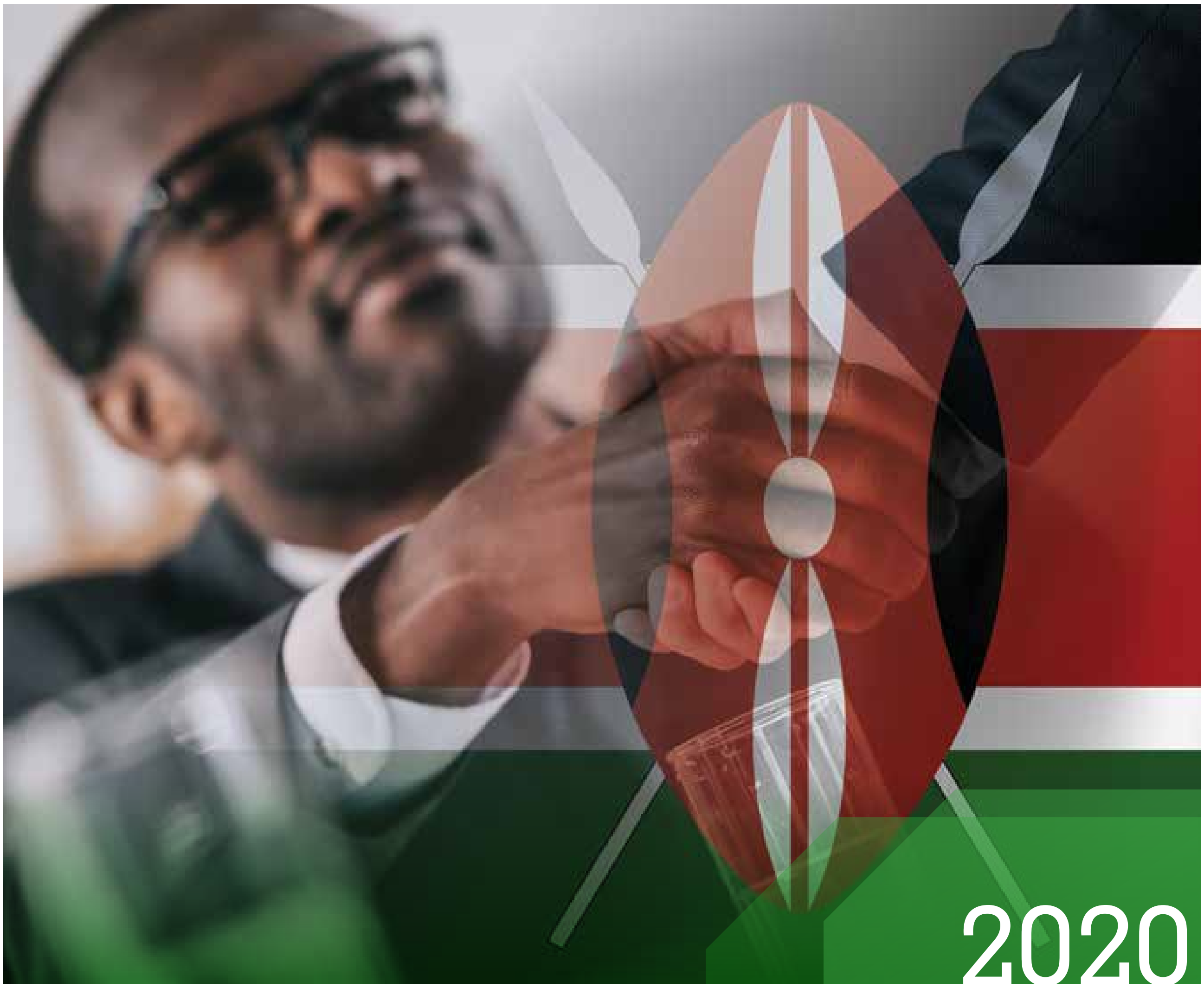
TAX COMPLIANCE GUIDE FOR FOREIGN INVESTORS
KENYA



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PROMOTING INVESTMENTS IN KENYA

Foreword

It gives me great pleasure to present to you the first edition of the *Kenya Tax Compliance Guide*. The publication has been developed for use by investors intending to invest in the Republic of Kenya or who are already established in the country. The guide answers questions that businesses might have about how, when, where, which taxes, what amount and even why they should pay taxes. Moreover, it outlines a comprehensive, but simple, point of reference on the various tax institutions, taxes, tax laws, tax administration mechanisms and tax regulations in force and applicable in Kenya. It also includes information on the various tax incentives and concessions offered by the Government of Kenya, highlights the changes that have occurred in the tax legislation and system over the years, and the impact of these changes on business.

This guide is the latest initiative by KenInvest, after the revamp of our website and creation of eRegulations and e-opportunities platforms to enhance transparency of investment and business processes in Kenya.

The production of the guide is a great team effort and I would like to thank all experts who contributed the vital information on the country's taxes that forms the heart of the publication. I would also like to thank the Partnership for Investment and Growth in Africa (PIGA) and the International Trade Centre (ITC) for the support in the production of the guide.

As you look to start, continue or expand your business in Kenya, I believe you will find the guide useful. KenInvest is also, as usual, ready to provide additional support in your investment journey.

Dr. Moses Ikiara, Phd, Mbs
Managing Director
Kenya Investment Authority

This guide was developed under the Partnership for Investment and Growth in Africa (PIGA) project. PIGA is part of Manufacturing Africa, a flagship programme of the United Kingdom of Great Britain and Northern Ireland's Department for International Development (DFID) facilitating foreign direct investment with high development impact into selected African countries. Under MA, PIGA aims to contribute to job creation and sustainable growth in Ethiopia, Kenya, Mozambique and Zambia by supporting these countries to attract foreign direct investment, specifically Chinese investment, in the agro-processing and light manufacturing sectors. PIGA is also designed to enhance the capacity of these countries for effective investment promotion.

PIGA is implemented by the International Trade Centre (ITC) in cooperation with the China Council for the Promotion of International Trade (CCPIT) and the China–Africa Development Fund (CADFund).

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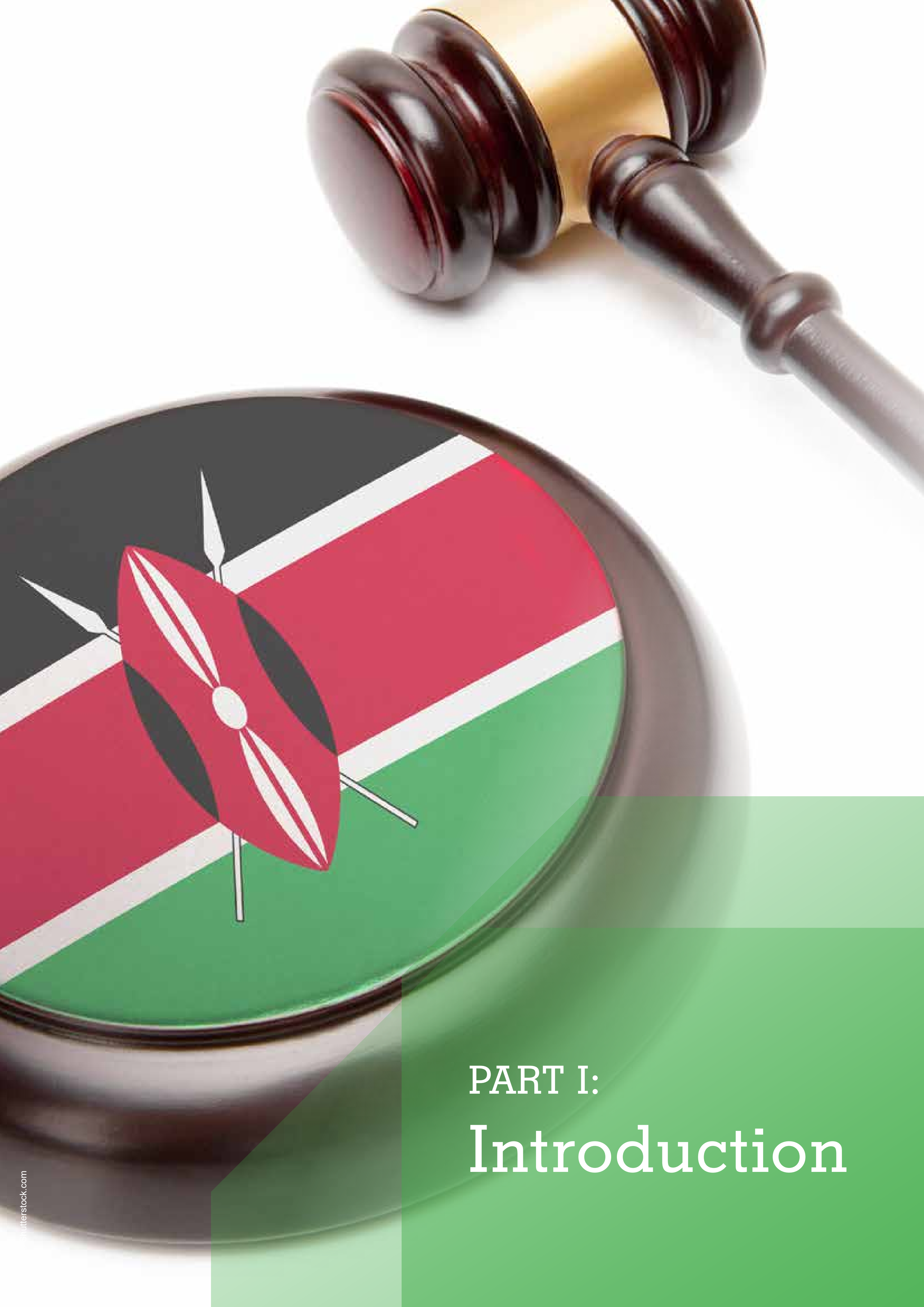
ACRONYMS AND ABBREVIATIONS

All weights and measurements are metric system.

Fiscal year: 1 July to 30 June

CBK	Central Bank of Kenya
CGT	Capital gains tax
CIT	Corporate income tax
CTDL	Catering and Tourism Development Levy
EAC	East African Community
EPZ	Export processing zone
FDI	Foreign direct investment
KEBS	Kenya Bureau of Standards
KES	Kenyan shilling
KPA	Kenya Ports Authority
KRA	Kenya Revenue Authority
MUB	Manufacture under Bond
NHIF	National Hospital Insurance Fund
NITA	National Industrial Training Authority
NSSF	National Social Security Fund
OECD	Organisation for Economic Co-operation and Development
PAYE	Pay as you earn
PIN	Personal identification number
SEZ	Special economic zone
TOT	Turnover tax
TREO	Tax Remission for Export Office
VAT	Value-added tax
WHT	Withholding tax
WTO	World Trade Organization



PART I:
Introduction

PART I

1. ABOUT THIS GUIDE

This tax guide has been developed for use by foreign investors intending to invest in the Republic of Kenya or who are already established and are operating a company or any other business entity in the country. The guide is intended to provide investors with a comprehensive, but simple, one-stop shop and point of reference for the various tax institutions, taxes, tax laws, tax administration mechanisms and tax regulations in force and applicable in the country. It includes information on the various tax incentives and concessions offered by the Government of Kenya to attract investors into the country, especially foreign ones, with the aim of creating job opportunities and increasing exports. The guide also highlights the changes that have occurred in the tax legislation and system over the years, and their impact on businesses.

2. INTRODUCTION

2.1. STRUCTURE OF KENYAN TAX SYSTEM

Kenya has a dynamic and broad-based taxation system that is largely anchored on the four principles or pillars of a good and progressive tax system, namely equality, certainty, convenience and economy. The taxation system has evolved and been reformed over time since the country gained its independence in 1963, especially following the enactment by parliament of the Income Tax Act, Chapter 470 of the Laws of Kenya in 1973.

In Kenya, taxes are divided into direct or indirect taxes. Direct taxes are those that are paid personally by taxpayers or that their employers deduct from their salaries and wages and pay directly to the Kenya Revenue Authority (KRA). Direct taxes are computed as a percentage of the taxpayer's income or assets, and cannot be shifted to a different party. Ideally, this means that whoever pays the tax is the actual person incurring the cost of the tax. Direct taxes, therefore, include the income tax deducted from salaries and other emoluments (pay as you earn (PAYE), from royalties or trades, and corporate income tax).

On the other hand, indirect taxes are not borne by the person who has the responsibility of paying/remitting to the respective tax authority; i.e. they are often transferred to a third party, for example end users or consumers of goods and services. Therefore, taxpayers of indirect taxes normally shift the burden of these taxes to the end user(s) through the prices of their goods and services; i.e. to the population at large. The various applicable taxes are summarized in Table 1.

In Kenya, tax revenue is spread across various different tax instruments (both direct and indirect), which are governed by independent legislation that establishes provisions for the charge, assessment and collection of the respective taxes. These tax laws apply to corporate entities (local and foreign) conducting business in the country, whether incorporated or operating through permanent establishments; i.e. a company or a branch of a foreign company. All corporate entities are required to register for a personal identification number (PIN) with the KRA, and to register for all applicable tax obligations immediately on commencement of business.

TABLE 1 The various taxes applicable in Kenya

Type of tax	Nature of tax	Responsibility for levying the tax
Pay as you earn (PAYE)	Direct tax on individuals	National government
Corporate income tax	Direct tax on corporate and business entities	National government
Withholding tax	Direct tax on individuals, and corporate and business entities	National government
Turnover tax (TOT)	Direct tax on small businesses (with turnover of less than KSh5 million)	National government
Compensating tax	Direct tax on dividend payment by corporates	National government
Capital gains tax (CGT)	Direct tax on transfer of property by individuals, and corporate and business entities	National government
Standards levy	Direct tax on individuals, and corporate and entities in manufacturing business	National government
Stamp duty	Direct tax on transfer of property, etc. by individuals, and corporate and business entities	National government
Value-added tax (VAT)	Indirect tax on individuals, and corporate and business entities	National government
Excise duty	Indirect tax on corporate and business entities	National government
Import duty	Indirect tax on individuals, and corporate and business entities	National government
Export levy	Indirect tax on individuals, and corporate and business entities	National government
National Hospital Insurance Fund (NHIF)	National health cover contributions	National government
National Social Security Fund (NSSF)	National social security contributions	National government
National Industrial Training Authority (NITA)	Industrial training levy	National government
Catering and Tourism Development Levy (CTDL)	Catering and tourism development levy on individuals, and corporate and business entities in the hospitality industry	National government
Single business permit	Direct tax on individuals, and corporate and business entities	County government
Property rent and rates	Direct levy on individuals and corporates	County government

The Government of Kenya has introduced various tax incentives over the years with the aim of promoting and attracting investment, particularly foreign direct investment (FDI), in key export-oriented sectors of the economy. The objectives are to create wealth and employment, transfer skills to its workforce and improve its competitiveness in international trade. The tax incentive schemes include duty and VAT exemptions and remissions on imported inputs for manufacture of export goods, a 10-year corporate tax holiday, investment allowances and tax credits, accelerated depreciation, special zones such as Manufacture under Bond (MUB), export processing zones (EPZs) and special economic zones (SEZs), investment subsidies, income tax exemptions, reductions in tax rates and indirect tax incentives.

2.2. BUSINESS REGISTRATION PROCESS

Whether an individual or a corporate entity, an investor wishing to do business in Kenya may register a local company, a branch or a subsidiary. A subsidiary is considered a local company with compliance requirements similar to those of local companies owned by locals. A branch office, on the other hand, is unique and is considered a foreign company under the Companies Act 2015.

The setting up and operation of these entities is governed by the Companies Act 2015. Under the Companies Act one or more persons can form a company, while a private company can have up to 50 members. Foreign entities are permitted to operate in the country as a company or a branch.

The process of registering a company or branch is as follows:

a. Conduct a Registry search and apply to the Registrar of Companies for reservation of a unique company name using the eCitizen portal. On payment of requisite fee (KSh150), the name is reserved the same day, for a period of 30 days.

b. Apply for registration of a company or branch on the eCitizen platform by entering the required information in the fields provided; i.e. the memorandum and articles of association, details of first directors and shareholders, company secretary, notice of registered address and statement of nominal capital.

c. Pay the requisite fees (currently KSh10,650) online using the stipulated payment methods, which include mobile money payment, debit, credit and prepaid cards, local bank transfer and e-Citizen agents. The application is then reviewed by the Company Registry officials and, if it is in order, a certificate of incorporation and an official registry search notification (CR12) is generated online.

d. Apply for the company's personal identification number (PIN) through KRA's online services portal at **http://www.kra.go.ke/portal**. To apply for a KRA PIN:

- Visit itax.kra.go.ke.
- Select "New PIN Registration".
- Select "Non-Individual" and "Online Form" as your mode of registration.
- Fill in your company's registration and other basic information.
- Select suitable tax obligation by checking the relevant boxes – these include income tax, VAT, PAYE and withholding tax (WHT); whichever is applicable.
- Enter details of company directors or partners, including the ID card or Alien ID card for one of the directors.
- Fill in tax agent details, if you have one.
- Enter the result of the arithmetic sum provided and submit.
- If a resident, you will receive the PIN certificate instantly after completing the online registration form.
- If a non-resident, you will receive an acknowledgement receipt, which you should present to Times Tower, alongside other relevant documents, to complete your registration process.

e. Apply to the KRA for the company's VAT registration, where business has made or is expecting to make taxable supplies the value of which is KSh5,000,000 or more in any period of 12 months. To register for VAT online:

- Visit the **KRA online tax portal** and click on "new registration".
- Then select which type of tax you want to register; i.e. individual or non-individual. Select "non-individual".
- Enter full details about your business; i.e. basic company information, tax obligation (in this case, VAT), details of director and associates, and details of the company's tax agent.
- Click on "submit". This will take you to a page to confirm correctness of details.
- After confirming the details, click on "submit" to submit the application form. This will lead to an automatic generation of your VAT registration certificate.
- You will be able to download a Pdf copy of the certificate and another copy will be sent to your e-mail address.

f. Apply to KRA for the company's pay as you earn (PAYE) registration in case the new company has employees.

- The PAYE registration is done automatically by simply selecting "PAYE" as one of the company's tax obligations when applying for the company's KRA PIN online.

g. Apply and pay the requisite fee for a single business permit to the respective county government. This can be done either manually by visiting the county offices, obtaining and completing the application form, attaching copies of company's registration documents and paying the requisite fees or, for some counties such as Nairobi, Mombasa and Kisumu, by using their online portal:

- Visit the online portal and, under the single business permit tab, select "register new business".
- Fill in the required information about your business and click "next" to obtain an invoice for the business licence fees.
- Click on "proceed" to make payment and confirm details (amount to be paid will be provided).
- Print generated payment invoice/receipt and the single business permit.
- Once you have printed the permit, display it on your business premises as the law requires.

h. Register with the National Hospital Insurance Fund (NHIF) for its employees' national health cover. *To register as an employer or organized group, visit* **www.nhif.or.ke/healthinsurance**:

- Download the Employer's NHIF Registration Form 33.
- Complete all the required company details in the spaces provided, including the current number of employees and members.
- Attach copies of the company's certificate of registration (if business not yet incorporated) or incorporation certificate and the KRA PIN card.
- Submit the NHIF Form 33 at the nearest NHIF branch (branches are located across the country).
- A compliance check will then be carried out by the NHIF office and the report filled in on the form submitted.
- An NHIF officer will inspect the company or employer, usually within 1–2 days of submitting.
- On approval, the applicant will be issued with a code for the company (account number) and can start remitting the NHIF deductions.
- The whole registration process and processing of NHIF cards for directors and employees take approximately seven days.

i. Register with the National Social Security Fund (NSSF) for your employees' pension contributions. To register online, use the self-service portal from the NSSF official self-service website: **http://selfservice.nssf.or.ke/**

- Click on the member self-service link.
- Use the member registration link to register as a first-time member.
- Complete the NSSF online registration form displayed. Be very accurate when supplying official details.
- Print the application notification.
- Contact the nearest NSSF office for certification.
- Once you get the PIN from the NSSF office near you, activate your membership.
- Click on the membership activation link and type in your password, username and PIN, then click "activate".

j. Register with the National Industrial Training Authority (NITA) for the employees' mandatory industrial training levy. To register as a levy contributor:

- Obtain Form 1 from the NITA website and complete the form (revised March 2017) for an employer in any category: person, public body, firm, corporation, company, agent, foreman, manager, heir, successor, assignee or transferee.
- Attach certified copies of all the company's statutory documents.
- Forward the application form together with the required documents to the Director General of NITA for processing and registration.

k. Register the workplace with the Directorate of Occupational Safety and Health Services (DOSHS).To apply for registration:

- Obtain and complete Form MLSSS/DOSH 21A and a workplace self-assessment report available on the Ministry of Labour website.
- Pay requisite registration fees (currently KSh2,000) to the DOSHS bank account.
- Submit the deposit slip plus the duly filled-in application form and self-assessment report to the DOSHS offices.
- The DOSHS office will process the application and issue you with a certificate. The certificate is renewable annually at a fee of KSh3,000.

A company as well as a branch is required to file an annual return with the Registrar of Companies, including any changes in the corporate status, company name, share capital or directorship, among others, within the first 18 months of operation and annually thereafter.

2.3. KENYA'S TAX COMPETITIVENESS

The Government of Kenya initiated major tax reforms in the mid-1980s through the development and publication of Sessional Paper No. 1 of 1986 (Government of Kenya, 1986), which was closely followed by the adoption of the Tax Modernization Programme (TMP) in 1986, and the Budget Rationalization Programme in 1987, which was aimed at regulating expenditure through strict fiscal controls. Prior to the reforms, the main problems of income taxation, especially corporate tax, included tax inequality, complicity, low levels of compliance, inefficient tax assessment and collection procedures of tax administration. Therefore, according to Sessional Paper No. 1 of 1986 (Government of Kenya, 1996), the TMP had the following policy objectives:

a. Raise the tax revenue–gross domestic product (GDP) ratio from 22% in 1986 to 24% by the period 1999/2007;

b. Promote saving and investment by placing a greater burden on taxation of consumption and removing any disincentives to investment;

c. Devise a tax structure that distributes income equitably and promotes rural–urban balance;

d. Make industry more competitive through reviews of import duties and export compensation;

- **e.** Design and implement a buoyant and elastic tax system that keeps revenues expanding at the same pace with income growth without annual changes in rates;
- **f.** Reduce compliance and administrative costs through low and rationalized tax rates, wider tax bases, self-assessment systems and taxpayer education and services;
- **g.** Improve tax administration by sealing leakage loopholes, making wider use of computers, enhancing audit surveillance and establish effective data management systems;
- **h.** Invigorate the growth of the fledgling capital market.

Since then, the implementation of tax reforms introduced a number changes to Kenya's tax system, the most significant one being the reduction of the top corporate income tax (CIT) rate from a high of 45% in 1989 to 30% currently. Further reforms included the unification of the top CIT rate and the top marginal personal income tax (PIT) rate as a means of increasing the disposable income for both corporate and individual capital investments, and also reducing incentives for tax avoidance. In addition, the differentiated CIT rate structure was rationalized by unifying the structure across all types of businesses.

There has been a reduction in direct taxes through a widening of tax brackets and gradual lowering of income tax rates, and significant increment in indirect taxes to cover the shortfall in revenue. There has also been a shift from taxes on international trade to taxes on domestic commodities. In addition, value-added tax (VAT) was introduced in 1990 to replace sales tax, which had been operation since 1973.

In 1993, the Government of Kenya abolished import licensing requirements and foreign exchange controls; i.e. the two main pillars of customs duty reforms. In addition, all current account and capital account restrictions were lifted in1993–1994. The Export Compensation Scheme was suspended in 1993, following loss of revenue through rampant abuse of the facility by corrupt local manufacturers. In addition, export duties and export licensing were abolished to support export growth and lower bureaucratic delays for exporters. Further measures included the introduction of the Manufacture under Bond facility (under export processing zones to encourage manufacturing in the country for foreign markets). This resulted in the granting of tax incentives such as exemption from duty and VAT on imported plant, machinery and equipment, raw materials and other imported inputs, and 100% investment allowance on plant, machinery, equipment and buildings, to both local and foreign investors.

These measure and other business reforms have significantly improved Kenya's competitiveness in terms of ease of doing business during the last four years, as compared to some of the countries outside the East African Community, but within the larger Common Market for Eastern and Southern Africa (COMESA) region as shown in Table 2.

TABLE 2 Ease of doing business

Depreciable asset	Kenya				Ethiopia				Mozambique				Zambia			
July/June fiscal year	2020	2019	2018	2017	2020	2019	2018	2017	2020	2019	2018	2017	2020	2019	2018	2017
Ranking in the world	56	61	80	92	159	159	159	161	138	135	138	137	85	87	85	98
Overall score %	73	71	65	60	48	47	46	44	55	55	53	52	67	65	64	60

Source: World Bank Reports on Ease of Doing Business.

As part of the tax reforms, the Government of Kenya also embarked on organizational reforms that culminated in the establishment of the Kenya Revenue Authority (KRA) in 1995, as an autonomous state corporation under an Act of Parliament, with an aim of strengthening revenue collections and harmonizing the separate tax collection arms. KRA consolidated and restructured the five main revenue departments that were previously under the Ministry of Finance; i.e. the customs duty, excise duty, sales tax, income tax and corporate tax departments. KRA also adopted business-like principles, culture and personnel policies that enabled it to recruit, train, retain, dismiss and promote quality staff by paying salaries above civil service terms.

Recent tax reforms that are applicable to date have included introduction of electronic tax registers (ETRs) in 2005 to ensure full remittance of VAT by retailers. The Simba System, also introduced in 2005, is an online value declaration customs system, with the latest one being the introduction of the iTax system in 2015, an integrated web-based tax management system aimed at simplifying the tax processes, shortening time taken to file returns and increasing revenue collection. The iTax system allows users to apply for their KRA tax PIN, check the certificate, generate an e-slip, file their returns electronically, view their ledgers, check status and apply for a tax compliance certificate or file VAT, income tax, PAYE and standards levy for the Kenya Bureau of Standards (KBS).

The CIT reforms have also introduced incentives, designed to prop up export-led industrialization and provide an enabling fiscal environment for foreign direct investment. The tax incentives currently given to foreign companies that invest in Kenya include duty and VAT exemptions and remissions on imported inputs for manufacture of export goods (on all inputs except for motor vehicles), a 10-year corporate tax holiday, investment allowances and tax credits, accelerated depreciation, special zones such as Manufacturing under Bond (MUB), export processing zones (EPZs) and special economic zones (SEZs), investment subsidies, income tax exemptions, reductions in tax rates, indirect tax incentives, stamp duty and withholding tax over a 10-year period.

Kenya's provision of tax incentives is part of the competition for FDI among the members of the East African Community (EAC). Following the re-establishment of the EAC in 1999 under the EAC Protocol Agreement, Kenya, the United Republic of Tanzania and the Republic of Uganda formed a customs union (a duty-free trade area with a common external tariff) through the enactment in 2004 of the East African Community Customs Management Act (EACCMA), which became effective in 2005. These three countries were joined by the Republic of Rwanda and the Republic of Burundi in 2009. This has created a larger regional market and means that firms can be located in any EAC country to service this market. The EAC member countries offer various tax incentives to foreign investors in order to attract FDI into their individual countries, with the aim of increasing job opportunities and exports.

Kenya's tax regime is considered competitive compared to its neighbours and the rest of the world. A comparison of Kenya's tax competitiveness with some of the countries outside the East African Community, but within the larger Common Market for Eastern and Southern Africa (COMESA) region, indicates that Kenya's corporation tax rate for foreign investors and non-residents is somewhat higher than its peers' rates. However, when it comes to personal income tax, Kenya's rates are somewhat lower than those of its peers are, as shown below.

TABLE 3 Ease of paying taxes

Country	Kenya				Ethiopia				Mozambique				Zambia			
July/June fiscal year	2020	2019	2018	2017	2020	2019	2018	2017	2020	2019	2018	2017	2020	2019	2018	2017
Ease of paying taxes score %	73	68	68	65	63	63	63	63	64	64	62	62	89	89	89	81

Source: World Bank Reports on Ease of Doing Business.

TABLE 4 Corporate income tax rates

Detail	Kenya		Ethiopia		Mozambique		Zambia	
Standard rate	Resident	Non-resident	Resident	Non-resident	Resident	Non-resident	Resident	Non-resident
2019	30%	37.5%	30%	30%	32%	32%	35%	35%
2018	30%	37.5%	30%	30%	32%	32%	35%	35%
2017	30%	37.5%	30%	30%	32%	32%	35%	35%
2016	30%	37.5%	30%	30%	32%	32%	35%	35%

TABLE 5 Kenya's personal income tax

Taxable income (in USD)				Rate
2019	2018	2017	2016	
0–1454	0–1454	0–1321	0–1202	10%
1455–2823	1455–2823	1322–2567	1203–2333	15%
2824–4194	2824–4194	2568–3813	2334–3465	20%
4195–5563	4195–5563	3814–5058	3466–4598	25%
More than 5563	More than 5564	More than 5058	More than 4598	30%

USD 1 = KES 101.50

TABLE 6 Ethiopia's personal income tax

Taxable income (in USD)				**Rate**	**Deduction (USD)**
2019	2018	2017	2016		
~~0–19~~	0–19	0–19	0–57	0%	0
~~20–52~~	20–52	20–52	58–247	10%	2
~~53–101~~	53–101	53–101	248–531	15%	5
~~102–166~~	102–166	102–166	532–892	20%	10
~~167–247~~	167–247	167–247	893–1346	25%	18
~~248–345~~	248–345	248–345	1347–1897	30%	30
More than ~~345~~	More than 345	More than 345	More than 1897	35%	47

USD 1 = ETB 31.63 (February 2020)

TABLE 7 Mozambique's personal income tax

Taxable income (in USD)				**Rate**	**Deduction (USD)**
2019	2018	2017	2016		
0–662	0–662	0–662	/	10%	0
663–2651	663–2651	663–2651	/	15%	33
2652–7952	2652–7952	2652–7952	/	20%	166
7953–23856	7953–23856	7953–23856	/	25%	563
More than 23856	More than 23856	More than 23856	/	32%	2233

USD 1 = MZN 63.38 (February 2020)

TABLE 8 Zambia's personal income tax

Taxable income (in USD)				**Rate**
2019	2018	2017	2016	
~~0–226~~	0–226	0–226	~~0–206~~	0%
~~227–282~~	227–282	227–282	~~207–261~~	25%
~~283–426~~	283–426	283–426	~~262–405~~	30%
More than ~~426~~	More than 426	More than 426	More than ~~405~~	37.5% (2016: 35%)

USD 1 = ZMW 14.56 (February 2020)

3. LEGAL FRAMEWORK

3.1. TAX LAWS AND THE BODIES THAT LEGISLATE THEM

In Kenya, the powers to legislate and impose taxes or raise revenue for both the national government and the county government are stipulated in Article 209 of the Constitution of Kenya 2010. The assignment of revenue responsibility between these two tiers of government is in keeping with the devolution framework, whose design ensures that the national government has responsibility over most of the taxes with significant tax bases. In particular, the national government, through parliament, is solely responsible for the imposition of income tax, value-added tax, customs duties and excise taxes, thereby according it the ability to redistribute national resources and stabilize the economy, which are key objectives of ideal tax systems.

On the other hand, Clause 3 of Article 209 of the Kenyan Constitution 2010 empowers the county governments, through their county assemblies, to enact laws and impose property taxes, entertainment taxes and any other tax as authorized by an Act of Parliament. In addition, a county government may impose charges on services provided at the local level.

3.2. TAX HEADS AND THEIR RESPECTIVE TAX RATES

3.2.1. Basis of charge to tax

In Kenya, all the income of a person, whether resident or non-resident, which is accrued in or derived from Kenya is subject to income tax. Income tax is chargeable on gains or profits from a business for whatever period of time carried on.

On the other hand, where a business is carried on or exercised partly within and partly outside Kenya by a resident person, the whole of the gains or profits from that business are deemed to have been accrued in or derived from Kenya.

Resident when applied in relation to a body of persons means: (i) that the body is a company incorporated under a law of Kenya; or (ii) the management and control of the affairs of the body were exercised in Kenya in a particular year of income under consideration; or (iii) that the body has been declared by the minister in charge of finance, by notice in the Gazette, to be resident in Kenya in any particular year of income.

Resident when applied in relation to an individual means that the individual has: (i) a permanent home in Kenya and was present in Kenya for any period in the year of income under consideration, or (ii) no permanent home in Kenya, but was present in Kenya for a period or periods amounting to 183 days or more in the year of income under consideration or was present in that year of income and in each of the two preceding years of income for periods averaging more than 122 days.

A non-resident person can operate in Kenya through a registered branch. Where he or she has not registered a branch, the non-resident may create a permanent establishment. A permanent establishment means a fixed place of business and includes a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, a building site, or a construction or installation project that has existed for six months or more where that person wholly or partly carries on business.

3.2.2. Income tax rates for individuals

Table 9 shows the current applicable income tax rates for individual taxpayers.

TABLE 9 Current applicable income tax rates for individual taxpayers

Taxable income Kenyan shilling (KES) per annum	Rate	Cumulative tax payable KES per annum
Year 2018 onwards		
0–147580	10	14758
147581–286623	15	35614
286624–425667	20	63423
425668–564709	25	98184
In excess of 564709	30	

TABLE 10 Personal allowances and reliefs

Personal allowance	Rate %
Personal relief	16896
Insurance relief (life, health and education)	15% of premiums up to KSh60000 per annum
Affordable housing relief	15% on gross emoluments up to KSh108000
Home ownership savings	With effect from 1 July 2018:KSh96000 (for 10 years)
Registered pension or provident scheme	The lower of actual contribution, 30% of pensionable income orKSh240,000
Mortgage interest relief for owner-occupied property	With effect from 1 January 2017: KSh300000

Employment benefits

All benefits are taxable at the higher of either the cost or the fair market value, except:

Tax-free benefits

- Interest income earned from Post Office Savings Bank (POSB) ordinary accounts;
- The first KSh300,000 per annum from registered pension and retirement annuities;
- KSh60,000 yearly withdrawal benefits from registered pension or provident fund to a maximum of KSh600,000;
- One-third of a non-resident employment income of a regional office approved by the commissioner, if absent from Kenya in the year of income for the performance of his duties for a period/s totalling 120 days or more;
- If 65 years old or older, the monthly or lump sum pension;
- For non-resident employees recruited outside Kenya, the cost of passage to and from Kenya;
- Non-cash benefits up to a maximum of KSh36,000 per year;
- Education fees for the employee's dependents if taxed on employer;

- Meals served by a canteen operated by the employer or a third party registered taxpayer for employee benefit to a maximum of KSh48,000 per year;
- Interest earned on deposits to registered Home Ownership Savings Plan (HOSP) of up to KSh3 Million deposit;
- Bonuses, overtime and retirement benefits for employees whose income before the said benefits is below the lowest tax band;
- First KSh150,000 for the disabled exempt;
- Deduction of KSh50,000 on drugs treatment and home care service for the disabled allowed as a deduction;
- Medical services and insurance paid by employer for full-time employees and directors or their beneficiaries provided by an insurance provider approved by the Commissioner of Insurance. For non-whole-time directors, the cabinet secretary(The National Treasury) has prescribed a limit of KSh1 million p.a.;
- Medical cover and insurance incurred by a partnership or sole proprietorship for their benefit up to KSh1 million;
- With effect from 1 July 2013, premiums of Group Life policy taken by employer, which do not confer benefits to the employee or their dependents.

Reimbursements

- Reimbursement of expenses expended wholly and exclusively in the production of income;
- Daily allowance of the first KSh2,000 paid to an employee while on official duty.

a. Motor vehicles

The benefits are the higher of either 2% per month of the initial cost of the vehicle or the prescribed scale rates. For leased vehicles, the benefits is the cost of leasing. Employees with restricted private usage can apply for a lower benefit valuation.

b. Housing

Non-working directors: The higher of15% of total emoluments, the fair market rental value, or the rent paid.

Whole-time service directors: The higher of 15% of emoluments, fair market value and rent paid.

Agricultural employees: 10% of emoluments less any rent charged to the employee.

Other employees: Higher of either 15% of gross emoluments or the rent paid.

c. Loans to employees

Fringe benefit tax paid on behalf of an employee by the employer at the corporate tax rate.

d. Other benefits

- Furniture: 1% of cost p.m.;
- Telephone: 30% of cost p.m.;
- Communal water:KSh500 (KSh200 for agricultural employees);
- Communal electricity:KSh1,500 (KSh900 for agricultural employees);
- Taxable benefit for employee share ownership plans (ESOPs) is the difference between the market price of shares and option grant price. The benefit accrues at the end of the vesting period.

e. Pension and provident funds

- Tax-exempt lump sum withdrawals from both registered pension and provident funds is up to KSh60,000 for each year of pensionable service, subject to a maximum of KSh600,000;
- Withdrawals based on 1991 and prior contributions are exempt;
- Earnings from non-commuted pensions are exempt up to KSh300,000 p.a.;
- Lump sum payments and monthly pension payments to persons older than 65 years of age are tax-free. Withholding tax rates for pension and provident fund withdrawals and lump sum payments beyond exempt limits:

i. Withdrawal before 15 years expires:

TABLE 11 Schedule of pension and provident withdrawals before 15 years

		KES
10%	On the first	147 580
15%	On the next	139 043
20%	On the next	139 043
25%	On the next	139 043
30%	On amounts more than	564 709

ii. Withdrawals after 15 years, attaining age of 50 years of retirement on health grounds:

TABLE 12 Schedule of withdrawals after 15 years

10%	On the first	400 000
15%	On the next	400 000
20%	On the next	400 000
25%	On the next	400 000
30%	On amounts more than	1600 000

- Employees are not entitled to employer's contribution before the retirement age;
- Any surplus refunded to or withdrawn by employer from registered fund shall be deemed to be the income of the employer;
- Withholding tax under (e) above is final tax.

3.2.3. Corporate tax rates

Resident companies (including subsidiaries of foreign companies) are taxable in Kenya on income accrued or derived from Kenya. Resident companies with business activities outside Kenya are also taxed on income derived from business activities outside Kenya. On the other hand, non-resident companies are taxed only on the trading profits attributable to a Kenyan permanent establishment (PE).

Table 13 shows the current applicable tax rates for resident and non-resident companies, including petroleum companies.

TABLE 13 Current applicable corporate income tax rates

Description	Tax rate (%)
Resident companies	30%
Non-resident companies (branches)	37.5%
Export processing zone enterprises:	
▪ First 10 years	NIL
▪ Next 10 years	25%
▪ Thereafter	30% and 37.5%
Special processing zone enterprises:	
▪ First 10 years	10%
▪ Next 10 years	15%
▪ Thereafter	30%–37%
Newly listed companies at least 20% capital listed (3 years)	27%
Newly listed companies at least 30% capital listed (5 years)	25%
Newly listed companies at least 40% capital listed (5 years)	20%
Rental income (gross of KSh144 000 to 1 million)	10%
Real estate companies	15%
Presumptive tax	15%

Note: Different percentages apply for previous years.*

TABLE 14 Capital deduction rates

Capital deductions	Rate (%)
Investment deduction:	
Qualifying investment exceeding KSh200 million (outside Nairobi or the municipalities of Mombasa or Kisumu)	150
Other qualifying investment (including by EPZ and SEZ enterprises)	100
Industrial building allowance:*	
Certified education buildings (straight line)	50
Qualifying rental residential or commercial building allowance (straight line)	25
Other qualifying buildings (including hotels; straight line)	1
Wear and tear allowance:	
Plant and machinery (reducing balance):	
Class 1	37.5
Class 2	30
Class 3	25
Class 4	12.5
Telecommunication equipment (straight line)	20
Other allowances:	
Computer software (straight line)	20
Capital expenditure under a concessionaire arrangement	*Equal proportions during the period of the concession*
Mining-specified minerals:	
Year 1	*40*
Years 2–7	*10*
Farm works (straight line)	*100*

Note: Different percentages apply for previous years.*

Capital deduction rates

In Kenya, accounting depreciation or impairment are not allowable for taxation purposes. However, capital allowances are allowed at varying rates (on a straight line basis) for certain assets used for business purposes, including buildings and machinery used in manufacturing, industrial buildings and hotels, machinery and plant, agricultural works and mining. The current allowable capital deductions are listed in Table 14.

Withholding tax rates

The current applicable withholding tax (WHT) rates are as presented in Table 15. WTH is deductible on all payments made and is payable to the KRA by the entity making the payment (payer), on or before the 20th day of the month following the month in which the deduction is made. The non-resident WHT is a final tax.

TABLE 15 Withholding tax rates

	Resident	**Non-resident
Investment income:		
Dividend > 12.5% voting power	Exempt	10%
Dividend < 12.5% voting power	5%	10%
Dividends – deemed interest	NIL	15%
Dividends – paid by the SEZ entity	N/A	Exempt
Interest:		
Bearer instruments	25%	25%
Government bearer bonds (maturity ≥ 2 years)	15%	15%
Bearer bonds (maturity ≥ 10 years)	10%	N/A
Others	15%	15%
Qualifying interest::		
Housing bonds	10%	N/A
Bearer instruments	20%	N/A
Others	15%	N/A
Commissions– insurance brokers	5%	20%
Commissions– others	10%	20%
Royalties	5%	20%
Management, professional and training fees	5%	20%
Service of a petroleum or mining service subcontractor with no permanent establishment		5.625%
Transfer of petroleum or mining interest	10%	20%
Natural resource income	5%	20%
Contractual fees	10%	30%
Real estate rent	10%	30%
Telecommunication service fees	N/A	5%
Lease of equipment	N/A	15%
Pension and retirement annuities	0%–30%	5%
Sporting or entertainment income		20%
Winnings	20%	20%
Demurrage charges		20%
Insurance premiums except for aircraft		5%

*Note:** East African Community treated as residents.*

A petroleum company is required, under the Ninth Schedule to the Income Tax Act, to withhold 37.5% of deemed profit; i.e. 15% of the taxable service fee payable to a non-resident subcontractor. The amount of tax so charged is a final tax.

3.2.4. Compensating tax on dividends

Compensating tax is imposed on a company if it pays dividends from untaxed gains or profits. The company distributing the dividend shall be charged tax at the corporate tax rate of 30% on the gains or profits from which such dividends are distributed, in the year of income in which the dividends are distributed. As long as no tax was charged on the gains, tax will be charged in the year such gains are distributed with no regard to whether the company has made a loss or profit. Compensating tax shall not apply to registered collective investment schemes and electricity or power producers under a power purchase agreement. The tax is due and payable by the end of the 6th month following a company's financial year-end.

3.2.5. Turnover tax (TOT)

Turnover tax (TOT) was introduced by the Finance Act 2007 through the provision of the Income Tax Act, Cap. 470 as one of the approaches of taxing the informal sector. TOT came into effect on 1 January 2008. TOT is applicable to any resident person whose turnover from business is more than KSh500 000 and does not exceed KSh5 million, and is charged at the rate of 3% of turnover.

TOT is a final tax. TOT is applicable to the following businesses: trade, profession or vocation and every manufacture, adventure and concern in the nature of trade.

3.2.6. Presumptive tax

The Finance Act 2018 introduced presumptive tax at the rate of 15% of the business permit or licence fee for businesses whose turnover is below KSh5 million per annum. Presumptive tax is, therefore, a simplified tax regime for small and micro enterprises that is applicable to a resident person with a turnover from business not exceeding KSh5 million during a year of income. The tax is based on the value of a single business permit or a trade licence issued or renewed by a county government. This presumptive tax acts as a minimum tax, because it is not a final tax. The business has to compute turnover tax (TOT) and remit any tax in excess of the presumptive tax paid. However, this tax does not apply to corporate entities, rental income or income from management and professional services.

Presumptive tax becomes due once a single business permit or trade licence is acquired or renewed.

3.2.7. Transfer of interest in a person where value is derived from immovable property

The net gain from the disposal of interest in a person (where the interest derives 20% or more of its value directly or indirectly from immovable property in Kenya) is subject to tax. The net gain is taxable based on the formula prescribed as follows:

Taxable net gain amount = **A x B/C**

A is the amount of net gain

B is the value of interest/stake derived directly from immovable property

C is the total value of interest

Where:

- "Interest in a person" includes a share or other membership interest in a company, an interest in a partnership or trust, or any other ownership interest in a person;
- "Immovable property" includes a mining right, an interest in a petroleum agreement, mining information or petroleum information;
- "Net gain" in relation to disposal of an interest in a person means the consideration for the disposal reduced by the cost of the interest;
- "Consideration", in relation to the disposal of an interest in a person, a mining or petroleum right, or mining or petroleum information, means the total amount received or receivable for the disposal, including the fair market value of any amount in kind determined at the time of the disposal.

3.2.8. Natural resource income

Any amount paid by a person or entity to a county government, the national government or any other entity as consideration for the right to take minerals or a living or non-living resource from land or sea shall be subject to tax in Kenya. The withholding tax (WHT) rate thereof is 5% for residents and 20% for non-residents. Natural resources include quarries, minerals, fish and timber, etc.

3.2.9. Usage of tax losses

With effect from 1 January 2016, tax losses are deductible in the year in which they are incurred and can only be carried forward for the subsequent nine years. If the losses are not exhausted within those nine years, an application can be made to the cabinet secretary (The National Treasury), through the Commissioner of Domestic Taxes, to extend the period for claiming the tax losses beyond this period of 10 years. Capital losses realized in any given period can be used against capital gains earned in that period, insofar as such losses have not already been used against gains from subsequent periods. However, for companies operating in the extractive industry (i.e. mining, oil and gas), any losses incurred in a year of income can be carried forward indefinitely until fully exhausted.

For companies in the mining, oil and gas industries, any losses incurred in a year of income can be carried forward indefinitely. These companies are also allowed to carry back tax losses for a period of three years, from the year of income in which the loss arose and operations ceased. The licensee or contractor is, however, required to apply to the commissioner to allow the tax loss carry back.

3.2.10. Taxation of branch of a foreign company

The profit of a branch of a foreign company with a permanent establishment (PE) in Kenya is taxed at the branch income tax rate of 37.5%. In determining the profits of a branch, interest, royalties or management or professional fees paid to the head office are not tax deductible. However, withholding tax does not apply to these payments and there is also no further taxation on the distribution and remittance of branch after-tax profits.

3.2.11. Imposed limits on deduction of interest

Kenya has "thin capitalization" rules that restrict the deductibility of interest of a resident company. Thin capitalization occurs when a company's debt to equity ratio exceeds 3:1 and the company is under the control of a non-resident person, alone or together with four or fewer other persons, and where the company is not a bank or a financial institution licensed under the Kenyan Banking Act. Where a company is thinly capitalized:

- Interest is restricted to the extent of thin capitalization; and
- Foreign exchange losses, whether unrealized or realized, in respect of the related party loan(s) are not taken into account as deductible expenses.

A company is considered to be "controlled" by a non-resident person where the non-resident person holds 25% or more of the issued share capital in the company. "Debt" is deemed to comprise all types of financial indebtedness while "equity" is deemed to comprise all classes of share capital (including redeemable preference shares). Where the debt-to-equity ratio exceeds 3:1, such a company is said to be thinly capitalized and the interest on the loan that exceeds the ratio will be non-deductible for tax purposes. Additionally, where a company is thinly capitalized, the foreign exchange losses (whether realized or unrealized) in respect of loans are deferred and, hence, not tax deductible until the Kenyan entity ceases to be thinly capitalized.

For companies operating in the extractive sector (mining, oil and gas), the prescribed debt to equity ratio is 2:1.

3.2.12. Capital gains tax

Capital gains tax (CGT) was reintroduced with effect from 1 January 2015, and the tax rate for companies and individuals is currently 5% of the capital gains; i.e. the difference between the cost price and the selling price of the property. The gains from securities listed in the Nairobi Securities Exchange (NSE) were exempted from capital gains tax from 1 January 2016. However, effective 1 July 2018, only gains from transfer by life insurance businesses are exempt from capital gains tax.

3.2.13. Value-added tax (VAT)

VAT on supply of goods and local services

Value-added tax (VAT) is a tax on value addition and is accounted for using the input–output mechanism. VAT is chargeable on the supply of taxable goods and services as well as on the importation of goods and services into Kenya by a taxable person. The liability to VAT on imported goods is on the importer and is collected by the Customs Department of the Kenya Revenue Authority. The current applicable value-added tax (VAT) rates are listed in Tables 16 and 17.

TABLE 16 Standard VAT rates

Applicable on taxable goods and services	16%
Petroleum	8%

TABLE 17 Zero-rated supply

Applicable on exports and specified zero-rated goods and services	0%

VAT on imported services (reverse charge VAT)

Reverse VAT is VAT payable by a registered person on imported services. VAT-registered persons are required to account for reverse charge VAT.

Tax on the supply of imported taxable services is a liability of the registered person receiving the supply.

In instances where the importer of taxable services is not registered for VAT, the foreigner supplier of services is required to appoint a local tax representative who is required to account for VAT on the imported taxable services.

An importer of taxable services in Kenya shall be deemed to have made a taxable supply to himself or herself and VAT shall be charged on such supplies – called reverse VAT. The burden of tax is on the importer. However, where the supplies of a business are 100% vatable, reverse VAT will not apply.

3.2.14. Miscellaneous fees and levies

a. Import duty

Kenya applies tariffs based on the international Harmonized System of product classification, and applies import duties and tariffs as per the East African Community (EAC) Customs Management Act 2004. Imported goods are generally subject to import duty at varied rates, including 0% for raw materials and capital goods, 10% for intermediate goods and 25% for finished goods. In Kenya, some imports, especially agricultural products, are under EAC Common External Tariffs (CETs). From time to time, the EAC CETs are reviewed by the Council of Ministers of the EAC partner states and are effective once they are gazetted in each partner state. Enterprises established in an EPZ are exempt from customs duty on machinery and inputs for products manufactured for export, while licensed oil and gas contractors with a production sharing contract (PSC) with the Government of Kenya are exempt from customs duty on importation of machinery, spares and inputs used in exploration activities, excluding motor vehicles.

b. Excise duty

Excise duty is a tax charged on specific goods and services manufactured in Kenya or imported into Kenya, at varying rates specified in the Fifth Schedule to Excise Duty Act 2015, Cap. 472. In Kenya, excise duty is charged at both a specific rate where a specific amount of tax is charged per unit of measure on an excisable product, and an ad valorem rate where a percentage rate of duty is charged on the value of an excisable product. Every package of excisable goods, except motor vehicles, manufactured in or imported into Kenya are required to be affixed with an excise stamp. The affixed stamp aims to deter counterfeits and enable accounting for the production of excisable goods manufactured in or imported into Kenya.

The excisable goods and services are mostly those considered to be luxurious, addictive goods having negative effects and those that have low price elasticity, among others. The list and types of excisable goods and services and their respective rates are specified in the First Schedule of the Excise Duty Act 23 of 2015.

The excisable goods include bottled water, soft drinks, cigarettes, alcohol, fuels and motor vehicles, while excisable services include mobile cellular phone services, fees charged for money transfer services and other fees charged by financial institutions.

Most of the excise taxes are levied on a specific rate base. These include, but are not limited to, spirits, other alcoholic beverages (beer and wine), tobacco, soft drinks (water, juices and non-alcoholic beverages), motorcycles, fuel oils, kerosene and plastic bags. All excisable services, food supplements, cosmetics, beauty products and motor vehicles are charged at an ad valorem rate.

These rates are adjusted to incorporate inflation every two years using the formula shown below:

A (1 + B)

Where:

A is the rate of excise duty on the day immediately before the adjustment day.

B is the adjustment factor for the adjustment day, calculated as the average rate of monthly inflation of the preceding financial year, based on data from the Kenya National Bureau of Statistics (KNBS).

For example, the Kenyan annual average inflation rates for the years ended 30 June 2019 and 30 June 2018 were 5.7% and 5% respectively.

Exempt good and services in the Second Schedule of the Act include the following:

- Imports of excisable supplies to diplomatic or consular mission;
- Imports or purchases by a foreign government or international organization or supplies to them;
- Imports or purchases by the Kenya Red Cross;
- Imports by a person changing residence or a returning resident;
- Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces;
- Imports or purchases for direct and exclusive use in the implementation of projects under special operating framework arrangements with the government;
- A motor vehicle imported by a returning public officer from a Kenyan mission abroad and another for spouse.

c. Export levy

An export levy is charged on all goods specified in the First Schedule of the Kenyan Miscellaneous Fees and Levies Act 2016, which primarily includes hides, skins and other animal products used in production of leather and fur clothing at the rate of 80%, and waste and scrap metal of any kind at 20%. The export levy will be based on the higher of either the ad valorem rate or the specified rate in the Act. The Act also allows the commissioner to adjust the export levy annually for inflation. This levy is not charged on goods exported to East African Community member states or goods exported to export processing zones and special economic zones.

d. Catering and tourism development levy

The catering and tourism development levy is a tax currently levied at a rate of 2% on the gross sales derived from the sale of accommodation, food, drinks and all other services offered in scheduled establishments. This levy is payable to the Tourism Fund (TF) by the 10th day of the following month of sale.

e. National industrial training levy

The National Industrial Training Authority (NITA) administers the industrial training levy, which is mandatory for all employers. The levy is currently chargeable at a rate of KSh50 per employee per month. Employers remitting the tourism levy are exempted from the training levy. Contributing employers qualify for reimbursement by NITA for approved training expenses. Employers register directly with NITA in order to be able to remit the training levy. The registration process can be initiated online via www.nita.go.ke.

f. Stamp duty

Stamp duty in Kenya is charged on various legal documents and agreements as detailed in Table 18.

TABLE 18 Stamp duty rates

Description	Rate
Increase in share capital	1%
Transfer of stock or marketable security (no duty on quoted securities)	1%
Transfer of immovable property in:	
▪ Urban	4%
▪ Rural	2%
Debenture or mortgage:	
▪ Primary security	0.1%
▪ Auxiliary security	0.1%
Lease 1 and 2 years	1% of annual rent
Lease more than 2 years	2% of annual rent

However, the following transactions are currently exempt from stamp duty, upon application to the Collector of Stamp Duties at the Ministry of Lands:

- Husband and wife transfers;
- Transfer of family property to family members on demise of a family member in whose name the property was registered;
- Family-to-family controlled company land transfers;
- Transfer between holding and subsidiary companies with shareholdings not less than 90%;
- Transfer of land to charitable organizations as gifts;
- Transfer of land for school construction or development provided the land will not be used for any other purpose;
- Initial share capital of a limited company;
- An instrument executed for purposes of collection and recovery of tax as well as an instrument relating to the business activities of SEZ enterprises.

g. Anti-adulteration levy

This levy was introduced with effect from 1 July 2018 at a rate of KSh18 per litre of illuminating kerosene imported for home use and it is paid at the time of importation.

h. Standards levy

The standards levy is a statutory levy imposed through an Act of Parliament, Standards Act Cap. 496 of the Laws of Kenya. The Act requires that any person who or entity that manufactures or intends to manufacture any products in Kenya must notify the Kenya Bureau of Standards (KEBS) by completing the registration forms and delivering them to KEBS offices. The registration with KEBS is processed at their offices and registration forms can be obtained online from **www.kebs.org**.

The standards levy is charged at a rate of 0.2% of the ex-factory price (price excluding VAT and discounts, where applicable) recoverable at source in respect of manufactured goods each month. The maximum levy is KSh400,000 per year and the minimum amount payable is KSh1,000 per year. The levy is collected by the KRA on behalf of the Kenya Bureau of Standards (KEBS).

i. Railway development levy (RDL)

The railway development levy was introduced with effect from 1 July 2013 at a rate of 1.5% of the customs value of the goods payable by the importer of such goods at the time of entering the goods for home use. However, the following categories of imported goods are exempt from this levy in accordance with Part B of the Second Schedule of Miscellaneous Fees and Levies Act No. 29 of 2016:

- Goods for implementation of an official aid funded project;
- Those imported by the United Nations (UN) or its agencies;
- Goods from the EAC partner states provided they meet the EAC rules of origin;
- Items imported for construction of liquefied petroleum gas storage (approval by cabinet secretary required).

The railway development levy is collected at the point of importing goods and does not require separate registration.

j. Advance tax on motor vehicles

This is a tax paid in advance before a public service vehicle or commercial vehicle is licensed at the rates applicable. The tax rates for advance tax are:

- For vans, pick-ups, trucks, prime movers, trailers and lorries: KSh1,500 per ton of load capacity subject to a minimum of KSh2,400 per year of income;
- For saloons, station wagons, minibuses, buses and coaches: KSh60 per passenger capacity per month subject to a minimum of KSh2,400 per year of income.

Advance tax is not a final tax. Individuals who have paid any advance tax are required to declare the same in their individual income tax returns submitted yearly and pay any additional tax due.

k. Betting, lotteries and gaming taxes

Betting tax is chargeable at a rate of 15% of the gaming revenue. The tax is due and payable by the licensed book-maker by the 20th day of the month following the month of collection.

On the other hand, tax on lottery revenue is chargeable at a rate of 15% of the lottery turnover. This tax is due and payable by a person authorized to promote the lottery by the 20th day of the month following the month of collection.

Gaming tax is currently charged at a rate of 15% of the gaming revenue. This tax is due and payable by a person carrying on a gaming business on the 20th day of the month following the month of collection.

In addition, prize competition tax is chargeable on the cost of entry to a competition, which is premium rated at 15% of the total gross turnover. This tax is due and payable by the licensed person by the 20th day of the month following the month of collection.

3.2.15. National Social Security Fund contributions

Employers and employees are obligated to contribute monthly to the NSSF a standard contribution at a rate of 10% of the monthly income, with the employer and employee each contributing 50% to a maximum of KSh400 payable by 15th of the month following the month of deduction.

However, the new NSSF Act provides for a higher contribution rate of 6% of pensionable earnings with matching contribution from the employer. The lower earnings limit (LEL) is KSh6,000 and the upper earnings limit (UEL) is KSh18,000. Employees earning below the LEL have an upper limit of KSh720 (Tier1), while those earning between the LEL and the UEL have a limit of KSh1,440. However, the implementation of the new NSSF Act is awaiting the conclusion of a pending High Court case challenging its legality.

3.2.16. National Hospital Insurance Fund

Every employer has an obligation to deduct and remit NHIF contributions on a monthly basis. NHIF is payable by the employee at graduated bands, up to a maximum of KSh1,700 per month. The maximum contribution is reached at a salary level of KSh100,000 per month. There is no corresponding employer contribution. The current graduated scale is detailed in Table 19.

TABLE 19 NHIF graduated scale

Salary bracket in KES	Monthly contribution in KES
0–5999	150
6000–7999	300
8000–11999	400
12000–14999	500
15000–19999	650
20000–24999	750
25000–29999	850
30000–34999	900
35000–39000	950
40000–44999	1000
45000–49000	1100
50000–59999	1200
60000–69999	1300
70000–79999	1400
80000–89999	1500
90000–99999	1600
100000 and more	1700
Self-employed	500

3.2.17. Business permit

Every entity or person who carries on a business in Kenya is required to apply for a business permit from each county government or local authority where it has established operations. The business permit is normally charged on the basis of the size of the entity or individual business and is renewable on an annual basis.

3.2.18. Local government rent and rates

Rent and rates in Kenya are levied annually on properties, and the rateable value payable to the county government varies in each county based on various forms of ratings, such as area rate, agricultural rental value or site value.

3.2.19. East African Community (EAC) tax rates

The corporate tax and VAT rates currently in force in the countries that are members of the East African Community (EAC) free trade area are presented in Tables 20 and 21.

TABLE 20 EAC corporate tax rates

	Resident companies	**Non-resident companies**
Kenya	30%	37.5%
Uganda	30%	30%
Tanzania	30%	30%
Rwanda	30%	–
Burundi	30%	–

TABLE 21 EAC standard VAT rates

			Threshold for registration
Kenya		16%	KSh5 million
Uganda	Standard	18%	USHS 50 million
	On residential property	5%	
Tanzania		18%	TSHS 40 million
Rwanda		18%	RWF 20 million
Burundi (sales tax)		17%	FBU 100 million

4. KENYA REVENUE AUTHORITY (KRA)

The organization vested with the right to collect, assess and account for taxes in Kenya on behalf of the government is the Kenya Revenue Authority(KRA). The KRA is a body corporate that was established in 1995 under Section 3 of the Kenya Revenue Authority Act (Cap. 469 of the Laws of Kenya – revised in 2012). The KRA's core functions are the assessment and collection of revenue, the administration and enforcement of the laws relating to revenue, and to advise the government on all matters relating to the administration and collection of revenue under the written laws or the specified provisions of the written laws set out in the First Schedule (revised in 2012) of Cap. 469 Kenya Revenue Authority, and to perform such other functions in relation to revenue as the minister may direct from time to time.

5. OTHER REGULATORY BODIES

Other bodies that regulate investments and business operations in Kenya are presented in Table 22.

TABLE 22 Other regulatory bodies

Entity	Mandate and functions
The National Treasury (Ministry of Finance)	This ministry formulates financial and economic policies and oversees effective coordination of government financial operations and management of public finances for the rapid and sustainable economic development of the country, deriving its mandate from the Constitution 2010, the Public Finance Management Act (PFMA) of 2012 and the Executive Order No. 2/2013. The PFM Act provides for the effective management of public finances by the national and county governments, the oversight responsibility of parliament and county assemblies, and the different responsibilities of government entities and other bodies.
Central Bank of Kenya (CBK)	The CBK was established in 1966 under the Central Bank of Kenya Act No. 15 of 1966, following the dissolution of East African Currency Board. The CBK is responsible for formulating monetary policy to achieve and maintain stability in the general level of prices. The CBK also fosters the liquidity, solvency and proper functioning of a stable market-based financial system and an effective and efficient payment, clearing and settlement system, formulates and implements foreign exchange policies, holds and manages foreign exchange reserves, issues of currency, and is the banker for, adviser to and fiscal agent of the Government of Kenya. The CBK has its head office in Nairobi, and branch offices in Mombasa City, Kisumu City and Eldoret Town.
Kenya Investment Authority (KenInvest)	KenInvest is a statutory body established in 2004 through an Act of Parliament, the Investment Promotion Act No. 6 of 2004, with the main objective of promoting investments in Kenya. It is responsible for facilitating the implementation of new investment projects, including assisting investors in obtaining licences, permits, incentives and exemptions, and providing "after-care services" for new and existing investments, as well as organizing investment promotion activities both locally and internationally.
Ministry of Industry, Trade and Cooperatives	This is the ministry that is mandated to promote industrialization and enterprise development through: industrialization and cooperative policy formulation and implementation, implementation of the industrial property rights regime, private sector development policy and strategy, quality control (including industrial standards development), cooperative savings, credit and other financial services policy and regulation, and development of micro, small and medium-sized enterprises and Buy Kenya-Build Kenya.
Ministry of Lands and Physical Planning	The ministry is headquartered at Ardhi House and its core functions include: national lands policy and management, physical planning for land use, land transactions, survey and mapping, land adjudication, settlement matters, rural settlement planning, land registration, national spatial data infrastructure, land and property valuation services and land administration. The ministry has got land registries (offices) spread across all the 47 counties of the country.
Catering and Tourism Development Levy Trustees (CTDLT)	The CTDLT is a body corporate that was established in 1972 under Section 18 of the Hotels and Restaurants Act (Cap. 494 of the Laws of Kenya – repealed in 1997). CTDLT's core functions are: (a) to control and administer the fund; (b) to establish, equip and control such establishments for the training of persons for employment in hotels and restaurants as the minister may approve; (c) establish and develop national standards for testing the skills required by the tourism industry; and (d) make such payments out of the fund as may be necessary to enable the Kenya Tourist Board to promote Kenya as a tourist destination both locally and internationally.
Export Processing Zones Authority (EPZA)	The Export Processing Zones Authority (EPZA), a state corporation under the Ministry of Industry, Trade and Cooperatives, was established in 1990 under the EPZ Act, Cap. 517 of the Laws of Kenya. The EPZA's mandate is to promote and facilitate export-oriented investments and to develop an enabling environment for such investments. The EPZA is the regulator of all EPZs. The EPZA, under the EPZ programme, offers a range of fiscal, physical and procedural incentives to investors to ensure fast set-up, low cost and smooth operations for export-oriented businesses.

Entity	Mandate and functions
BrandKE (Kenya Export Promotion and Branding Agency)	The Kenya Export Promotion and Branding Agency (KEPROBA), commonly referred to as "BrandKE", is a new State Corporation established in August 2019, under the State Corporations Act Cap 446, through the merger of the former Export Promotion Council and the Brand Kenya Board. BrandKE aims to develop and implement export promotion and nation branding initiatives and policies to promote Kenya's export of goods and services.
Special Economic Zones Authority (SEZA)	The SEZA is a state corporation under the Ministry of Industry, Trade and Cooperatives, which was established in 2015 under the Special Economic Zones Authority (SEZA) Act No. 16 of 2015. SEZA is the regulator of all special economic zones (SEZs) in the country. It is responsible for designing, approving, establishing, developing, operating, promoting and regulating SEZs, and licensing and implementing government policies and programmes. In addition, the authority is in charge of determining the investment criteria and investment thresholds for the businesses in the zones and maintains records of the enterprises and residents operating in each zone.
Kenya Bureau of Standards (KEBS)	KEBS is a state corporation under the Ministry of Industry, Trade and Cooperatives and was established in 1974 under the Standards Act, Chapter 496 of the Laws of Kenya. KEBS has remained the premier government agency for the provision of Standards, Metrology and Conformity Assessment (SMCA) services since its inception in 1974. KEBS is also responsible for the imposition and administration of the standards levy in Kenya. Over the years, the main activities of KEBS have expanded from the development of standards and quality control for a limited number of locally made products in the 1970s to the provision of more comprehensive standards development, metrology, conformity assessment, training and certification services. With the re-establishment of the East African Community (EAC) and Common Market for Eastern and Southern Africa (COMESA), KEBS activities now include participation in the development and implementation of SMCA activities at the regional level, where it participates in the harmonization of standards, measurements and conformity assessment regimes for regional integration. KEBS operates the National Enquiry Point in support of the World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement.
National Industrial Training Authority (NITA)	NITA is a newly established state corporation (former Directorate of Industrial Training) under the Ministry of East African Community, Labour and Social Protection. It was established under the Industrial Training (Amendment) Act of 2011. Its mandate is to promote the highest standards in the quality and efficiency of industrial training in Kenya and ensure an adequate supply of properly trained manpower at all levels in the industry. NITA is responsible for the regulation and provision of industrial training in Kenya, development and harmonization of industrial training curricula and assessment guidelines, assessing industrial training, testing occupational skills, awarding certificates (including government trade test certificates), equating certificates, accrediting institutions engaged in industrial training, integrating labour market information into skills development, and assessing, collecting and administration of the industrial training levy, fees and penalties due as per the NITA Act. NITA's headquarters are in Nairobi and industrial training centres are in Kisumu (Kisumu Industrial Training Centre), Mombasa (Mombasa Industrial Training Centre) and Athi River (Technology Development Centre). Two other centres (the Kenya Textile Training Institute and the National Industrial and Vocational Training Centre) are located at NITA headquarters.

Entity	Mandate and functions
National Environmental Management Authority (NEMA)	NEMA is a state corporation established in 2002 under the Environmental Management and Co-ordination Act No. 8 of 1999 (EMCA) in the Ministry of Environment and Forestry, and the principal instrument of government for the implementation of all policies relating to the environment. NEMA's core mandate is to exercise general supervision and coordination over all matters relating to the environment and to be the principal instrument of the Government of Kenya in the implementation of all policies relating to the environment in all sectors within the country. NEMA has established branch offices in most major towns in the country, for ease of providing services to its customers. NEMA currently issues a wide range of environmental licences and permits under various environmental regulations. These include licences for: ▪ Environmental Impacts Assessment (EIA) ▪ Effluent discharge ▪ Waste management, transporters, incinerators and recyclers ▪ Import–export for controlled substances Permits for: ▪ Access to genetic resources ▪ Trans-boundary movement of waste ▪ Sand harvesting sale and transportation
Kenya Ports Authority (KPA)	Established in 1978 under the Kenya Ports Authority Act, Cap. 391, the Kenya Ports Authority (KPA) is a state corporation whose mandate is to manage and operate the Port of Mombasa and all scheduled seaports along Kenya's coastline, which include Lamu, Malindi, Kilifi, Mtwapa, Kiunga, Shimoni, Funzi and Vanga. In addition, the authority manages inland waterways, as well as inland container depots at Embakasi, Eldoret and Kisumu. The Port of Mombasa is the gateway to East and Central Africa, and is one of the busiest ports along the East African coastline. The port provides direct connectivity to more than 80 ports worldwide and is linked by road to a vast hinterland comprising Uganda, Rwanda, Burundi, Eastern Democratic Republic of the Congo, Northern Tanzania, the Republic of South Sudan, the Federal Republic of Somalia and the Federal Democratic Republic of Ethiopia. A railway line also runs from the port to Uganda and Tanzania. KPA is responsible for setting port tariffs and imposing and collecting port charges for goods imported through Kenyan ports, including shipping lines' fees and demurrage charged per day after expiry of the allowed free period.
Kenya Association of Manufacturers (KAM)	KAM was established in 1959 as a private sector body and has evolved over the years into a dynamic, vibrant, credible and respected business association that unites industrialists and offers a common voice for businesses. KAM is the representative organization for manufacturing value-add industries in Kenya. It provides an essential link for cooperation, dialogue and understanding with the government by representing the views and concerns of its members to the relevant authorities. In pursuit of its core mandate of policy advocacy, KAM promotes trade and investment, upholds standards, and encourages the formulation, enactment and administration of sound policies that facilitate a competitive business environment and reduce the cost of doing business.
County governments	The Constitution of Kenya 2010 created a decentralized system of government wherein two of the three arms of government, namely the Legislature and the Executive, are devolved to the 47 political and administrative counties as provided for under Article 6 and specified in the First Schedule. The primary objective of decentralization is to devolve power, resources and representation down to the local level. Article 209(3) of the Kenyan Constitution 2010 empowers county governments to impose property taxes, entertainment taxes and any other tax as authorized by an Act of Parliament. In addition, a county government may impose charges on services provided at the local level.

PART II:
Tax laws in force

PART II

In Kenya, taxes are categorized under two main heads: direct and indirect taxes. Indirect statutory taxes apply when the purchase of goods are made. The various taxes under this category are excise duty, customs duty and levies and value-added tax (VAT). On the other hand, income tax falls under direct taxes. The various tax laws in force in Kenya are presented below.

6. INCOME TAX ACT

The Income Tax Act (ITA), Cap. 470 of the Laws of Kenya, was enacted in 1973 and became operational from 1 January 1974. The ITA is the principal legislation that provides for the charge, assessment and collection of income tax, for the ascertainment of the income to be charged, for the administrative and general provisions relating thereto, and for matters incidental to and connected with the foregoing. Income tax is a direct tax charged on incomes of individuals and corporate entities. The principle law of the Income Tax Act has 14 parts, 133 sections and 13 schedules, and it has been amended through the Finance Act every year after the reading and passing of the national budget by parliament. The administration of various direct taxes, which have different rates, is undertaken by the Income Tax Department at the KRA.

7. VALUE ADDED TAX ACT

The principal legislation that governs the imposition and administration of value-added tax (VAT) in Kenya is the Value Added Act, Cap. 476 of the Laws of Kenya. Following the value added replacement of sales tax with VAT on 1 January 1990, further reforms and rationalization were continued, involving the lowering of the top rate from 150% to the standard rates of 16% and reduction of the number of tax rates from 15 in 1990 to three currently. VAT in Kenya is an indirect tax on consumption that is assessed on the increased value of goods at each discrete point in the chain of production and distribution, from the raw material stage to final consumption. The tax on processors or merchants is levied on the amount by which they increase the value of items they purchase and resell.

8. EXCISE DUTY ACT

The Excise Duty Act 2015, which became effective on 1 December 2015, repealed the Customs and Excise Act, Cap. 472 of the Laws of Kenya that previously administered excise duty in Kenya. This new Act provides for the management, administration, charging, assessment and collection of excise duty in Kenya. The Act significantly changed the excise duty structure from ad valorem to specific, save for food supplements, motor vehicles and cosmetics, and also empowered the commissioner general to adjust specific duty rates annually to take into account inflation.

The excisable goods and services are mostly those considered to be luxurious, addictive, goods having negative effects and those that have low price elasticity, among others. The list and types of excisable goods and services and their respective rates are listed in the First Schedule of Excise Duty Act 2015. The excisable goods include bottled water, soft drinks, cigarettes, alcohol, fuels and motor vehicles, while excisable services include mobile cellular phone services, fees charged for money transfer services and other fees charged by financial institutions.

9. CUSTOMS AND EXCISE DUTY ACT

The Customs and Excise Act, Cap. 472 of the Laws of Kenya became effective on 21 September 2016 (it repealed the Customs and Excise Act of 13 October 1978) and is the principal legislation that governs the management and administration of the customs and excise duties, for the assessment, charge and collection of customs and excise duties and for related and connected matters in Kenya. This was before it was rendered moribund, firstly by the enactment of the East African Community Customs Management Act (EACCMA) in 2004, which took over the imposition and administering of customs duty, and secondly by the repeal of the Customs and Excise Act, Cap. 472 in 2015. Currently, any customs policy and duty changes or amendment requires consultations and agreement between the EAC member states, as provided by the protocol on the establishment of the East African Customs Union.

10. EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT

The East African Community Customs Management Act (EACCMA) was enacted in 2004 and became effective on 1 January 2005. The Act repealed the Customs and Excise Act, Cap. 472 of the Laws of Kenya. The Act has undergone several amendments since its enactment, including through the East African Community Customs Management (Amendment) Act 2011, East African Community Customs Management (Amendment) Act 2015, various annual EAC gazette notices and other subsidiary legislation.

11. MISCELLANEOUS FEES AND LEVIES ACT

The Miscellaneous Fees and Levies Act 2016, which became effective on 21 September 2016, is the principal legislation that governs the imposition and collection of levies, namely the export levy, import declaration fees and the railway development levy (RDL), which were previously regulated by the repealed Customs and Excise Act, Cap. 472. The Act introduced notable changes that essentially had the effect of reducing import fees for importers.

Under this Act, the Commissioner of Customs and Border Control is responsible for the control, collection of and accounting for the export levy, import declaration fees and the RDL subject to the direction and control of the Cabinet Secretary for Finance.

12. TAX PROCEDURES ACT

The Tax Procedures Act (TPA) No. 29 of 2015 became effective on 19 January 2016.The TPA's objectives are to provide uniform procedures for consistency and efficiency in the administration of tax laws, facilitate tax compliance by taxpayers, and promote the effective and efficient collection of tax. This Act essentially, by deletion, amended the provisions of the Income Tax Act and the Value Added Tax Act.

The TPA also harmonized and consolidated the tax procedural rules. For example, the TPA provides that a taxpayer should keep records for five years. Previously, the different tax laws, such as the VAT Act 2013, Income Tax Act, and Excise Act, prescribed different timeframes that records should be kept by a taxpayer.

13. THE TAX APPEAL TRIBUNAL ACT

The Tax Appeal Tribunal Act 2013, which became effective on 1 April 2015, established one tribunal responsible for hearing and determining appeals filed against any tax decision made by the Commissioner of Domestic Taxes with respect to income tax, value-added tax, customs and excise or any other tax administered by the Commissioner of Domestic Taxes. Previously, income tax matters were heard and determined by the local committee, whereas VAT matters were heard and determined by the Tax Tribunal. The Act, therefore, repealed the various tribunals set out under the Value Added Tax Act 2013, the Income Tax Act (Cap. 470) and the Customs and Excise Act (Cap. 472). Consequently, the Tax Appeal Tribunal now hears and determines all tax cases arising under the various tax statutes in Kenya.

14. OTHER TAXES AND STATUTORY DEDUCTIONS

The other taxes, levies and statutory deductions applicable in Kenya are presented in Table 23.

TABLE 23 Other taxes and statutory deductions

Stamp Duty Act	The Stamp Duty Act, Chapter 480 amendment provisions became effective on 1 October 1958, and is the principal legislation that provides for the levying and management of stamp duties, and for purposes connected there with and incidental there to. The Act has had several repeals and amendments over the years, the latest being Act No. 4 of 2012.
Capital gains tax (CGT)	Capital gains tax (CGT) is a tax chargeable on the whole of a gain that accrues to a company or an individual on or after 1 January 2015 on the transfer of property situated in Kenya, whether or not the property was acquired before 1 January 2015 (Finance Act No. 16 of 2014). Capital gains tax (CGT) had been suspended in Kenya since 1985. However, with effect from 1 January 2015, CGT was reintroduced on the transfer of property situated in Kenya, whether or not the property was acquired before 1 January 2015. The tax is levied at a rate of 5% on the net transfer value over adjusted cost. It is a final tax and cannot be offset against other income taxes. According to KRA, CGT is a transaction-based tax and should, therefore, be paid upon the transfer of property, but not later than the 20th day of the month following the completion of the transfer. Its introduction was marked by various challenges in its implementation and administration, especially in relation to gains realized from listed securities. However, effective 1 January 2016, securities traded in the Nairobi Stock Exchange (NSE)were exempted from CGT.
Standards Act	The Standards Act, Chapter 496 of the Laws of Kenya, was enacted in 1974 and is principal legislation that establishes the Kenya Bureau of Standards (KEBS) and its operations, regulates the setting, management, maintenance and control of standards in Kenya, and also the imposition and administration of the standard levy.
Central Bank of Kenya Act	The Central Bank of Kenya (CBK) was established in 1966 under the Central Bank of Kenya Act No. 15 of 1966 following the dissolution of East African Currency Board. The Central Bank of Kenya Act has been repealed and amended several times over the years, culminating in the consolidated Central Bank of Kenya Act, Chapter 491 of the Laws of Kenya, 2014. The CBK Act is the principal legislation that establishes the Central Bank of Kenya and provides for its operation, including the establishment of its currency, its constitution and objects. It provides guidelines for the determination of its capital reserves, management, currency and external relations, regulations of foreign exchange dealings, relations with specified banks and relations with public entities, and also oversees the implementation of the Banking Act, Cap. 488 of 2016 (as amended in November 2018).
Investment Promotion Act	The Investment Promotion Act of 2004, of the Laws of Kenya is the principal legislation that establishes the Kenya Investment Authority and the Kenya Investment Council, and provides for their objectives, mandates and operations, with the objective of promoting investments in Kenya.
Betting, Lotteries and Gaming Act	The Betting, Lotteries and Gaming Act (2016), Cap. 131 of the Laws of Kenya is the one that sets out the rules and regulations of betting, lotteries, gaming and competition in Kenya, including the imposition, administration and collection of betting, lotteries and gaming taxes.
Hotels and Restaurants Act	The Hotels and Restaurants Act, Cap. 494 of the Laws of Kenya, which commenced on 1 February 1972, is the principal legislation that provides for the licensing of hotels, hotel managers and restaurants, the regulation of hotels and restaurants, the imposition of a levy by the Catering Levy Trustees (CLT), for training persons to be employed in hotels and restaurants, and matters incidental to and connected with the foregoing. In 1997, the Hotels and Restaurants Act was amended to enhance the mandate of CLT, and the name of Trustees was also changed to Catering and Tourism Development Levy Trustees (CTDLT).
Export Processing Zones Act	The Export Processing Zones Act, Cap. 517 of the Laws of Kenya was enacted in 1990 (revised in 2007). The EPZ Act provides for the establishment of export processing zones and the Export Processing Zones Authority, with the objective of providing for the promotion and facilitation of export-oriented investments and the development of an enabling environment for such investment and for connected purposes.

Special Economic Zones Act	The Special Economic Zones Act 2015 that establishes special economic zones (SEZs) came into force on 15December 2015 (and revised in 2017). It provides for the establishment of special economic zones, the promotion and facilitation of global and local investors, the development and management of an enabling environment for such investments, and for connected purposes.
National Industrial Training Act	The National Industrial Training (Amendment) Act of 2011 is the principal legislation that establishes the National Industrial Training Authority, its objects, mandate, operations and the entire legal and institutional framework for industrial training in Kenya, including ensuring an adequate supply of properly trained manpower at all levels in the industry.
National Environmental Management Act	The Environmental Management and Co-ordination Act No. 8 of 1999 (EMCA) is the principal legislation that provides for the establishment of the National Environmental Management Authority (NEMA) and its objectives, mandate and operations, including the legal and institutional framework for environmental management in Kenya.
National Social Security Fund Act	The National Social Security Fund Act, Cap. 258 of the Laws of Kenya (as repealed with effect from 10 January 2014) is the principal legislation that establishes the National Social Security Fund (NSSF), and the body mandated to collect and administer pension contributions in Kenya, and provides for contributions to and the payment of benefits out of the fund and for matters connected therewith and incidental thereto.
National Hospital Insurance Fund Act	The National Hospital Insurance Act of 1966, Cap. 255 of the Laws of Kenya (as repealed by Act No. 9 of 1998 with effect from 15 February 1999) is the principal legislation that establishes the National Hospital Insurance Fund (NHIF) in Kenya, its objectives, mandate and operations, and provides for contributions to and the payment of benefits out of the fund, as well as running a national health cover. It also establishes the National Hospital Insurance Fund Management Board and for matters connected therewith and incidental thereto.
National Housing Development Fund (NHDF) Regulations	The Finance Act 2018 amended the Employment Act 2007 to introduce a National Housing Development Fund (NHDF) levy with the objective of financing the implementation of the Government's Affordable Housing Scheme under the Big 4 Agenda. This was followed by the development and gazettment of the National Housing Development Fund Regulations 2018 on 17 December 2018, which prescribes the requirements for qualification to the scheme. All employers are expected to deduct and remit the deductions to the National Housing Development Fund (NHDF) every month. As of today, in 2020, the course suspended the 1.5% levy payable by employers until further notice. The National Housing Development Fund (NHDF) will be under the control of the National Housing Corporation (NHC) as provided for in the Housing Act, Cap. 117.
Transfer Pricing Rules	The Income Tax (Transfer Pricing) Rules 2006, which were enacted in 2006 and became effective from 1 July 2006, are significantly borrowed from the "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations". The rules require all transactions between related parties (where one party is resident in Kenya and the other outside Kenya) to be documented in accordance with set-out guidelines. The rules also apply to transactions between a head office and its branch (or other related branches). Resident-related parties are required to adhere to the arm's length principle for any related party transactions if one of the parties is operating under a preferential tax regime; i.e. one that includes a reduction in the tax rate or the tax base. The main objective of the rules is to ensure that any transfer prices charged between related parties satisfy the arm's length principle. The rules set out: ■ The entities and related party transactions under review; ■ The methodologies that may be used by the entities in determination of the arm's length transfer price; and ■ The records pertinent to the stipulated transactions that must be maintained.

PART III:
Tax compliance

15. BODIES RESPONSIBLE FOR TAX COLLECTION

Table 24 lists the bodies and entities legally mandated to collect taxes in Kenya.

TABLE 24 Bodies legally mandated to collect taxes in Kenya

No.	Description of the tax or levy	Body responsible for collection
1	Corporation income tax	KRA
2	Pay as you earn (PAYE)	KRA
3	Withholding tax (WHT)	KRA
4	Fringe benefit tax (FBT)	KRA
5	Advance tax	KRA
6	Instalment tax	KRA
7	Turnover tax (TOT)	KRA
8	Rental income tax	KRA
9	Presumptive tax	KRA
10	Value-added tax (VAT)	KRA
11	Customs duty	KRA
12	Import duty	KRA
13	Excise duty	KRA
14	Capital gains tax (CGT)	KRA
15	Stamp duty	Collected by KRA on behalf of the Ministry of Lands
16	Betting and pool tax	Collected by KRA on behalf of Betting Control and Licensing Board
17	Land rates and taxes	County governments
18	Business permit	County governments
19	Entertainment levies	County governments
20	Tourism catering levy	Tourism Fund
21	NSSF contributions	Collected by KRA on behalf of NSSF
22	NHIF contributions	NHIF
23	Standards levy	Kenya Bureau of Standards (KEBS)
24	Training levy	NITA
25	Port charges	KPA

16. PROCEDURES AND REQUIREMENTS FOR TAX REGISTRATION

The Tax Procedures Act requires a person or entity to apply for registration as a taxpayer to the Commissioner of Domestic Taxes within 30 days after the person has accrued a tax liability or expects to accrue a tax liability under the Income Tax Act or the VAT Act 2013. The person is also required to apply for deregistration within 30 days once the person ceases to meet the registration requirements for the purpose of a tax law. This provision creates certainty of when a person is supposed to register or deregister for tax purposes.

17. TAX COMPLIANCE CERTIFICATE

A tax compliance or a tax clearance certificate is an official document issued by KRA to a taxpayer as proof of having filed and paid all taxes. A tax compliance certificate is valid for 12 months only. KRA requires a taxpayer to lodge an application for a tax compliance certificate through the iTax platform seven days prior to expiry of the previous one. A taxpayer seeking a tax compliance certificate must be compliant in:

- Filing of tax returns on or before the due date for all applicable tax obligations;
- Payment of tax on or before the due date;
- Clearance of all outstanding tax debt.

Once processed, the certificate is sent to applicants' e-mail address.

18. DUE DATES FOR FILING TAX RETURNS AND REMITTING TAXES

Table 25shows the due dates for filing tax returns and remitting the various taxes in Kenya.

TABLE 25 Due dates for filing and paying taxes in Kenya

No.	Return due date	Return due date	Tax/levy payment due date
1	Corporation income tax	Last day of the 6^{th} month after the company's year end	20^{th} day of the 4^{th} month after the company's year-end
2	Pay as you earn (PAYE)	9^{th} day of the following month	9^{th} day of the following month
3	Withholding tax (WHT)	20^{th} day of the following month	20^{th} day of the following month
4	Fringe benefit tax (FBT)	20^{th} day of the following month	20^{th} day of the following month
5	Advance tax	Quarterly by 20^{th} day of the month following end of the quarter	20^{th} day of the month following end of each quarter
6	Instalment tax	20^{th} day of the 4^{th}, 6^{th}, 9^{th} and 12^{th} months	20^{th} day of the 4^{th}, 6^{th}, 9^{th} and 12^{th} months
7	Turnover tax (TOT)	20^{th} day of the following month	20^{th} day of the following month
8	Presumptive tax	Annually	Every January, when renewing the single business permit
9	Rental income tax	20^{th} day of the following month	20^{th} day of the following month
10	Value-added tax (VAT)	20^{th} day of the following month	20^{th} day of the following month
11	Customs duty	On import or export	On import or export
12	Import duty	On importation	On importation
13	Excise duty	On ex-factory time	On ex-factory time
14	Capital gains tax (CGT)	On lodgement of transfer documents	On lodgement of transfer documents
15	Stamp duty	Within 30 days if documents are prepared within Kenya; 30 days after receipt of documents in Kenya for registration if documents were prepared outside Kenya	Within 30 days if documents are prepared within Kenya; 30 days after receipt of documents in Kenya for registration if documents were prepared outside Kenya
16	Betting and pool tax	20^{th} day of the following month	20^{th} day of the following month
17	Land rates and taxes	Before commencement of every calendar year	Before commencement of every calendar year
18	Business permit	Before commencement of calendar year/business	Before commencement of calendar year/business
19	Entertainment levies	Before commencement of calendar year/business	Before commencement of calendar year/business
20	Tourism catering levy	10^{th} day of the following month	10^{th} day of the following month
21	NSSF contributions	15^{th} day of the following month	15^{th} day of the following month
22	NHIF contributions	9^{th} day of the following month	9^{th} day of the following month
23	Kenya Bureau of Standards (KBS) levy	20^{th} day of the following month	20^{th} day of the following month
24	Training levy	10^{th} day of the following month	10^{th} day of the following month

19. PRACTICAL TAX FILING AND PAYMENT PROCEDURES

The procedures for filing and paying the various taxes currently applicable in Kenya are presented in Table 26.

TABLE 26 Tax filing and payment procedures

Type of tax	Filing and payment procedures
Pay as you earn (PAYE)	PAYE is deducted monthly at the prevailing individual income tax rates, on or before 9th of the following month. The employer deducts the PAYE due from each employee. The employer files a PAYE return online via iTax. Companies and partnerships without PAYE to remit should file a NIL return via iTax. After filing the PAYE return, generate a payment slip online via iTax and make payment at any of the KRA-appointed banks.
Corporate income tax (CIT)	CIT is filed online via iTax by filing an Income Tax Company Return (IT2C form) on or before end of the 6th month after the end of an accounting period. The return covers one fiscal year, which is a period of 12 months within which the corporation chooses to make its financial statements. For payment of CIT: generate a payment slip via iTax and make payment at any of the KRA-appointed banks. However, if the company's annual tax liability is projected to exceed KSh40,000, then instalments taxes should be filed and paid via iTax. This is called instalment tax.
Withholding tax (WHT)	Payment is done via iTax. Generate a payment slip and present it, with the tax due, at any of the KRA-appointed banks. After successful payment of withholding tax, both the payer or withholder and the person from whom the WHT is deducted will receive a withholding certificate via e-mail.
Residential rental income tax	Residential rental income is taxed at 10% on the gross rent received and no expenses are allowed. The tax should be filed monthly via iTax on or before the 20th of the following month. Residential rental income is for residential rental premises whose rental income per year does not exceed KSh10 million.
Value-added tax (VAT)	VAT returns are filed online via iTax on or before the 20th of the following month, by filling a VAT return (VAT 3 form). After filing your VAT returns online, one should generate a payment slip for any tax due and make payment to any of the KRA-appointed banks or through any mobile money transfer platform.
Excise duty	Excise duty on imports is paid at the port of entry. Domestic excise duty on the sale or use of specific goods and services, such as tobacco products and alcohol, should be paid by 20th day of the following month. To pay excise duty, one should generate a payment slip via iTax and present it to any of the KRA-appointed banks to make the payment.
Customs and import duty	Customs or import duty is paid at the port of entry. All customs procedures are declared in a single entry form known as C17B online through the Integrated Customs Management System (iCMS), (previously the Simba system). The clearing agent completes the entry and assesses duty and taxes. The importer then pays duties and taxes at the bank and presents the entry plus all supporting documents to customs.

Type of tax	Filing and payment procedures
Capital gains tax (CGT)	CGT is due and payable on or before the date of lodgement of application documents for transfer of property at the lands office.
Stamp duty	Stamp duty is payable to the government at different rates, depending on the nature of the instrument. Stamp duty due date depends on where transaction documents were prepared: If prepared in Kenya – payment should within 30 days. If prepared abroad and sent for registration locally – payment should be within 30 days of receiving the documents. Payment for stamp duty is made as follows: ▪ Present the legal instrument for assessment. ▪ Go to the KRA website, iTax, and print the payment slip. ▪ Make payment at a KRA-appointed bank. ▪ Present the copies of payment slip and banking slip for confirmation of payment. ▪ After confirmation, present the legal instruments for franking. ▪ Collection of the franked documents ready to be presented for registration.
Betting and pool tax	The tax rate for betting, lottery, gaming and competition prizes is 15%. Withholding tax on winnings is 20%. Generate a payment slip online via iTax. Use the payment slip to make the payment at any of the KRA-appointed banks.

20. INCOME TAX AND VAT REFUND PROCEDURES

The Tax Procedures Act 2015 provides for the application for refunds by taxpayers for overpaid taxes, within one year of the date of payment. However, it also provides that the Commissioner for Domestic Taxes may subject the refund claim to an audit process to verify the claimed amount.

Income tax refunds procedures

A taxpayer should take the following steps when applying for an income tax refund from KRA:

- You should log in to the KRA iTax portal using the KRA PIN and password you used at the time of registration or filing your returns.
- After you have logged in, click to refunds, which will display a dialogue box, and choose the applicable type of KRA refund application; i.e. for an income tax refund, select the income tax and fill in all the required sections.
- Complete the KRA refund form with the relevant information required, bank details where you wish your funds to be sent, and the KRA refund claim reason for asking for the income tax refund and refund type, e.g. normal, description and the amount you wish to be refunded.
- Submit your request by clicking the submit option that is displayed after confirming and verifying your details.
- After submitting the complete income tax refund form, you will receive an acknowledgement receipt number for your refund application.
- You will then be required to save the receipt, as you may need to use it for follow-up with the KRA customer care.

All refunds are processed within a maximum of 90 days from the day of submission of the income tax refund form for normal refunds.

Vat refund claiming and processing procedures

VAT refunds are claimed using two types of forms:

- VAT 4 for refunds arising from zero rating, physical capital investment, rebate of bad debts and tax pain in error.
- VAT 5 for claim for relief from tax paid on stock, assets and buildings by a newly registered person.

All refund claims are submitted to the KRA headquarters, where they are sorted, numbered and recorded both in the manual books and on the computer. Refund claims that are not accepted are immediately returned to the claimant with appropriate comments that are entered into the manual register. Such claims are normally time barred and those with inadequate supporting documents are returned.

All claims by registered persons must be accompanied by the appropriate copies of the monthly returns for the period of claim. Other documents, such as invoice and import entries, are just listed on the VAT 4 form and are presented to the department during audit or when demanded.

Claims by unregistered persons and those arising from tax paid in error, bad debts, refund on public interest and physical capital investments must be accompanied by the relevant documents.

The VAT Act currently provides for payment of claims of KSh1 million and more on the basis of an auditor's certificate issued by the claimant's auditor. Such claims are, therefore, paid without prior audit by the department unless the claimant is lodging a claim for the first time or the department has valid reason for such audit. Claims of less thanKSh100,000 are also paid without prior audit unless the department has similar reasons to carry out an audit.

Claims paid on the basis of auditors' certificates are audited during normal verification of the taxpayer's records. However, every now and then, the department selects claims for immediate post-payment audits to confirm genuineness and correctness.

For a registered taxpayer, refund is paid only if the monthly returns are up to date. Any claims that are more than 12 months old are time barred.

In order to minimize risk of cheques diversion, all refunds, except for unregistered persons, are paid directly through bank transfers to the claimants' accounts.

Although the KRA recently committed through the Taxpayers Charter to refund claims within 60 days, the current backlog extends to 120 days.

21. EXCHANGE CONTROL

There are no controls on foreign exchange in Kenya. The country repealed all exchange control laws in 1993, and all current account and capital account restrictions were lifted in1993–1994, thereby moving to a fully market-determined exchange rate system. However, the Central Bank of Kenya Act provides that, for every payment made in Kenya to or for the credit of a person outside Kenya, outside Kenya to or for the credit of a person in Kenya, or in Kenya (other than a payment for a current transaction) between a resident and non-resident, such payment must be effected through an authorized bank.

The Central Bank of Kenya (CBK) licenses foreign exchange bureaus, which were introduced in 1995 to enhance efficiency in the forex market. However, the following capital transactions are subject to foreign exchange restrictions:

a. Investment by foreigners in shares traded on the Nairobi Stock Exchange (NSE) for both companies and individuals is restricted to 75% of a company's ordinary share capital, under the Capital Markets (Foreign Investors) Regulations of July 2002; and
b. Investments by Kenyan residents outside Kenya exceeding $500,000 must be approved by the CBK through the facilitating bank.

However, notwithstanding (a) above, where, in the case of public offering, the percentage reserved for local investors is not subscribed for in full by local investors, the

issuer may, with the prior written approval of the Capital Markets Authority, allot the shares so remaining to foreign investors.

Residents and non-residents are permitted to buy or sell foreign exchange, without restriction, to and from authorized dealers up to the equivalent of $10,000. Amounts exceeding this limit require full documentation to show the purpose for the transaction, purely for administrative recording by the CBK.

On the other hand, exporters may retain all their export proceeds in foreign currency accounts with local banks, or sell such proceeds to obtain local currency. Kenyan residents may borrow abroad with no limit on the amount. However, the government does not guarantee any borrowing by private sector investors, although payments under technical, management, royalty and patent fees are freely remittance, and relevant agreements and renewals are subject to approval of the CBK.

In addition, persons leaving or entering Kenya are permitted to take from or bring into the country up to KSh500,000 of Kenyan currency and a foreign currency equivalent to a maximum of $6,250 without duty. Amounts beyond these limits may be taken out or brought into the country provided they are declared at the point of departure or entry.

Profit repatriation

Currently, there are no restrictions on foreign investment, foreign ownership and repatriation of profits or capital in Kenya. An investor can repatriate capital at will and also profits after payment of the relevant taxes thereon. There is no further taxation on the distribution and repatriation of the profits of a branch of a foreign company.

22. TAX INCENTIVES AND CONCESSIONS

22.1. GENERAL

The Government of Kenya has introduced various tax incentives over the years with the aim of promoting and attracting investment, particularly foreign direct investment (FDI), in key sectors of the economy, especially export-oriented industries, with the objectives of creating wealth and employment, transferring skills to its workforce and improving its competitiveness in international trade. The tax incentive schemes include:

- Duty and VAT exemptions and remissions on imported inputs for manufacture of export goods (on all inputs except for motor vehicles);
- A 10-year corporate tax holiday, investment allowances and tax credits, accelerated depreciation;
- Special zones such as Manufacturing under Bond (MUB), export processing zones (EPZs), special economic zones (SEZs)and investment subsidies;
- Income tax exemptions, reductions in tax rates, and indirect tax incentives, stamp duty and withholding tax over a 10-year period.

22.2. EXPORT PROCESSING ZONES (EPZS)

The Government of Kenya established export processing zones (EPZs) in 1990 with the aim of attracting and facilitating export-oriented investments. The objective of EPZs, therefore, is to encourage and generate economic development, foreign direct investments and economic activities by encouraging foreign investment for the development of zones. The EPZs provide an attractive and enabling environment as well as a range of fiscal and procedural incentives such as exemptions from certain taxes and regulations, for these investments.

There are no restrictions on who can invest in such zones. An EPZ firm may be 100% foreign owned, 100% Kenyan owned or any combination of foreign and Kenyan ownership. The entity is also allowed to bring in foreign workers for training, technical and managerial categories. The scheme also offers a wide range of attractive fiscal, physical infrastructure and procedural incentives to ensure lower-cost and smoother operations, and faster set-up.

Currently, there are more than 40 gazetted zones in Nairobi, Voi, Athi River, Kerio Valley, Mombasa and Kilifi in various stages of development by both private and public zone developers and operators. The EPZs are managed and promoted by the Export Processing Zones Authority (EPZA).

22.3. SPECIAL ECONOMIC ZONES (SEZS)

A special economic zone (SEZ) is a designated geographical area where business-enabling policies are implemented and sector-appropriate on-site and off-site infrastructure and utilities are provided for by the Kenyan Government. Under the SEZ regime, investors benefit from a trade-enabling environment such as integrated infrastructure facilities, access to business and economic incentives, and removal of trade barriers and impediments.

An SEZ has the potential to be developed, whether on a public, private or public–private partnership basis. SEZs are considered to be outside the customs territory of Kenya, thereby operating within a jurisdictional bubble that shields them from taxes and similar regulatory hurdles that directly or indirectly impede trade. Consequently, licensed SEZ enterprises, developers and operators benefit from various tax rebates such as exemption from excise duty, customs duty, value-added tax and stamp duty, advantageous corporate income tax rates and preferential withholding tax rates, especially in relation to profit repatriation.

22.4. DUTY DRAWBACK

The East African Community Customs Management Act 2004 provides for drawback/refund of all or part of any import duty paid in respect of goods imported for the manufacture of goods, which are to be exported, transferred to a free port and transferred to an export processing zone, or used in a manner or for a purpose prescribed as a condition for granting the refund. In order to qualify for import duty drawback under this scheme, the investor is required to fulfil the following conditions:

- Obtain authorization from the Commissioner of Customs before beginning to manufacture;
- The goods for export must be a direct result of the imported goods used in their manufacture;
- Present the goods destined for export for examination to the proper customs officer;
- Make a written declaration to the effect that the conditions under which drawback may be allowed have been fulfilled and that the goods have actually been exported. The claim for drawback must be presented within a period of 12 months from the date of exportation of the goods.

22.5 AGRO-PROCESSING AND MANUFACTURING UNDER BOND

Manufacturing under Bond (MUB) is a tax incentive/facility extended to both local and foreign investors with the aim of promoting industrial production of goods for export. Under MUB, manufacturers are allowed to import plant, machinery, equipment and raw materials into the country tax free, for exclusive use in the manufacture of goods for export. The MUD scheme is meant to encourage manufacturers, both local and foreign, to manufacture for export within the country. However, the manufacturer must obtain a licence from the Commissioner of Customs to operate a bonded factory.

22.6 TAX REMISSION FOR EXPORT OFFICE

The Tax Remission for Export Office (TREO) is a scheme under the East African Community Customs Management Act 2004 that offers incentives and drawback to exporters by remitting duty and VAT on imported raw materials used in the manufacture of goods for export. It also provides for tax remission on inputs to make goods defined as essential for the domestic market. The scheme is administered by The National Treasury (Ministry of Finance). For the purpose of this scheme, the manufacturer includes any process by which a commodity is finally produced. These include assembling, repacking, bottling, mixing, blending, grinding, cutting, bending, twisting, joining or any other similar activity. This scheme is, therefore, quite attractive to manufacturers of goods for export, as it grants them:

- Remission of import duty on inputs;
- Exemption from import declaration fees on inputs, apart from payment the KSh5,000 processing fee;
- Remission of VAT on inputs; and
- Remission of excise duty on fuel oils and kerosene.

The investor or manufacturer is required to apply for the duty and VAT remission to The National Treasury, through the Kenya Association of Manufacturers (KAM), and also provide the following:

- An export order or contract for the specified export goods or a letter of credit;
- A detailed plan for the production of the export goods;
- A list of goods/inputs to be imported for the manufacture;
- The tariff classification, quantity, value and amount of duty and VAT to be waived;
- The investor will also need to provide a security bond covering the taxes in question. The security bond will only be cancelled after the reconciliation declaration has been verified and approved by the TREO office and any unused imported goods have been re-exported or the duty thereon has been paid.

23. DOUBLE TAXATION AGREEMENTS (DTAS)

Double taxation agreements (DTAs) are treaties between two or more countries in order to avoid international double taxation property and income by dividing the tax rights of in order to safeguard the rights to the taxpayer as well as reduce tax evasion. Kenya has signed DTAs with various countries and Table 27 lists those that are already in force.

TABLE 27 Double taxation agreements (DTAs) in force

No.	Country	Effective date
1	Zambia	1 January 1964
2	Denmark	1 January 1974
3	Norway	1 January 1974
4	Sweden	1 January 1974
5	United Kingdom	1 January 1978
6	Germany	1 January 1980
7	Canada	1 January 1988
8	France	1 January 2011
9	South Africa	1 January 2015
10	Qatar	1 January 2016
11	India	1 January 2018
12	Iran	1 January 2018
13	South Korea	1 January 2018
14	United Arab Emirates	1 January 2018

Kenya has also signed double tax treaties with the following countries, but these are not yet in force: the Republic of Seychelles, the Republic of Mauritius, the Republic of Italy, the State of Kuwait, the People's Republic of China, East African Community member states, the Portuguese Republic (Portugal), the Republic of Singapore and the Kingdom of the Netherlands.

The Finance Act 2014, which became effective on 1 January 2015, introduced some restriction on the applicability of double tax treaties that Kenya has concluded with other countries. The new restriction clause (i.e. limitation of benefits clause) provides that, for a foreign entity to be entitled to the benefits arising from a double tax treaty, at least 50% of its underlying ownership should be held by persons who are tax residents in the relevant foreign jurisdiction or the entity should be listed in the stock exchange of the relevant foreign jurisdiction. This is to ensure that Kenyan residents do not register foreign entities and use them to claim tax benefits using double taxation treaties.

24. BILATERAL AND MULTILATERAL TRADE AGREEMENTS AND TREATIES

Kenya has signed several bilateral and multilateral agreements and treaties aimed at enhancing trade with other countries. Kenya has a number of tax treaties and investment promotion and protection agreements. Exports from Kenya enjoy preferential access to world markets under various special access and duty reduction programmes.

Multilateral trading system (MTS)

Kenya has been a member of the World Trade Organization (WTO) since its inception in January 1995. The WTO is an international organization established to supervise and liberalize world trade, and is the successor to the General Agreement on Tariffs and Trade (GATT), which had been in force since 1 January 1948. However, unlike the GATT, the WTO is a permanent organization that benefits from a legal personality and its attributes. In addition, whereas GATT mainly dealt with trade in goods, the WTO and its agreements cover trade in services and in traded inventions, creations and designs (intellectual property).

ACP-EU Partnership Agreement

Exports from Kenya entering the European Union are entitled to duty reductions and freedom from all quota restrictions. Trade preferences include duty-free entry of all industrial products as well as a wide range of agricultural products including beef, fish, dairy products, cereals, fresh and processed fruits and vegetables.

Generalized System of Preferences (GSP)

Under the Generalized System of Preferences, a wide range of Kenya's manufactured products are entitled to preferential duty treatment in the United States of America, Japan, Canada, New Zealand, Australia, the Swiss Confederation (Switzerland), the Kingdom of Norway, the Kingdom of Sweden, the Republic of Finland, the Republic of Austria and other European countries. In addition, no quantitative restrictions are applicable to Kenyan exports on any of the 3,000-plus items currently eligible for GSP treatment.

African Growth and Opportunity Act (AGOA)

Kenya qualifies for duty-free access to the United States of America (USA) market under the African Growth and Opportunity Act enacted by the USA. Kenya's major products that qualify for export under AGOA include textiles, apparels and handicrafts, etc.

Bilateral trade agreements

Kenya has signed bilateral trade agreements with several countries, namely the Argentine Republic (Argentina), the People's Republic of Bangladesh, the Federal Republic of Nigeria, the Republic of Bulgaria, China, the Union of the Comoros, the Democratic Republic of the Congo (the DRC), the Republic of Djibouti, the Arab Republic of Egypt, Hungary, the Republic of India, the Republic of Iraq, the Kingdom of Lesotho, the Republic of Liberia, the Netherlands, the Islamic Republic of Pakistan, the Republic of Poland, Romania, the Russian Federation (Russia), Rwanda, Somalia, the Republic of Korea, the Kingdom of Swaziland, Tanzania, the Kingdom of Thailand, the Republic of Zambia and the Republic of Zimbabwe.

Additional agreements are under negotiation with several additional countries, namely the Republic of Belarus, the Czech Republic, Ethiopia, the State of Eritrea, the Islamic Republic of Iran, the Republic of Kazakhstan, Mauritius, the Republic of Mozambique and the Republic of South Africa.

Investment protection guarantee

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

Trade protocol with China

During the China International Import Exposition (CIIE) held in China in 2018, several negotiations were concluded between Kenya and China, which included the signing of sanitary and phytosanitary (SPS) protocol that gives Kenya's agricultural products entry to China's market. These products include: avocados, French beans, legumes (peas, beans and green grams), flowers, vegetables and fruits, herbs, mangoes, peanuts, meat, hides and skins, herbs, bixa, macadamia, gum arabica, myrrh and Asian vegetables (chilli and karela) among other Kenyan products.

In addition, Kenya and China signed a memorandum of understanding (MoU) establishing a technical working group to commence negotiations on expansion of trade opportunities and review of tariff and non-tariff barriers.

Regional markets

Kenya is a member of the East African Community (EAC), which has a combined population of approximately 145 million. It is also a member of the Common Market for Eastern and Southern Africa (COMESA) with a population of approximately 400 million. Exports and imports within member countries enjoy preferential tariff rates. EAC member states have signed a protocol to establish a common customs union.

25. KRA TAX AUDIT

A tax audit by the Kenya Revenue Authority is an examination of a taxpayer's tax affairs to ascertain whether the taxpayer has correctly self-assessed, paid and fulfilled all its tax obligations. There is no prescribed audit process, as a tax audit can be occasioned by various factors as determined by the KRA. Tax audits are usually carried out every 3–5 years, as this corresponds with the audit limitation period of five years. However, in cases of gross or wilful neglect, evasion, or fraud by, or on behalf of, the taxpayer, the KRA may undertake an audit for any period.

Tax audits were common in the past, with the KRA making physical visits to a taxpayer's premises to ascertain the taxpayer's level of tax compliance. The KRA, particularly its Large Taxpayers Office (LTO) (which audits companies with turnover of approximately $10 million and more), used to audit all taxpayers under its ambit every three years. Kenyan ease of paying taxes has improved from 65% in 2017 to 73% in 2019. The reduction in tax audits is largely due to digitization of tax registration, tax returns filing, payment registration and payment of taxes. Where a taxpayer has filed tax returns and paid the taxes on time, the online tax system does not flag their tax accounts for follow-up. This was not possible when filing of tax returns and payment of taxes was done in person or through an agent at the KRA offices.

The audit or inspection will commence with written request or other communication from the KRA for the taxpayer to make available any such records or information as may be required. Section 58 of the Tax Procedures Act 2015 gives an authorized officer of the KRA the power to inquire into the affairs of a person under any tax law, and full and free access to all lands, buildings and places to inspect all goods, equipment, devices and records, whether in the custody of a public officer or a body corporate or any other person, and make extracts from or copies of those records.

Once the taxpayer has received the list of the documents required by the KRA for the tax audit, they should immediately prepare the relevant documents required. The documents should be arranged preferably per year of income and per tax type to make the tax audit easy to manage. Where some of the documents are not readily available, the taxpayer can request more time to prepare and avail the documents.

The taxpayer should appoint one senior or responsible employee to be responsible for the tax audit, including liaising with the company's auditors or tax agent on the matter, all communication with the KRA, providing all the required records and documents and providing answers and clarifications to the queries raised by KRA officers during and after the tax audit.

Taxpayers should ensure that most tax queries are resolved before the tax field audit is completed. It is easier to sort out the queries when the tax audit is progressing, because all the necessary documents are available and can be cross-checked quickly. The taxpayer should ensure that the auditor or tax agent is present during the exit meeting in order to note and advise on the way forward for any outstanding information, tax issues or unresolved tax queries.

On the other hand, after the tax audit activities are completed, there may be issues that the taxpayer may require the tax officers to explain or clarify. The taxpayer should seek explanations for any issues or findings of the tax audit, including any tax assessment, before the tax officers exit the audit. It is a taxpayer's right to seek clarification.

The taxpayer should seek and agree on the way forward with the tax officers before they exit the tax audit or immediately thereafter. In cases where there is no additional tax to pay, the case is closed. In cases where there is a tax assessment, the taxpayer should inquire and agree on the way forward.

26. PENALTIES AND INTEREST ON TAX OFFENCES

Table 28 shows the current applicable tax penalties for failure by a taxpayer to comply with tax filing and payment obligations:

TABLE 28 Penalties and interest on tax offences

Offence	Penalty
Failure to furnish returns	5% of tax due
Penalty on unpaid tax	20% of unpaid tax
Interest on unpaid tax	2% per month compounded
Fraud or wilful omission	Double the amount of tax in a return underpaid Fine not exceeding KSh200 000 Imprisonment not exceeding two years
Negligence by authorized tax agent	50% of the additional tax per return or document (min. KSh1000; max. KSh50 000)
Failure to deduct or remit PAYE	25% of the amount of tax involved (min. KSh10 000)
Failure to deduct or pay WHT	10% of amount involved to a maximum of KSh1 million
VAT operations failure	Fines ranging from KSh10 000 to KSh500 000

The interest under all Kenyan Tax Acts shall not exceed 100% of basic tax and are to cease once mitigations for waiver are done. No interest is charged on penalties.

27. TAX DISPUTE RESOLUTION PROCEDURES

In Kenya, the assessment of tax is on the basis of voluntary self-assessment by the taxpayer. Where a taxpayer submits a return of income to the Commissioner of Domestic Taxes, the commissioner may accept the amount declared in the return, or he may issue his own assessment if he has reasonable cause to believe that the return is not true and correct, thereby rising a tax dispute. A tax dispute may also arise following a tax assessment issued by the KRA to a taxpayer following an in-depth audit or a routine compliance check. A tax dispute can also arise due to disagreement on interpretation of facts involved in any dispute or the law applicable or both.

The commissioner may assess tax on a person who fails to submit a return of income, if he is of the opinion that such a person had income chargeable to tax. The commissioner may also assess tax on a person who is about to permanently leave Kenya, or in case of a company that is about to be liquidated or about to cease business, if the commissioner believes that any tax payable is at risk of non-payment.

In addition, the commissioner may issue an additional tax assessment where he considers that a person has been assessed at a lower amount with regard to income charged to tax or amount of tax payable. Such additional tax assessment should be issued to the taxpayer in writing, prior to the expiry of five years after the year to which the assessment relates.

A taxpayer who disputes a tax decision made upon him may, by a notice in writing to the commissioner, object to such decision within 30 days of being notified of the decision. A notice of objection shall be treated as validly lodged by a taxpayer if:

a. The notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision and the reasons for the amendments;

b. In relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute or has applied for an extension of time to pay the tax not in dispute; and

c. All the relevant documents relating to the objection have been submitted.

Where the commissioner has not responded to an objection within a period of 60 days, the grounds of objection are deemed to have been accepted. However, the commissioner may accept the notice of objection or reject or confirm the amended or additional assessment, and, where he rejects, he shall furnish the taxpayer with the reasons for such rejection within 30days of receiving the application.

The Tax Procedures Act provides that, if the taxpayer is not satisfied with the commissioner's resulting decision on the objection, the taxpayer may appeal the decision to the Tax Appeals Tribunal (TAT) upon paying all the tax not in dispute.

A taxpayer who disputes the Commissioner's decision on any tax issue may appeal to the tribunal, subject to the provisions of the relevant tax law and upon giving notice in writing to the commissioner. A non-refundable fee of KSh20,000 is payable by the appellant before the appeal is filed.

Appeals to the tribunal shall be by way of a notice of appeal (the notice), which should be in writing and is required to be submitted to the tribunal within 30 days of receipt of the commissioner's decision.

Within 14 days of filing the notice, the appellant is required to file copies of a memorandum of appeal, statement of facts and the tax decision being appealed. The tribunal is thereafter required to hear and determine the appeal within 90 days of filing.

The tribunal has wide-ranging powers and can stay a decision by the tax authorities where an appeal has been filed. Previously, the power to stay the commissioner's decisions was only held by the courts.

The tribunal's decisions shall be by majority vote of the members in writing, with the chairperson having a casting vote (in addition to his deliberative vote) in the case of an equality of votes.

The tribunal's decisions will have the same effect and enforceability as a decision of a court. The tribunal's decisions shall also be public documents open to inspection by the public. This is a departure from the past, when rulings by tax tribunals were private and only accessible by the parties to the dispute.

The tribunal also has powers to award costs in any appeal, and such costs will be executed in a similar manner as a High Court decree.

Finally, an aggrieved taxpayer or the commissioner may appeal the decision of the Tax Appeals Tribunal to the High Court within 30 days, but only on a question of law or of mixed law and facts. The High Court is to hear such appeals in accordance with rules to be issued by the Chief Justice. However, a further appeal may be made to the Court of Appeal against the High Court's decision.

Moreover, when an appeal is before the Tax Appeals Tribunal or the courts, the taxpayer or commissioner may voluntarily request for the dispute to be handled through alternative dispute resolution (ADR) mechanisms.

The KRA established its own Alternative Dispute Resolution (ADR) Framework with effect from 1 July 2015. The framework is an alternative method of handling tax disputes outside the tribunal or court system. Some of the benefits associated with ADR, as compared to the court system in Kenya, include reduced dispute resolution costs, faster resolution process and confidentiality due to the private nature of the process. Internationally, the trend is moving towards adoption of ADR mechanisms as a means to settle tax disputes.

Since 2015, the Organisation for Economic Co-operation and Development (OECD) has been developing and implementing action plans and initiatives to tackle base erosion and profit shifting (BEPS). Kenya is a signatory to OECD and is one of the 100 countries and jurisdictions under OECD's inclusive framework, which seeks to enhance collaboration to implement the BEPS measures and tackle BEPS (i.e. Action Plan 14 of OECD's BEPS).

The OECD Action Plan on effective dispute resolution also includes an option for arbitration for willing countries. In Kenya, this would ideally be implemented through the recently inaugurated Nairobi Centre for International Arbitration (NCIA).

28. IMMIGRATION RULES IN KENYA

Under the Kenya Citizenship and Immigration Act 2011, Cap. 172 of the Laws of Kenya, and Regulations of 2012, work and residence permits are issued to any non-Kenyan wishing to engage in employment in Kenya, whether in gainful employment or voluntary service.

Work and residence permits

The work and residence permits issued by the Department of Immigration Services are classified from A–M inclusive. They are issued under the Kenya Citizenship and Immigration Act 2011 of the Laws of Kenya. The following are the various classes of permits and their respective requirements:

General requirements

- Dully filled-in and signed application Form 3;
- Covering letter from employer, yourself or organization depending on the class (as applicable);
- Copies of the national passport;
- Two coloured passport-sized photographs;
- Application fees are only payable upon receipt of an approval notification;
- Dully completed entry permit applications should be submitted at Immigration Aliens Counter 9 located at Nyayo House, ground floor (south wing), Nairobi City for acknowledgement;
- Applications for renewal of entry permits should be done three months prior to expiry date;
- These permits are normally issued for a period of two years.

The application for work permit are done online using the eFNS portal where applicants are able to apply and pay for the application fees and then submit the application print out to the Immigration offices or KenInvest for processing. Once the application has been reviewed, the investor will be issued with a notification of approval and will be able to go ahead with the payments for the work permit. Once payments are done, the work pemit will be endorsed on the passport.

TABLE 29 Classes of work permits

Class/Category	Permit requirements
A	Class A permit is issued to person who intends to engage in prospecting for minerals or mining. The application requirements are: ■ One should obtain or is assumed to obtain the necessary licences and registrations; ■ For renewals current licence held for prospecting minerals and copy of PIN is required; ■ One has sufficient capital for investment; ■ Processing fee: KSh10,000 (approximately $100).
B	Class B permit is issued to person wishing to invest in agriculture and animal husbandry. Requirements: ■ Proof of land ownership or leasehold interest in land for the purpose; ■ Proof of capital available for the purpose; ■ Clearance from relevant bodies; ■ For renewals, current licence held and a copy of PIN is required; ■ Processing fee: KSh10,000 ($100); ■ Fee: KSh100,000 ($1,000) per year or part thereof.
D	Class D permit is issued to a person who is offered specific employment by a specific employer who is qualified to undertake that employment. The application requirements are: ■ Copies of academic and professional certificates along with CV; ■ Evidence that the organization failed to fill the vacancy from the local labour market; ■ Form 25 duly filled-in, signed and sealed by the company; ■ Processing fee: KSh10,000 ($100); ■ Fee: KSh200,000 ($2,000) per year or part thereof; ■ Employer tax compliance certificate; ■ Employee tax compliance certificate.
G	Class G permit is issued to an investor in specific trade, business or consultancy. The application requirements are: ■ Documentary proof of capital to be invested or already invested: minimum $100,000 or equivalent in any other currency; ■ Registration certificate for the company or certificate of incorporation; ■ Copies of personal and company PIN if business is running; ■ For renewals, audited accounts for previous two years and a certificate of tax compliance; ■ Processing fee: KSh10,000 ($100); ■ Fee: KSh100,000 ($1,000) per year or part thereof.
I	Class I permit is issued to a member of a missionary society approved by the Government of Kenya and whose presence is beneficial to the country. The application requirements are: ■ A copy of the registration certificate of the organization; ■ Academic and professional certificates of the applicant; ■ Processing fee: KSh10,000 ($100); ■ Fee: KSh5,000 ($50) per year or part thereof.
K	Residence permit issued to a person who has an assured income derived from sources outside and undertakes not to accept paid employment of any kind. The application requirements are: ■ Documentary proof of assured income is required for Class K; ■ Processing fee: KSh10,000 ($100); ■ Fee: KSh100,000 ($1,000) per year or part thereof.
M	Work permit issued to a conventional refugee. The application requirements are: ■ Recognition letters from United Nations High Commissioner for Refugees (UNHCR) and Department of Refugee Affairs; ■ Processing fee gratis; ■ Permit is issued gratis.

Permanent residency

Under Section 37 of the Citizenship and Immigration Act 2011, the following categories of applicants, their children and spouses detailed in Table 30 are eligible for permanent residency in Kenya upon meeting the prescribed requirements. In normal practice, holders of permanent residency are expected to be domiciled in the country.

TABLE 30 Categories of permanent residency

Category	Permanent residency requirements
A	Applicants who were Kenyan citizens at birth, but now: ▪ Have renounced or lost citizenship status; ▪ Are denied the opportunity by their countries of domicile from holding dual citizenship; ▪ The children and spouses of the above-mentioned applicants. Requirements: ▪ Application letter; ▪ Dully filled-in Form 23; ▪ Dully filled-in *Questionnaire – Work Permit Holders* for intending applicants – Category A; ▪ Proof of previous Kenyan citizenship: copy of birth certificate, identity card or passport; ▪ Certified copy of the current passport; ▪ Two passport-sized photos; ▪ Police clearance certificate issued by country of domicile; ▪ Processing fees: KSh10,000 ($100); ▪ Issuance fees: KSh15,000 ($150).
B	Applicants are required to have held Kenyan work permits for at least seven years and have been resident in the country continuously for three years immediately preceding the application for permanent residency. These requirements also apply to their spouses and children. Applicants must demonstrate a strong position to make a tangible contribution to the country's socioeconomic development; hence, priority is given to investors and highly qualified professionals. Applicants may be required to appear in person for an interview to confirm or verify these facts. The requirements are: ▪ Application letter; ▪ Dully filled-in Form 23; ▪ Dully filled-in questionnaire for intending applicants – Category B; ▪ Dully filled-in residence status form; ▪ Copy of the work permit(s); ▪ Copy of the passport; ▪ Two passport-sized photos; ▪ Police clearance certificate (original); ▪ Processing fees: KSh10,000 ($100); ▪ Issuance fees: KSh15,000 ($150). **Spouses** ▪ Application letter; ▪ Dully filled-in Form 23; ▪ Dully filled-in questionnaire for intending applicants – Category B; ▪ Dully filed-in-residence status form; ▪ Demonstrate marriage and family life; ▪ Certified copy of the marriage certificate; ▪ Copy of dependant pass and work permit(s); ▪ Two passport-sized photos; ▪ Police clearance certificate (original); ▪ Processing fees: KSh10,000 ($100); ▪ Issuance fees: KSh15,000 ($150).

Category	Permanent residency requirements
	Children (younger than 18 years) ▪ Application letter; ▪ Dully filled-in Form 23; ▪ Dully filled-in questionnaire for intending applicants – Category B; ▪ Certified copy of the birth certificate; ▪ Certified copies of the parents' birth certificates; ▪ Two passport-sized photos; ▪ Copy of dependant pass; ▪ Processing fees: KSh10,000 ($100); ▪ Issuance fees: KSh15,000 ($150)
C	Children of Kenyan citizens born outside the country and who have acquired foreign citizenship of their country of residence – NOTE: Applicants may qualify for Kenyan citizenship. Requirements: ▪ Application letter; ▪ Dully filled-in *Form-23 – Application for Permanent Residence*; ▪ Dully filled-in questionnaire for intending applicants – Category C; ▪ Certified copies of the birth certificate; ▪ Certified copies of the parents' birth certificates, Kenya passport(s) and identity card(s); ▪ Certified copy of the current passport; ▪ Two passport-sized photos; ▪ Processing fees: KSh10,000 ($100); ▪ Issuance fees: KSh15,000 ($150).
D	Applicants who are spouses of Kenyan citizens married for at least three years must give ample proof of marriage and family life besides documentation furnished. In this framework, applicants may be required to appear in person for interview to confirm or verify these facts. Requirements: ▪ Application letter by Kenyan spouse; ▪ Dully filled-in *Form-23 – Application for Permanent Residence*; ▪ Dully filled-in questionnaire for intending applicants – Category D; ▪ Dully filled-in-residence status form; ▪ Police clearance certificate (original); ▪ Demonstrate marriage and family life; ▪ Certified copy of the marriage certificate; ▪ Copies of passport or identity card, and birth certificate of Kenyan spouse; ▪ Copy of either the passport or birth certificate of the foreign spouse; ▪ Copies of work permit(s) and dependant pass of spouse if resident in Kenya; ▪ Two passport-sized photos; ▪ Processing fees: KSh5,000 ($50); ▪ Issuance fees: KSh50,000 ($500). *NOTE: A joint sworn affidavit by the spouses should be attached if marriage was not solemnized in Kenya.*

Visa requirements

A Kenyan visa does not allow a foreign national to work in Kenya. Different types of visas include:

- Ordinary single-entry or multiple-journey visa;
- Transit visa;
- Diplomatic visa;
- Official, service or courtesy visa;
- East Africa Tourist visa – entitles holders to travel to and within Kenya, Uganda and Rwanda.

Moreover, the dependent(s) of the expatriate employee(s) are required to obtain dependent passes. However, these can only be obtained once the expatriate working in Kenya has obtained a work permit. School-going children of an expatriate employee should obtain a student's pass.

In addition, any foreigner who intends to be present in Kenya for more than three months is required to register as an alien and obtain an alien card. Expatriates are also required to apply for a PIN from the KRA.

GLOSSARY OF TERMS

Accounting period – In relation to a person, it means the period for which that person makes up the accounts of his business.

Ad valorem tax – A tax on goods or property expressed as a percentage of the sales price or assessed value.

After-tax profit – The earnings of a business after all income taxes have been deducted.

Allowance – An amount of money paid to persons to meet their expenses. It also refers to deductions made when computing income taxes to attain the taxable income.

Arm's length transaction – A transaction among parties, each of whom acts in his or her own best interests.

Assessment – An exercise we conduct to obtain the value of your property and other assets usually for purposes of calculating tax due.

Audit – An examination of a tax return by tax authorities at the taxpayer's place of business.

Authorized tax agent – Any person who prepares or advises for remuneration, or who employs one or more persons to prepare for remuneration, any return, statement or other document, with respect to a tax, the preparation of a substantial portion of a return, statement or other document shall be deemed to be the preparation of the return, statement or other document.

Avoidance – A legal methodology used to lower the amount of tax liability.

Bank – A bank or financial institution licensed under the Kenyan Banking Act (Cap. 488).

Bearer instrument – Includes a certificate of deposit, bond, note or any similar instrument payable to the bearer.

Building society – A building society registered under the Building Societies Act (Cap. 489).

Business – Includes any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade, but does not include employment.

Business permit – An administrative grant of authority to operate a business within a local authority, municipality or county.

Collective investment scheme – Has the meaning assigned to it in Section 2 of the Capital Markets Act.

Commercial vehicle – A road vehicle that the commissioner is satisfied is:

a. Manufactured for the carriage of goods and so used in connection with a trade or business; or
b. A motor omnibus within the meaning of that term in the Traffic Act, Cap. 403; or
c. Used for the carriage of members of the public for hire or reward.

Commissioner – means:

a. The commissioner general appointed under Section 11(1) of the Kenya Revenue Authority Act, Cap. 469; or
b. With respect to powers or functions that have been delegated under Section 11(4) of the Kenya Revenue Authority Act, Cap. 469 to another commissioner.

Company – A legal entity (a corporation) organized to perform an activity, business or industrial enterprise.

Compensating tax – The addition to tax imposed under Section 7A of the Kenyan Income Tax Act, Cap. 470.

Contract of service – An agreement, whether oral or in writing, whether expressed or implied, to employ or to serve as an employee for any period of time, and includes a contract of apprenticeship or indentured learnership, under which the employer has the power of selection and dismissal of the employee, pays his wages or salary and exercises general or specific control over the work done by him; and for the purpose of this definition an officer in the public service shall be deemed to be employed under a contract of service.

Customs officer – A customs officer appointed under the Kenyan Customs and Excise Act, Cap. 472.

Customs territory – The territory in which the customs laws of Kenya apply in full, but does not include an export processing zone.

Double taxation agreements (DTAs) – International agreements concluded between two jurisdictions to allocate taxing rights between two countries.

Double taxation – They are agreements between Kenya and other countries that lessen the tax burden on citizens and corporations of each country.

Debenture – Includes any debenture stock, mortgage, mortgage stock or any similar instrument acknowledging indebtedness, secured on the assets of the person issuing the debenture; and, for the purposes of paragraphs (d) and(e) of Section 7(1) of this Act, includes any loan or loan stock, whether secured or unsecured.

Deemed interest – An amount of interest equal to the average 91-day Treasury Bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the non-resident, where such loan is provided free of interest.

Director – means:

a. In relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or similar body;

b. In relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person;

c. In relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate, and includes any person in accordance with whose directions and instructions such persons are accustomed to act.

Direct tax – Tax levied on the income or profits of the person who pays it.

Discount – Interest measured by the difference between the amount received on the sale, final satisfaction or redemption of any debt, bond, loan, claim, obligation or other evidence of indebtedness, and the price paid on purchase or original issuance of the bond or evidence of indebtedness or the sum originally loaned upon the creation of the loan, claim or other obligation.

Dividend – Any distribution (whether in cash or property, and whether made before or during a winding-up) by a company to its shareholders with respect to their equity interest in the company, other than distributions made in complete liquidation of the company of capital that was originally paid directly into the company in connection with the issuance of equity interests.

Due date – The date on or before which any tax is due and payable.

Duty – The fiscal, customs and excise duty for the time being chargeable under any written law.

Employee – A person employed for wages or salary and includes an apprentice, indentured learner, temporary, seasonal and casual worker.

Employer – Any person, public body, firm, corporation or company who or that has entered into a contract of service to employ any person, and includes:

i. An agent, foreman or manager; and

ii. An heir, successor, assignee or transferee of that person, public body, firm, corporation or company.

Export – To take or cause to be taken out of the customs territory or into an export processing zone.

Export processing zone – A designated part of Kenya where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory, but are duly restricted by controlled access.

Export processing zone enterprise – A corporate body, including a developer or an export processing zone operator that has been granted a licence under the Kenyan Export Processing Zone Act.

Export processing zone operator – A corporate body engaged in the management of an export processing zone designated under Section 15 of the Kenyan Export Processing Zone Act.

Exemptions – Tax laws frequently provide specific exemptions for persons, items or transactions, etc. that would otherwise be taxed. Exemptions may be given for social, economic or other reasons.

Franking – The process used to affix any type of mark or stamp to a paper to indicate that the stamp duty has been paid.

Goods – Includes all kinds of articles, wares, merchandise and stock and, where any such goods are sold under the Kenyan Customs and Excise Act (Cap. 472), and includes the proceeds of sale.

Import – To bring or cause to be brought into the customs territory from a foreign country or from an export processing zone or a special economic zone.

Import duties and taxes – Customs duties and all other duties, taxes, fees or other charges that are collected on or in connection with the importation and exportation of goods, but does not include fees and charges that are limited in amount to the costs of services rendered under the Kenyan Customs and Excise Act (Cap. 472).

Raw materials – Items used as ingredients in the manufacture of goods.

Infrastructure – A physical structure such as a road, bridge or storm sewer that facilitates economic or other activity or protects property.

Indentured learner – A person, other than an apprentice, who is bound by a written contract to serve an employer for a determined period of not more than two years with a view to acquiring knowledge of a trade in which the employer is reciprocally bound to instruct that person.

Individual – A natural person.

Individual retirement fund – A fund held in trust by a qualified institution for a resident individual for the purpose of receiving and investing funds in qualifying assets in order to provide pension benefits for such an individual or the surviving dependants of such an individual subject to the Income Tax (Retirement Benefit) Rules1994.

Industrial training – Training for a specified industry.

Industry – A trade, occupation, profession or economic sector.

Interest (other than interest charged on tax) – Interest payable in any manner in respect of a loan, deposit, debt, claim or other right or obligation.

Local committee – A local committee established under Section 82 of the Kenyan Income Tax Act.

Loss – In relation to gains or profits, it means a loss computed in the same manner as gains or profits.

Management or professional fee – Any payment made to any person, other than a payment made to an employee by his employer, as consideration for any managerial, technical, agency, contractual, professional or consultancy services, however calculated.

Minister – The cabinet secretary for the time being responsible formatters relating to finance.

Natural resource income – Means:

i. An amount including a premium or such other like amount paid as consideration for the right to take minerals or a living or non-living resource from land or sea; or

ii. An amount calculated in whole or in part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea.

Officer – The commissioner and any other member of staff of the Kenya Revenue Authority appointed under Section 13 of the Kenya Revenue Authority Act, Cap. 469.

Paid – Includes distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person, and "pay", "payment" and "payable" have corresponding meanings.

PIN – A personal identification number (PIN) is a number that identifies a person for purposes of transacting business with the Kenya Revenue Authority, other government agencies and service providers. It is processed by the Domestic Tax Department.

Registered pension fund – A pension fund that has been registered with the commissioner in such manner as may be prescribed.

Pensionable income – Means:

a. In relation to a member of a registered pension or provident fund or of an individual eligible to contribute to a registered individual retirement fund, the employment income specified in Section 3(2)(ii) subjected to deduction of tax under Section 37 of the Kenyan Income Tax Act, Cap. 470;

b. In the case of an individual eligible to contribute to a registered individual retirement fund, the gains or profits from business subject to tax under Section 3(2)(a)(i) earned as the sole proprietor or as a partner of the business.

Permanent establishment – In relation to a person, it means a fixed place of business and includes a place of management, a branch, an office, a factory, a workshop and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, a building site, or a construction or installation project that has existed for six months or more where that person wholly or partly carries on business, provided that:

a. The person's permanent establishment shall be deemed to include the permanent establishment of the person's dependent agent;

b. In paragraph (a), the expression "dependent agent" means an agent of the person who acts on the person's behalf and who has, and habitually exercises, authority to conclude contracts in the name of that person.

Personal relief – The personal relief provided for under Part V, and the relief mentioned in Section 30 of the Kenyan Income Tax Act, Cap. 470.

Premises – Land, any improvement thereon and any building or part of a building that is occupied as a separate dwelling or house.

Provident fund – Includes any fund or scheme for the payment of lump sums and other similar benefits to employees when they leave employment or to the dependants of employees on the death of those employees, but does not include any national provident fund or national social security fund established by the government.

Qualified institution – A bank licensed under the Kenyan Banking Act, Cap.488, or an insurer registered under the Insurance Act, Cap. 487, or such other financial institution as may be approved under the Kenyan Retirement Benefits Act1997 (No. 3 of 1997).

Qualifying assets – In respect of a registered individual retirement fund, this means time deposits, treasury bills, treasury bonds, securities traded on any securities exchange approved under the Capital Markets Act, Cap. 485A, and such other categories of assets as may be prescribed in the investment guidelines issued under the Kenyan Retirement Benefits Act 1997, Cap. 197.

Qualifying interest – The aggregate interest, discount or original issue discount receivable by a resident individual in any year of income from:

i. A bank or financial institution licensed under the Kenyan Banking Act, Cap. 488; or

ii. A building society registered under the Kenyan Building Societies Act, Cap. 489, which in the case of housing bonds has been approved by the relevant minister for the purposes of this Act; or

iii. The Central Bank of Kenya.

Provided that:

a. Interest earned on an account held jointly by a husband and wife shall be deemed to be qualifying interest; and

b. In the case of housing bonds, the aggregate amount of interest shall not exceed KSh300,000.

Registered fund – A registered pension fund or a registered provident fund.

Registered home ownership savings plan – A savings plan established by an approved institution and registered with the commissioner for receiving and holding funds in trust for depositors for the purpose of enabling individual depositors to purchase a permanent house.

Resident individual – Has a permanent home in Kenya and was present in Kenya for any period in a particular year of income under consideration; or has no permanent home in Kenya, but:

- Was present in Kenya for a period or periods totalling 183 days or more in that year of income; or
- Was present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income.

Resident company – That the body is a company incorporated under a law of Kenya, or the management and control of the affairs of the body was exercised in Kenya for any year of income.

Registered individual retirement fund – An individual retirement fund where the trust deed for such a fund has been registered with the commissioner.

Re-exports – Goods that are imported and are under customs control for re-exportation.

Return of income – A return of income furnished by a person consequent to a notice served by the commissioner under Section 52 of this Act, including a return of income together with a self-assessment of tax furnished to the commissioner in accordance with the provisions of Section 52B, together with any documents required to be furnished therewith.

Royalty – A payment made as a consideration for the use of or the right to use:

a. Any copyright of a literary, artistic or scientific work; or

b. Any cinematograph film, including film or tape for radio or television broadcasting; or

c. Any patent, trademark, design or model, plan, formula or process; or

d. Any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific equipment or experience, and any gains derived from the sale or exchange of any right or property giving rise to that royalty.

Securities exchange – Means a market, derivatives exchange, securities organization or other place at which securities are offered for sale, purchase or exchange, including any clearing or settlement, with or without novation or transfer services connected therewith.

Services – Something that someone needs and pays for and that is not goods or money.

Tax – The income tax charged under the Kenyan Income Tax Act, Cap. 470.

Tax return – A declaration made by taxpayers that summarizes their income, expenses and other pertinent tax information.

Tax incentive – A tax benefit that reduces tax liability or defers the payment of tax to a future date. These incentives are aimed at encouraging investments in the industry, thereby creating employment directly and indirectly.

Tax offences – They include late filing, late payment, failure to declare taxable income or transactions, and negligent or fraudulent misstatements in tax declarations.

Tax refund – Also known as tax rebate, it is a refund on taxes when the tax liability is less than the taxes paid.

Tax agent – Tax adviser who assists taxpayers in fulfilling their statutory tax obligation on their behalf.

Tax clearance certificate – A document issued to taxpayers to certify that a taxpayer has fully cleared all his or her taxes.

Tax compliance certificate – A certificate issued to taxpayers to satisfy and confirm that they are compliant with all their statutory taxes as per their obligations.

Transfer pricing – The rules and methods for pricing transactions within and between enterprises under common ownership or control. It can be used as a profit allocation method to attribute a multinational corporation's net profit or loss before tax to countries where it does business.

Tax decision – A determination of the amount that a tax representative, appointed person, director or controlling member is liable for.

Tax representative – A person who is the tax representative of the taxpayer.

Taxpayer – A person liable for tax under a tax law whether or not they have accrued any tax liability in a tax period.

Transit – The movement of goods imported from a foreign place through the territory of one or more of the partner states, to a foreign destination.

Trade – A skilled occupation; or the act of buying, selling or exchanging goods between people and countries.

Training fee – A payment made in respect of a business or user training services designed to improve the work practices and efficiency of an organization, and includes any payment in respect of incidental costs associated with the provision of such services, provided that the training fee shall not include fees paid for educational services provided by:

a. A pre-primary, primary or secondary school;
b. A technical college or university;
c. An institution established for the promotion of adult education, vocational training or technical education.

Unpaid tax – This means any tax that has not been paid by the due date or any late payment interest in respect of a tax liability.

Year of income – A period of 12 months.

Annexes

ANNEXES

ANNEX I

REGISTRATION AND RETURN FORMS

Registration and return forms can be done online at **https://itax.kra.go.ke/KRA-Portal/.**

ANNEX II

USEFUL CONTACTS

Institutions that facilitate taxation in Kenya

Institution	Role	Contact
Kenya Revenue Authority	▪ Legally responsible for collecting, assessing and accounting for taxes in Kenya on behalf of the Government of Kenya. ▪ The administration and enforcement of the laws relating to revenue. ▪ Advise the Government of Kenya on all matters relating to the administration of and the collection of revenue under the written Laws of Kenya. ▪ Perform such other functions in relation to revenue as the Cabinet Secretary (Minister) for Finance may direct from time to time.	info@kra.go.ke
Central Bank of Kenya	▪ Licensing and monitoring of the operations and activities of commercial banks and foreign exchange bureaus in Kenya. ▪ Approving any investment by Kenyan residents outside Kenya exceeding $500,000. ▪ Maintaining records of foreign remittances exceeding $10,000. ▪ Considering and approving the remittance of payments under technical, management, royalty and patent fees agreements.	info@cbk.go.ke
Catering and Tourism Development Levy Trustees	▪ Controlling and administering the CTDL fund. ▪ Establishing, equipping and controlling institutions responsible for the training of persons for employment in hotels and restaurants. ▪ Establishing and developing national standards for testing the skills required by the tourism industry. ▪ Facilitating the promotion of Kenya as a tourist destination both locally and internationally.	info@ctdlt.co.ke

Institutions that facilitate taxation in Kenya

Institution	Role	Contact
Export Processing Zones Authority	▪ Promotion and facilitation of export-oriented investments and development of an enabling environment for such investments.	info@epzakenya.com
Kenya Bureau of Standards	▪ Responsible for provision and maintenance of Standards, Metrology and Conformity Assessment (SMCA) services in Kenya. ▪ Responsible for the imposition and administration of the standards levy. ▪ Participates in harmonization of standards, measurements and conformity assessment regimes for regional integration. ▪ Operates the National Enquiry Point (NEP) in support of the WTO's Technical Barriers to Trade (TBT) Agreement.	info@kebs.org
Kenya Investment Authority	▪ Investment promotion and facilitation. ▪ Provides information on investment opportunities and sources of capital. ▪ Assists in obtaining necessary licences and permits. ▪ Investor tracking after-care services. ▪ Assists in issuing investment certificates.	info@invest.go.ke
Kenya Ports Authority	▪ Responsible for setting port tariffs. ▪ Imposing and collecting port charges for goods imported through Kenyan ports.	ca@kpa.co.ke
National Environment Management Authority	▪ Provides general supervision and coordination over all matters relating to the environment. ▪ Issues environmental licences and permits.	dgnema@nema.go.ke
National Hospital Insurance Fund	▪ Collection and administering of the NHIF contributions in Kenya. ▪ Running a national health cover.	info@nhif.or.ke
National Industrial Training Authority	▪ Regulation and provision of industrial training. ▪ Development and harmonization of industrial training curricula and assessment guidelines. ▪ Accrediting institutions engaged in industrial training. ▪ Assessing, collecting and administration of the industrial training levy, fees and penalties.	directorgeneral@nita.go.ke
National Social Security Fund	▪ Collection and administering of NSSF and pension contributions in Kenya. ▪ Payment of benefits out of the fund.	info@nssfkenya.co.ke
Special Economic Zones Authority	▪ Development and registration of all SEZs in Kenya and development of enabling environment for such investment and for connected purposes. ▪ Development and management of enabling environment for global and local investment under the special economic zones.	ps@industrialization.go.ke

Institutions that facilitate taxation in Kenya

Institution	Role	Contact
The National Treasury	■ Formulates financial and economic policies and oversees effective coordination of government financial operations. ■ Oversees management of all public finances for the country's rapid and sustainable economic development, per the Kenyan Constitution 2010. ■ Oversees effective management of public finances by the national and county governments, government entities and other statutory bodies. ■ Administering of the TREO tax incentive scheme. ■ Granting remission of import duty and VAT for investors and manufacturers of export goods. ■ Considering and granting waiver of tax penalties and interest exceeding KSh500,000.	info@treasury.go.ke

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Partnership for Investment and Growth in Africa (PIGA)

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