

**AMBALE AND COMPANY**  
**Certified Public Accountants**

**A Member of LUMBIKA  
International**

**KENYA TAX ADVISORY**

**2019 -2020**

## PERSONAL TAXATION

### Income Tax Rates For Individual

w.e.f. 01/01/2018

Tax Bands	Taxable income p.a. KShs.	Taxable income p.m. KShs.	Rate
On the first	147,580	12,298	10%
On the next	139,043	11,587	15%
On the next	139,043	11,587	20%
On the next	139,043	11,587	25%
Excess of	564,709	47,059	30%

#### Personal allowances

2018  
KShs. p.a.

2019  
KShs. p.a.

Registered Pension/Provident Schemes relief limits	240,000	240,000
Personal relief	16,896	16,896
Mortgage interest relief for owner occupied property - maximum	300,000	300,000
Home ownership savings plan (for first 10 years)	96,000	96,000
Insurance relief (life, health and education) 15% of premiums to a maximum of KShs. 60,000 p.a.		
Affordable Housing Relief - 15% of gross emoluments up to a maximum of KShs. 9,000 per month subject to set conditions		

## TAX AMNESTY

The Commissioner shall refrain from recovering penalties or interest from a company that lists on the growth segment of a securities exchange in Kenya, in respect of any year of income prior to the date of listing where the company makes full disclosure of its past income, assets and liabilities for the two years immediately preceding the date of listing: Provided that the principal tax shall be paid in full. This will remain open for three years.

## EMPLOYMENT BENEFITS

All benefits are taxable at the higher of cost and the fair market value except:

#### (a) Tax-free benefits

- First KShs. 150,000 for the disabled
- Deduction of KShs. 50,000 on drugs treatment and home care service for the disabled allowed as a deduction
- Medical, school fees (if employer taxed), registered provident/pension contributions (except contributions to non-registered funds or in excess of relief for registered funds where the employer is tax exempt)
- Passage for expatriates
- Canteen/cafeteria established/operated by employer or a tax registered third party where value of meals provided to staff does not exceed KShs. 4,000 per employee per month.
- Gratuity up to KShs. 240,000 p.a. paid into a registered pension scheme by an employer
- Group life premiums that do not confer benefit to employee
- Contributions paid to a registered or unregistered pension scheme, pension fund or individual retirement fund
- Bonuses, overtime and retirement benefits to employees whose taxable employment income before bonuses and overtime does not exceed KShs.134,164 per annum in 2017 and KShs.147,580 per annum in 2018

**(b) Non-cash taxable benefits**

- Exempt if the aggregate cost does not exceed KShs. 36,000 p.a.
- Tax-free medical benefits for directors (and their beneficiaries) owning over 5% shareholding limited to KShs. 1 million p.a.
- Tax-free medical benefits for partners and sole proprietors limited to KShs. 1 million p.a.

**(c) Reimbursements**

- For employees working out of station the first KShs. 2,000 per diem is deemed to be reimbursement and not taxable. Reimbursement expenses are generally not taxable but require to be supported
- Double taxation relief for Kenyan citizen artistic performers and sportsmen

**(d) Motor vehicles**

The benefit is the higher of 2% p.m. of the initial cost of the vehicle or prescribed scale rates. For leased vehicles the benefit is the cost of leasing. Employees with restricted private usage can apply for a lower benefit valuation

**(e) Housing**

Non-working directors: The higher of 15% of total income, fair market rental value and 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: The higher of 15% of emoluments or rent paid by the employer under an arms-length agreement with a third party

**(f) Loans to employees**

Fringe benefit tax is payable by the employer at the rate given by the Commissioner less actual rate paid by employee. The tax rate to be applied is the corporate rate

**(g) Other benefits**

- Furniture 1% of cost p.m.
- Telephone 30% of cost p.m.
- Taxable benefit for employee share ownership plan (ESOPs) is the difference between the market price of shares and option grant price. The benefit accrues at the end of the vesting period

**PENSION / PROVIDENT FUNDS**

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Tax exempt lump sum withdrawals from both registered pension and provident funds is KShs. 60,000 for each year of pensionable service, subject to a maximum of KShs. 600,000. Withdrawals based on 1991 and prior contributions are exempt. Earnings from non-commuted pensions are exempt up to KShs. 300,000 p.a. Lump sum payments and monthly pension payments to persons over 65 years of age are tax-free.

- Employees are not entitled to employer's contribution before the retirement age
- Any surplus refunded to/withdrawn by employer from registered fund shall be deemed to be the income of the employer

Withholding tax rates for pension/provident fund withdrawals and lump sum payments beyond exempt limits:

**(a) Withdrawal before 15 years expires:**

	<b>KShs.</b>
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 over	564,709

**(b) Withdrawal after 15 years**, attaining age of 50 years or retirement on health grounds:

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 over	1,600,000

- Withholding tax under (b) is final tax

## REAL ESTATE TAXATION

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Rental income tax on gross residential income earned by resident persons at a tax rate of 10%, where the rental income is up to KShs. 10,000,000 per annum (no tax is due where annual residential rent does not exceed KShs. 144,000 per annum). One may elect, in writing, to pay tax on net profits under the self assessment regime. Commercial and Residential Rent Appointed Agents to withhold 10% of gross rent paid (w.e.f 01/01/2017)

## BUSINESS INCOME TAXATION

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### Corporate Tax Rates

- Non-resident companies 37.5%
- Resident companies 30%
- Export Processing Zone enterprises:
  - First ten years Nil
  - Next ten years 25%
- Special Economic Zone enterprises:
  - First ten years 10%
  - Next ten years 15%
- Newly listed companies over 20% capital listed (3 years) 27%
- Newly listed companies over 30% capital listed (5 years) 25%
- Company introducing shares through listing 25%
- Newly listed companies with over 40% capital listed (5 years) 20%
- Developers constructing at least four hundred residential units annually (for that year of income) 15%
- Local assemblers of motor vehicles (for 1st 5 years) 15%
- Dividend distribution tax on untaxed profits 30%
- A company operating a plastics recycling plant for the first 5 years 15%
- Turnover tax 3% of gross monthly sales net of presumptive tax equal to fifteen percent of the amount payable for a business permit or trading licence issued by a county government (w.e.f. 1/1/2020)

Employers engaging at least 10 university graduate apprentices allowed to claim 150% of salaries and wages paid to the graduates

Dividends received by Special Economic Zone enterprises, developers and operators exempted from withholding tax

Investee company of a real estate investment trust  
Exempted from tax

### Instalment taxes

Instalment tax where applicable is payable as follows:

	Fourth month	Sixth month	Ninth month	Twelfth month
Agricultural enterprises	-	-	75%	25%
All other taxpayers	25%	25%	25%	25%

Instalments are payable on or before the 20th of the month they fall due

Basis for instalment tax: Lower of preceding year's tax multiplied by 110% and current year's estimate

### Self assessment returns (SAR)

- SARs for non-individuals fall due six months after the end of the accounting year. The balance of tax due is however payable by the end of the fourth month.

- SARs for all individuals due on or before 30 June of the following year. A spouse's income may be filed and taxed separately
- SARs must be submitted on iTax

### **Application for extension to file returns**

- Application for extension to submit monthly and annual return can be done 15 days and 30 days respectively before the due date for submission of return

### **Deductible business expenses**

Expenses are deductible if incurred wholly and exclusively to produce income. Capital and personal expenditure are generally disallowed with certain exceptions. Charitable donations and social project costs are deductible subject to the charity being registered as tax exempt and the donor providing proof of donation.

Losses are available for carry forward for ten years including the year in which they were incurred

### **Thin capitalisation**

- Project under an affordable housing scheme upon recommendation by the Cabinet Secretary responsible for housing exempted from thin capitalisation rules (w.e.f. 1/1/2020).
- Deemed interest is to be calculated in the form and manner prescribed by the Commissioner
- For Petroleum Contractors debt to equity ratio 2:1
- For foreign controlled entities debt to equity ratio is 3:1
- Transactions between preferential trade enterprises and local related entity subject to transfer pricing

### **Transfer pricing**

Transfer pricing between related parties should be based on arms length or using the following methods:

- Comparable uncontrolled price method
- Cost plus method
- Resale price method
- Profit split method
- Transaction net margin method
- Other prescribed method

### **Capital allowances**

- Tractors, lorries over 3 tonnes, heavy self-propelled vehicles 37.5%
- Computer hardware, calculators, copiers and duplicating machines 30%
- Motor vehicles and aircrafts (saloon cars qualifying value limited to KShs. 2 million) 25%
- Plant, machinery, petroleum pipeline, furniture and equipment 12.5%
- Loose tools and implements (straight-line) 33.3%\*
- Petroleum and Mining Exploration Machinery 100%
- Telecommunication equipment used by telecommunication Operator (straight-line) 20%
- Machinery, roads, bridges under concessionaire agreement straight line basis i.e., Amortised over the concession period

\* this is the generally accepted rate but it could be lower or higher depending on the exact nature of the tools.

### **Industrial building allowances**

- Factories 10%
- Commercial buildings places (up to 31/12/12) 10%
- Commercial buildings with services 25%
- Rental residential buildings with services 25%
- Prescribed low-cost residential housing developments 5%
- Hostels and approved educational buildings – from 2007 10%
- Hostels education buildings 50%

### **Farm Works Deductions**

100%

### **Investment Deduction Allowances**

- Qualifying investment exceeding KShs. 200 million outside Nairobi, Mombasa or Kisumu 150%
- Manufacturing (Building or Machinery) 100%

- On construction of a building or on purchase and installation of machinery by or for a SEZ 100%
- Hotel 100%
- Film equipment by local film producer 100%
- Building used for training film producers, actors or crew 100%
- Ships over 125 tonnes 100%

### Specified expenditure on intangible assets

- Software rights 20%
- Right to fibre optic cable by a telecommunication operator 5%

### Other

- Petroleum and Mining Development Expenditure 20%
- Electricity costs by manufacturers subject to conditions set by the Ministry of Energy 130% of cost

### Set-off of tax

- Tax paid in another country on employment income by a Kenyan citizen can be offset against tax payable on that income in Kenya to the maximum of tax payable in Kenya on the said income

## WITHHOLDING TAX RATES

	Resident	Non-Resident (1)
<b>Investment Income</b>		
- Qualifying dividends (for E.A.C citizens, the resident rate is applied)	5%	10%
- Subsidiary and associated company dividends (with >12.5% shareholding)	N/A	10%
- Dividends paid by SEZ	5%	N/A
- Interest (including deemed interest) (2)	15%	15%
- Qualifying interest on - housing bonds	10%	N/A
- bearer instruments	20%	N/A
- any other	15%	N/A
- Two year government bearer bonds	15%	15%
- Other bearer bonds	25%	25%
- Ten year bearer bonds	10%	15%
- Rent - Buildings (immovable) (3)	10%	30%
- Others (except aircraft, aircraft engine, locomotives and rolling stocks)	N/A	15%
<b>Services payments</b>		
- Demurrages charges	N/A	20%
- Winnings (2)	20%	20%
- Royalties (3)	5%	20%
- Insurance or reinsurance premium, (except paid for aircraft)	N/A	5%
- Insurance commission paid to - brokers	5%	20%
- others	10%	20%
- Building, civil and engineering contractual fees (for local payments, this applies for payments of/or more than KShs. 24,000 p.m.)	3%	20%
- Management, consultancy, agency professional and training fees (for local payments, this applies for payments of/or more than KShs. 24,000 p.m.) (3) (5) (for E.A.C residents the rate is 15%)	5%	20%
- Paid by Petroleum Contractor on		
- Management, training or professional fee	N/A	12.5%
- Telecommunication services/messages	N/A	5%
- Shipping gains/profits	N/A	2.5%
- Entertainment and Sports fees	N/A	20%
- Natural Resource Income	5%	20%
- Service fee paid by Petroleum contractor to Non-Resident sub-contractor	N/A	5.625%
- Service fee paid by Mining licensee to Non-resident sub-contractor	N/A	5.625%
<b>Pensions</b>		
- Pension withdrawals (graduated rates)	10-30%	5%

(1) Rate may be less for countries with double tax treaty with Kenya

(2) Final tax

(3) Paid by Special Economic Zone Enterprise (SEZ) developer/enterprise to a non-resident - 5%

(4) Only by approved agents

(5) Excludes commission paid to non-residents for international travel air tickets

## MOTOR VEHICLE ADVANCE TAX

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For public service vehicles (PSV), pick-ups, vans, lorries and commercial vehicles:

- Higher of KShs. 1,500 per ton of load capacity per annum or KShs. 2,400 per annum
- For passenger carrying vehicles: For every driver KShs. 3,600 and for every conductor KShs. 1,200
- For minibus, station wagons and saloon cars: Higher of KShs. 60 per passenger capacity or KShs. 2,400 per year whichever is higher
- Payment has to be on or before 20th of the first month of the year

## CAPITAL GAINS TAX (CGT)

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### Self assessment tax

- Transfer of property and unlisted securities - 5% (final tax)
- CGT applicable to transfer of property by insurance companies except property connected to life business

### Property transfer

- CGT due date - On or before the date of application for transfer is made to lands office

### Exemptions

- Transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity, subject to certain conditions.
- Transfer of assets to a company where spouses or a spouse and immediate family hold 100% shareholding
- Land transfer by an individual value of which is KShs. 3,000,000 and below
- Transfer of Agricultural land by an individual having an area of 50 acres and below outside municipality
- Transfer of residential home by an individual (MUST have occupied the house for at least 3 years prior to transfer)
- Transfer of assets between former spouses or their immediate family as part of divorce settlement or bona fide separation agreement
- Transfer of assets between spouses or immediate family
- Transfer of property within 2 years of issue of probate under estate administration
- Transfer of listed securities

## VALUE ADDED TAX (VAT)

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### Charge to tax

VAT is chargeable on the supply of taxable goods and services as well as on the importation of goods and services into Kenya. The liability to account for the tax is on the supplier. Liability to VAT on imported goods is on the importer and is collected by customs. Liability on imported services is on the importer and the tax is paid directly to the commissioner by registered importer

### Standard rate

Applicable on taxable goods and services 16%

### Other rates

Goods listed in Section B of Part I of the First Schedule (taxable value excludes excise duty, fees and other charges) 8%

### Zero rate

Applicable on exports and specified zero-rated goods and services 0%  
Services supplied to transit goods 0%

### Registration

- Registration threshold (turnover per annum) KShs. 5,000,000
- Discretionary voluntary registration can be granted
- The commissioner must be notified of any changes affecting registration
- Group registration is available on application but subject to specified conditions
- Application to the Commissioner may be submitted within 3 months of registration for VAT incurred on inventory and

assets held in the last 24 months prior to registration date or exempt goods becoming vatiable and if approved may be claimed in the VAT return as input VAT.

### **Time of supply**

Time of supply is earliest of supply of goods or services, issuance of an invoice, issuance of architect's certificate or payment date

### **Value of supply**

The value for tax is the price paid for local supply of goods or services. The value for imported goods is the value for duty plus duty paid. The price includes any cost of wrapping or packaging (except returnable containers) and all other incidental costs (except hire purchase interest)

### **Place of supply of services in Kenya if:**

The VAT Act, 2013 has extensively enlarged provisions on this. Please consult us when necessary

### **VAT withholding**

VAT withholding agent to withhold 2% of taxable value at the time of paying for purchases (taxable supplies for official aid funded projects excluded) (w.e.f. 7/11/2019).

Application for exemption can be made if in credit position for not less than 24 months. Due date on or before 20th day following payment to supplier. 10% late payment penalty.

### **VAT exemptions**

- Plant, machinery and equipment used in the construction of a plastics recycling plant
- Locally manufactured motherboards
- Musical instruments and other musical equipment, imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education

### **VAT refunds**

VAT is refundable where credits arise from: making zero rated supplies; tax paid in error; tax on debts exceeding three years

- Input tax claimable within 6 months of the date tax became payable
- Credit notes to be issued within 6 months of the date tax became payable
- VAT refund claims must be lodged within 12 months from the time the tax became due and payable

## **MISCELLANEOUS TAXES**

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### **Gaming and Lotteries**

Betting, Lottery, Gaming and Prize Competition tax at 15%

### **Training levy**

The Directorate of Industrial Training levies administers the Industrial Training Levy. The levy is KShs. 50 per employee per month. Contributing employers qualify for reimbursement of approved training expenses

### **Standards levy**

Due from manufacturers at the rate of 0.2% of ex-factory price subject to a minimum of KShs. 1,000 per month and a maximum of KShs. 400,000 per annum

### **Catering levy**

The catering levy is a 2% tax levied on hotels and restaurants

### **National Housing Development Levy**

1.5% of basic pay payable by employer & employee subject to a maximum of KShs. 5,000

## **CUSTOMS DUTIES**

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Duties are chargeable on imports, exports and on specified goods and services. Customs duties are charged under the East African Community Common External Tariffs

### **Customs duty rates**

Raw materials	0%
Semi-finished goods	10%
Finished goods	25%
IDF fees (exempt for EAC)	3.5% (w.e.f. 7/11/2019)
Export duties - lead acid batteries	20%
- raw hides and skins	40%



Railway Development Levy on all imports (w.e.f. 7/11/2019)	2%
IDF fees and Railway Development Levy for manufacturers approved by CS Treasury & Industry	1.5%

## EXCISE DUTIES

Excise duties are charged on a variety of products including:

Betting	20% of staked amount;
Imported gas Cylinders	35%;
Imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02, 87.03 and 87.04	25%
Motor Vehicles of tariff no. 8703.24.90 and 8703.33.90	35%
Bottled water	KShs. 5.2 per litre
Cosmetics & beauty products	10%
Telephone and internet data services	15%
Fees charged for money transfer services by banks, money transfer agencies and other financial service providers	20%
Fees charged for money transfer services by cellular phone service providers	12%

## NATIONAL SOCIAL SECURITY FUND

### Old NSSF act

Contributions are set at 10% of monthly income up to a maximum of KShs. 400 per month; half paid by employer and half by employee. In case of casual employees only the employer pays 5% of gross wages. Payable even for one employee

### New NSSF act (under court injunction)

- 12% of the pensionable earnings of an employee; half paid by employee and half by employer
- Pensionable Earnings defined as the lower of the member's monthly wage and upper earnings limit
- Currently Upper Earnings Limit is KShs. 18,000 and lower earnings limit at KShs. 6,000. Upper earnings limit will move up gradually to the average level of earnings equal to 4 times the National Average Earnings (NAE)
- Compulsory contributions to NSSF up to 12% of lower earnings limit. Excess contribution over 12% lower earnings limit may be contributed to NSSF or any other registered retirement scheme

## NATIONAL HOSPITAL INSURANCE FUND

Payments are set at graduated scale rates starting at KShs. 150 to a maximum of KShs. 1,700 on salaries of KShs. 100,000 and above (for self employed KShs. 500 per month)

## STAMP DUTY

• Increase in share capital	1%
• Transfer of stock or marketable security (no duty on quoted securities)	1%
• Transfer of immovable property in:	
- Municipalities	4%
- Outside municipalities	2%
• Debenture or mortgage:	
- Primary security	0.1%
- Auxiliary security	0.1%
• Lease 1 and 3 years	1% of annual rent
• Lease over 3 years	2% of annual rent

### Exemptions under Real Estate Investment Trust (REIT)

- Transfer of beneficial interest from one trustee to the other or an additional trustee
- Transfer of beneficial interest in property from a person or persons for transfer of units REIT

### Other exemptions

- Husband/wife transfers
- Family to family controlled company land transfers
- Transfers between holding and subsidiary companies with shareholdings > than 90%
- Transfer of land for school construction
- Certain exemptions for Islamic related transfers

- Purchase of a house by a first-time home owner under affordable housing scheme (w.e.f. 1/10/2018)

## TAX PENALTIES

Offence	Penalty
Failure to apply for registration/licensing or deregistration under tax law (except VAT)	KShs. 100,000 for each month or part thereof but not exceeding KShs. 1,000,000
Failure to keep records as required under tax law	The higher of KShs. 100,000 or 10% of tax payable relating to unavailable records
Failure to file tax return by due date	<ul style="list-style-type: none"> <li>• Employment Income - Higher of KShs. 10,000 or 25% of PAYE due;</li> <li>• VAT or Excise - Higher of 5% of tax payable or KShs. 10,000;</li> <li>• Individuals - Higher of 5% of tax payable or KShs. 2,000;</li> <li>• A person other than an individual - Higher of 5% of tax payable or KShs. 20,000</li> </ul>
Failure to pay tax on the due date	5% of tax due and payable
Failure to submit a document under tax law other than a tax return	KShs. 1,000 for each day or part day of default - Maximum KShs. 50,000
Making misleading or false statement leading to tax shortfall	75% of tax shortfall if false statement is deliberate; or 25% if otherwise; 85% if offence committed for the second time and 100% if offence committed for the third time and subsequent; 65% on voluntary disclosure prior to discovery by Commissioner or commencement of KRA audit whichever is earliest
Tax avoidance or false claim of tax refund	Double the tax amount avoided or refund claim filed
Failure to file return or pay tax under iTax	KShs. 100,000
<b>Specific Income Tax Act Penalties</b>	
Underestimation of instalment tax if current year basis of instalment tax calculation adopted	20% of difference between instalment tax payable and 110% of instalment tax paid
<b>Specific VAT Act, 2013 Penalties</b>	
<ul style="list-style-type: none"> <li>• Failure to apply for registration or deregistration</li> <li>• Failure to display tax registration certificate</li> </ul>	Fine not exceeding KShs. 200,000 and/or a jail term not exceeding 2 years
<b>Specific Excise Duty Act Penalty</b>	
General Penalty	Liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years, or to both
Offence which no penalty is provided for under the VAT Act, 2013	Fine not exceeding KShs. 1,000,000 and/or jail term not exceeding 3 years

Interest waiver application ONLY by reason of question of law or fact; hardship or equity; impossibility or undue difficulty. Waiver of penalties unconditional but discretionary

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