.

7.3.2.3. Royalties

Payments of royalties to non-resident individuals who do not have a PE in Kenya are subject to a final withholding tax rate of 20% of the gross amount (paragraph 3(b) of the Third Schedule to the ITA).

Through an amendment effected through the Finance Act 2017, the withholding tax rate on royalties paid by an SEZ enterprise, developer or operator to a non-resident person was reduced from 10% to 5% (effective 1 January 2018).

Royalties are subject to VAT at the standard rate.

7.3.2.4. Other income

7.3.2.4.1. Rents

Rent paid to a non-resident person from the rent of movable property is subject to a withholding tax rate of 15% (paragraph 3(c)(ii) of the Third Schedule to the ITA).

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Rent paid in respect of immovable property owned by a non-resident person is subject to a withholding tax rate of 30% (paragraph 3(c)(i) of the Third Schedule to the ITA).

In both cases the withholding tax is a final tax.

7.3.2.4.2. Management and professional fees

The ITA defines management or professional fees as payments made to a person, other than a payment made to an employee by his employer, as consideration for managerial, technical, agency, contractual, professional or consultancy services. Management and professional fees are subject to a final withholding tax rate of 20% if paid to a non-resident person. Management and professional fees paid to citizens of the East African Community Partner States are subject to final withholding tax at a preferential rate of 15%.

The Finance Act 2017 reduced the withholding tax rate on management and professional fees paid by an SEZ enterprise, developer or operator to a non-resident person from 10% to 5% (effective 1 January 2018).

7.3.2.4.3. Broadcasting income

Profits from the business of transmitting messages by cable or radio communication, optical fibre, television broadcasting, Very Small Aperture (VSAT), internet, satellite or any similar method of communication is subject to a final withholding tax rate of 5% when paid to a non-resident person without a PE in Kenya.

7.3.3. Other taxes on income

Kenya does not levy other taxes on income.

7.3.4. Taxes on capital

Kenya does not levy a tax on capital.

7.3.5. Taxes on inheritances and gifts

Kenya does not tax inheritance and gifts.

7.3.6. Administration

Only non-resident persons with a PE are required to file tax returns. In such a case the normal rules relating to filing of returns as discussed in section 1.11. apply.

7.4. Tax treaties and other agreements

7.4.1. Tax treaties

7.4.1.1. Treaty policy

Kenyan tax treaties generally follow the OECD and UN Model Conventions with a bias towards the UN Model Convention.

For policy on tax sparing credits, *see* section 7.4.1.6.2.

7.4.1.2. Treaty relief from double taxation

Generally, Kenyan tax treaties provide for the ordinary credit method to relieve double taxation. Companies resident in Kenya or the other contracting state benefit from the treaty.

7.4.1.3. Tax treaties in force

7.4.1.4. Tax treaties signed but not yet in force

7.4.1.5. Treaty withholding tax rates

See Kenya - Treaty Withholding Rates Table , Quick Reference Tables IBFD.

7.4.1.6. Special provisions in tax treaties

7.4.1.6.1. Limitation on benefits provisions

Kenyan tax treaties do not contain a specific limitation of benefits clause.

7.4.1.6.2. Tax sparing credit

The effect of tax exemptions granted by some countries to non-resident investors is not intended to be nullified by levies in the investor's country of residence. To that effect, certain tax treaties concluded by Kenya contain provisions granting a fixed foreign tax credit on certain

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categories of foreign income, even if such income is exempt from foreign tax or subject only to a low level of taxation under the law of the source country.

Tax sparing credits are granted by Kenya to its resident companies under the tax treaty with Zambia. The 1985 treaty with India provided for tax sparing credit. However, this treaty has been replaced by the 2016 treaty, which entered into force on 30 August 2017. The new treaty does not provide for tax sparing credit.

Under the following treaties, the treaty partners grant to their resident companies credits for taxes which would have been paid in Kenya if the tax had not been given up:

Country	Qualifying income	Credit rate	Treaty article	Expiry date
Canada	Any income subject to the treaty	Ordinary credit	24(3)	When treaty is repealed/replaced
Denmark	Any income subject to the treaty	Ordinary credit	25(4)	First 10 years from effective treaty date
Germany	Dividends, interest, royalties, management fees	Ordinary credit	23(1)	When treaty is repealed/replaced
Norway	Any income subject to the treaty	Ordinary credit	25(5)	First 10 years of treaty
Sweden	Any income subject to the treaty	Ordinary credit	22(4)	10 years of treaty coming into effect and extended in 1987 for 14 years
United Kingdom	Any income subject to the treaty	Ordinary credit	26(2)	When treaty is repealed/replaced
Zambia	Any income subject to the treaty	Ordinary credit	16(3)	When treaty is repealed/replaced

7.4.1.6.3. Special provisions for offshore activities

No special provisions for offshore activities are provided under Kenyan tax treaties.

7.4.1.6.4. Excluded individuals

Kenyan tax treaties contain no provisions dealing with excluded individuals.

7.4.1.6.5. Other special provisions

Kenyan tax treaties do not contain special provisions on arbitration and/or reciprocity.

7.4.2. Treaties on administrative assistance

The 2012 Finance Act amended the ITA to allow the Cabinet Secretary to conclude treaties on the exchange of information (section 41A of the ITA). Although Kenya has begun the negotiation process with several countries, none of the treaties are currently in force.

7.4.3. Foreign account reporting agreements

7.4.3.1. Foreign account reporting agreements signed

7.4.3.2. Foreign account reporting agreements not signed

7.4.4. Transportation (tax) treaties

So far only one transport treaty is in force.

Country	Scope	Date of signature	Effective date
Hong Kong	air	21.04.2004	28.04.2006

7.4.5. Inheritance and gift tax treaties

Kenya has not concluded inheritance and gift tax treaties.

7.4.6. Social security agreements

Kenya has not concluded any social security agreements.

8. Value Added Tax

See Corporate Taxation section 13.

9. Miscellaneous Indirect Taxes

See Corporate Taxation section 14.

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