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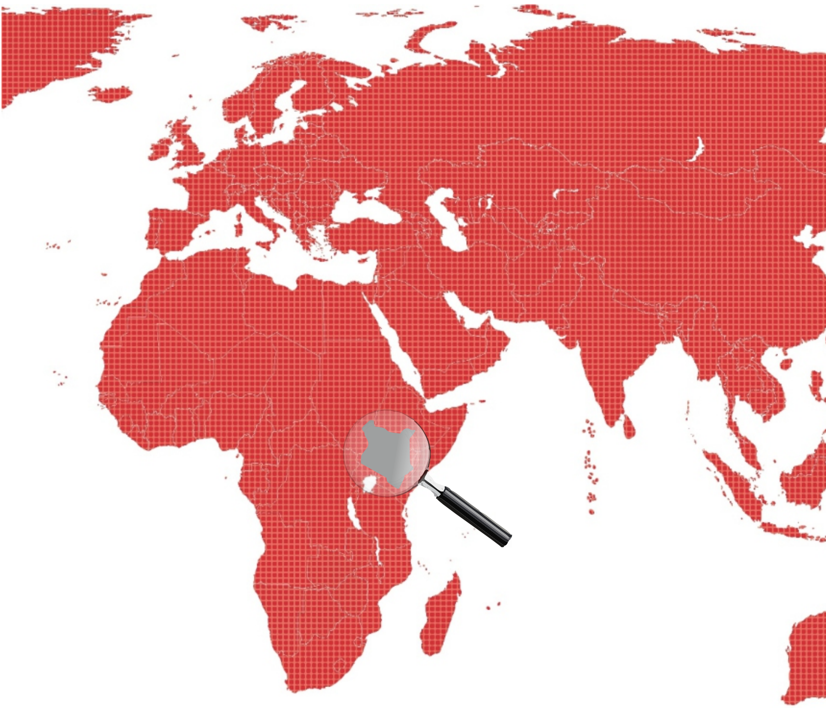

TAX AND INVESTMENT FACTS

A GLIMPSE AT TAXATION AND INVESTMENT IN KENYA

wtskenya

Viva Africa Consulting LLP, WTS Co-operation Partner, Kenya

Viva Africa Consulting LLP ("VACL") is an independent specialist legal and financial fiscal advisory Firm providing tax advice in personal, corporate and investment matters. The Firm comprises of some of the leading experts in tax, many of whom have gained experience from years of practice with the 'big four' accounting firms.

VACL is widely acknowledged as being amongst the leading tax and business advisors in the region having developed a reputation for being reliable providers of quality, value adding and practical tax advice in our areas of speciality. We have developed an internal operating structure which ensures that we combine top level expertise and experience with a hands-on-deck approach resulting in efficient and personalized delivery of service by ensuring active participation of all members in the VACL Team. Being independent, we are free from audit based conflicts of interest and the attendant time consuming conflict checking procedures. Moreover, we are free to assist our clients in implementation activities, which effectively bring in additional real value by our involvement.

We focus on national and international aspects of tax affecting both businesses and individuals and offer the full spectrum of tax services from individual taxation to transfer pricing and tax efficient mergers and acquisitions ensuring that clients optimise their tax position, legal structure and improve their processes.

In particular we focus on:

- Mergers & Acquisitions
- Tax Planning & Risk Management
- Transfer Pricing
- Transaction Advisroy, Structuring and Support
- International Tax & Offshore Tax Planning
- Taxation of Employment Income
- Tax Recovery
- Direct and Indirect Tax Management
- Tax Investigations Management
- Resolution of Disputes with the Revenue Authorities
- Wealth Management and Succession Planning
- Strategic Planning, including Risk & Opportunity Evaluation and Implementation

In all the above areas of focus our ability to implement recommendations, including interaction with regulators and Revenue Authorities places us in a unique position as fiscal advisors.

Our clients are from a broad range of industries/sectors including real estate, infrastructure and the energy industry, private equity funds, agricultural concerns, petroleum, manufacturing, trading, and telecommunications, among others and are from a diverse range of countries with operations across the globe.

WTS Alliance, to which VACL is a Co-operation Partner, is a global network of selected consulting firms represented in more than 100 countries worldwide. Within our service portfolio we are focused on tax, legal and consulting. In order to avoid any conflict of interest, we deliberately refrain from conducting annual audits. Our clients include multinational groups, national and international medium-sized companies, non-profit organizations and private clients.

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TABLE OF CONTENTS

A. INTRODUCTION 7

1. Types of Business Organisation and their Tax Status 7

2. Exchange Controls 7

3. Restrictions on Business Ownership and Control 8

4. Doing Business in Kenya 8

B. BUSINESS TAXATION 8

5. Scope of Income Tax 8

6. Taxation of Resident Entities 9

7. Taxation of Non-resident Entities 9

8. Assessment and Payment of Income Tax 9

9. Basis of Tax 10

9.1 Taxable Income 11

9.2 Dividend Income 11

9.3 Foreign Source Income 11

9.4 Deductions 11

9.5 Management Fees 11

9.6 Interest Expense 11

9.7 Foreign Exchange Differences 12

9.8 Taxes 12

9.9 Inventory Valuation 12

10. Capital Allowances 12

10.1 Investment Deduction 12

10.2 Industrial Building Allowance 12

10.3 Wear and Tear Allowance 13

11. Withholding Taxes 14
12. Employment Taxes 15
13. Fringe Benefits Tax 17
14. Social Security Contributions 17
15. Other Business Taxes 18
15.1 Value Added Tax 18
15.2 Customs and Excise 18
15.3 Export Duties 19
15.4 Stamp Duty 19
15.5 Other Taxes, Levies and Fees 19
16. Investment Incentives 19
16.1 Export Processing Zones 19
16.2 Duty Remission 20
C. TAX PLANNING 20
17. Taxation of Groups of Companies 20
18. Tax Treatment of Branches and Subsidiaries Compared 20
19. Thin Capitalisation 21
20. Capital Gains and Compensating Tax on Distributions of Capital Profits 21
21. Tax Treatment of Losses 22
22. Transfer Pricing 22
23. Artificial Transactions 22
D. PERSONAL TAXATION 22
24. Tax Treatment of Resident Individuals 23
24.1 Scope of Taxation 23
24.2 Employment Income 23
24.3 Residence of Individuals 23

24.4 Income Other than from Employment 24
24.5 Interest 24
24.6 Joint and Separate Returns 24
25. Assessment and Payment of Income Tax 24
26. Tax Treatment of Non-resident Individuals 25
E. FURTHER INFORMATION 25

PREFACE

Viva Africa Consulting LLP presents the first in a series of guides to taxation in Africa, under the series title Ujuzi, a word in Swahili encapsulating the concepts of knowledge and experience and their skilful application which underpins Viva Africa's service delivery.

Most tax guides write about taxes. The Ujuzi Guides are user-focused, and this guide to the taxation of business in Kenya is for a local or international investor and does not deal at length with the details of personal tax, except to the extent that they are relevant to the business.

The guide starts with a short background describing types of business organisation, exchange control, restrictions on foreign investment and business ownership (if any) and the country status under the World Bank's highly respected Doing Business indices.

The core section deals with the taxes which a business is obliged to pay, whether on its own account, or on behalf of suppliers or employees. Under the heading of Tax Planning, we briefly deal with some of the key areas of business structural planning which a new business is well advised to 'get right' at the outset. This naturally leads into a description of anti-avoidance legislation, which gives the tax authorities some leeway to make adjustments where the effective substance of the transactions differs from their apparent legal form.

The guide then has a brief section on personal taxes from the individual's standpoint and reference is then made to the key legislation and online resources.

Of course, these guides are nothing more than an introduction and the partners of Viva Africa will be pleased to advise you further. Information about Viva Africa and contact details are provided at the back of this guide.

Nairobi, Kenya, May 2015

A. INTRODUCTION

1. Types of Business Organisation and their Tax Status

The main type of formal business organisation in Kenya is the limited liability company, with public companies available where the number of shareholders requires. Newly listed public companies may be eligible for reductions in the corporate rate of income tax.

Foreign investors also sometimes operate through branches, in which case there is an increased tax rate.

Sole proprietorships and partnerships are also common in the professions and in less formal business, and are subject to personal income tax. For a partnership, tax is charged to the partners on the basis of their allocated shares of the profit/loss.

The Limited Liability Partnership Act came into effect on 16 March 2012 and a limited liability partnership is proving to be a viable alternative to operating through a limited liability company.

Co-operative societies are taxed under special rules.

Further details of the respective tax rates are set out in Section B.

2. Exchange Controls

The Kenyan Shilling (KShs) is the national currency although it is not unusual for transactions to be designated in other currencies such as the US Dollar (1 US$ = KShs 94.7597 as at 05 May 2015[1]).

The Exchange Control Act was repealed in late 1995 and commercial banks may now process remittances with respect to bona fide business transactions without approval from the Central Bank of Kenya. However, they must inform the Central Bank of any daily remittances from the country in excess of US$ 50,000. Business accounts in the foreign currencies of the main trading partners can easily be opened and there is no requirement to repatriate foreign earnings or to convert such amounts to local currency.

[1] Rate obtained from the Central Bank of Kenya website (www.centralbank.go.ke)

3. Restrictions on Business Ownership and Control

There are few restrictions on the extent of non-resident participation in companies. For companies quoted on the Nairobi Securities Exchange a minimum of 25% of the issued shares must be owned by East Africans. The insurance business is restricted to resident controlled companies. Work permits are generally available for expatriate management and staff where justified.

3.1 Trusts Other Than Special Trusts

Trusts which do not fall under special trusts are taxed at the rate of 41%.

4. Doing Business in Kenya

Nairobi, Kenya is the largest centre of economic activity in eastern Africa and is therefore a frequent choice for regional head offices for multinationals. For 2014, Kenya ranked 129 out of 189 economies as compared to Uganda (132), Tanzania (145). Rwanda is ranked 32. For the criteria of ‘paying taxes’, ‘trading across borders’ ‘registering property’, and starting a business, Kenya was ranked below 150th. A significant amount of detail is included in the survey report, for instance relating to the 10 procedures to start up a standard company which take an estimated 34 days.

B. BUSINESS TAXATION

5. Scope of Income Tax

Income tax is chargeable on all income accruing in or derived from Kenya. This applies to resident and non-resident entities alike. Nonetheless, residence or non-residence affects the rate of tax and the way in which the taxable income is determined.

Capital Gains Tax was re-introduced in the Finance Act 2014 at the rate of 5% and was set to be effective from 1 January 2015. The capital gains tax had been suspended in Kenya since 1985. Having been recently introduced there are a few uncertainties surrounding the administration of the tax. The Kenya Revenue Authority has however issued some guidelines on its administration and it is anticipated that the Finance Act 2015 will also bring more clarity on the administration of the tax.

Aspects of the business impact of this are described in Section C below.

6. Taxation of Resident Entities

A company or other similar body of persons is resident in Kenya for tax purposes if:

6.1 it is incorporated under Kenyan law; or

6.2 the management and control of its affairs are exercised in Kenya; or

6.3 it is declared resident by the Minister of Finance in the official Gazette.

When a business is carried on by a resident person partly within and partly outside Kenya, the whole of the profit of that business is deemed to accrue in or be derived from Kenya.

The corporate rate of income tax is 30%. This may be reduced for several years of income after listing where the newly listed companies exceed targets for the percentage of shares placed in the market. If more than 20% of the shares are listed the rate falls to 27% for three years. For over 30% listed, the tax rate is 25% for five years and for 40%, the tax rate is 20% for five years.

Certain businesses with turnover not exceeding KShs 5 million per annum may apply to pay turnover tax at 3% of the gross receipts of the business instead of income tax based on adjusted profits.

7. Taxation of Non-resident Entities

The adjusted profits of a branch (and other Permanent Establishments) of a non-resident company are subject to tax in Kenya at a rate of 37.5%. Certain tax aspects relevant to deciding whether to carry on business in Kenya as a branch or company are described in Section 3 below.

Payments by residents to non-residents of interest, dividends, management, professional or technical fees, royalties, asset leasing, pensions shipping or rents are deemed to be income derived from Kenya. Such payments are subject to withholding tax, which in these cases is a final tax in Kenya.

8. Assessment and Payment of Income Tax

The tax year is the calendar year, but a company may have any year end accounting date it chooses. The taxable income of a company for a year of income is the taxable income of its accounting period ending in that year. The annual Budget Presentation is made in June and income tax measures are normally applicable from 1 July.

All income is self-assessed and may be subject to desktop review or audit by the Kenya Revenue Authority.

Instalment taxes are also payable for the current year. It may be difficult to project current year tax sufficiently accurately and often therefore the prior year basis is preferred and the current year's profit is estimated as 110% of the prior year's profit. Relevant tax withheld at source can be used to reduce the instalments which are payable on the twentieth day of the fourth, sixth, ninth and twelfth months of the accounting period. Because of the seasonality of income for Agricultural enterprises, the first three instalments are combined and fall due paid on the twentieth day of the ninth month of the accounting period.
Any balance owing after payment of the instalment taxes is due not later than the last day of the fourth month following the financial year-end.

A final return, accompanied by the taxpayer's accounts and a computation of the tax liability, must be submitted no later than the last day of the sixth month following the financial year-end. No extensions are granted and the Commissioner can issue an estimated assessment if a taxpayer fails to submit a final return. Penalties can be levied for failure to submit a return or to pay tax or for underestimation of tax.

9. Basis of Tax

9.1 Taxable Income

The ordinary principles of commercial accounting generally apply to the calculation of income. Taxable profits are based on profits reported in the statutory accounts, which are adjusted for tax purposes. Business income, investment income (except for that of banks and financial institutions), rental income and income from agricultural activities are assessed separately, and losses from each of these sources can only be set off against profits from the same source.

9.2 Dividend Income

Dividend income is not included in taxable profits. The dividend income of banks and other financial institutions is exempt from tax, but attributable expenses must be disallowed. Also exempt are dividends received by a resident company from another company of which the investing company controls 12.5% or more of the voting power. Otherwise, dividend income is subject to a final withholding tax.

9.3 Foreign Source Income

The business income of resident companies is taxed on a worldwide basis where business is carried on or exercised partly within and partly outside Kenya. Double taxation is avoided where double tax treaty applies; otherwise, foreign taxes are treated as an expense. Foreign source investment income is exempt, as it is not derived from Kenya, except for Kenyan branches of non-resident banks on Kenya based assets.

9.4 Deductions

The general rule for deducting expenses is that the expenses should be incurred wholly and exclusively in the production of income and should not be of a capital nature. The Income Tax Act lists specific expenses that are allowable when incurred.

9.5 Management Fees

Management fees paid to non-residents are typically deductible only to the extent that the Commissioner considers them to be fair and reasonable.

9.6 Interest Expense

Interest paid on borrowings incurred to generate investment income (excluding dividend income) is deductible to the extent of investment income earned. Interest paid to a related party may be disallowed to an extent if the paying company is thinly capitalised, as further described in

Section C.

9.7 Foreign Exchange Differences

Foreign exchange gains or losses resulting from a Kenyan business are treated as trading receipts or deductible expenses if realized. No distinction is made between capital or trading transactions.

9.8 Taxes

Direct Kenyan taxes are not deductible, but other domestic taxes treated as expenses are deductible.

9.9 Inventory Valuation

Any method of inventory valuation sanctioned by accounting principles is accepted, as long as it is consistently applied. Stock provisions will often be disallowed unless they are substantially realised.

10. Capital Allowances

The principal types of allowance for the qualifying capital expenditure of a business are the Investment Deduction, the Industrial Building Allowance, and the Wear and Tear Allowance.

10.1 Investment Deduction

A 100% Investment Deduction is available to manufacturers against the cost of construction of new buildings and purchase and installation of new plants. For hotels, only the building is eligible. The rate is increased to 150% outside the municipalities of Nairobi, Mombasa and Kisumu, provided the investment is not less than KShs. 200 million. Industrial Building Allowance and Wear and Tear allowance may not also be claimed on the same assets.

10.2 Industrial Building Allowance

Industrial Building Allowance is granted on the straight line basis for qualifying capital expenditure on the construction of an industrial building to be used in a business carried on by the taxpayer or his lessee at the following rates:

Classes of Industrial Building	% IBA
Education buildings and hostels, and training facilities	50%
Rental, residential or commercial buildings	25%
Hotels and other qualifying buildings	10%

10.3 Wear and Tear Allowance

Plant and machinery used in carrying on a business is eligible for a wear and tear deduction using the reducing balance method. The rates depend on the types of assets as follows.

Classes of Plant & Machinery	% Wear & Tear Rate
Tractors, combine harvesters, heavy earth-moving equipment and similar heavy self-propelling machines	37.5%
Computers and peripheral computer hardware, calculators, copiers and duplicating machines	30%
Other self-propelling vehicles, including aircraft	25%
All other plant and machinery, including ships	12.5%

Computer software is allowed a 20% rate on the straight line basis.

Special rules apply to specific trades including telecommunications, mining and agriculture.

(a) Telecommunication equipment used by an operator has a 20% wear and tear allowance on the straight line basis;

(b) Qualifying capital expenditure incurred in mining specific minerals has a 40% first year allowance, with the remaining cost written off at 10% per annum for six years;

(c) Farm works are eligible for a 100% deduction for years of account commencing 1 January 2011 (previously spread over two years).

11. Withholding Taxes

The main rates of withholding tax on payments to residents and non-residents are shown below. In the case of dividends and fees and commissions, a concessionary rate applies for recipients in the East African Community (for dividends, the residents must also be citizens).

The general rate for non-residents is substituted with the treaty rate when lower. Kenya has tax treaties with only nine countries, Canada, Germany, France, India, UK, Zambia, and the Scandinavian countries of Denmark, Norway and Sweden. Treaties with Mauritius and Iran have now been signed and ratified, however following completion of the procedures required under Kenyan law they are expected to be in force as from 1 January 2015. Treaties with Italy, Tanzania and Uganda have been signed but are not in force. Other agreements are in the course of drafting or negotiation.

	Kenya Resident	East Africa	Non-resident
Bank Interest	15%	15%	15%
Dividends (on less than 12.5% holdings)	5%	5%	10%
Royalties	5%	20%	20%
Management fees, consultancy fees, commissions, including reimbursement of incidental costs	5%	15%	20%
Construction and similar contract fees	3%	20%	20%
Leases of immoveable property	0%		30%
Leases of moveable property	0%		15%

Payment of withholding tax is due on the 20th of the month following deduction from the payment to a supplier, who should be sent a certificate of deduction at the time of settlement.

In the case of residents, the tax withheld can usually be credited against the recipient's final tax liability; however, tax withheld from dividends and from interest paid to individuals is final. For non-residents, tax withheld from any payment is usually a final tax, so far as Kenya is concerned.

12. Employment Taxes

Although the tax on employment income is the obligation of the employee, an employer is responsible for deduction of tax and its remittance to the Kenya Revenue Authority under the PAYE system. The employer must therefore recognise who is subject to this system (see Section 4 for the determination of individual residence) and how to compute their PAYE and when to remit it. Benefits in kind are also subject to tax under PAYE system.

Taxable income from employment is widely defined and includes wages and salaries, commissions, bonuses and allowances. Benefits in kind are in principle taxable at the higher of cost to the employer or the fair market value of the benefit. However, whilst this will apply to housing, for utilities and domestic staff fixed scale rates apply.

Travelling, entertainment and other allowances are taxable unless they represent the reimbursement of expenses incurred in the production of income. However the first KShs 2,000 per day expended by an employee while out of his usual place of work is tax free.

An employee is not subject to tax on a passage between Kenya and any place outside Kenya that is paid for by the employer, provided that the employee is not a Kenyan citizen, was recruited from outside Kenya, and is in Kenya solely for the purposes of the employment.

Exempt income also includes:

(a) the value of medical services provided by an employer for a full-time employee, including directors. In the case of a non-whole-time director, the value of the services is currently limited to KShs. 1 million per annum;
(b) employer's contributions to pension or provident funds. Contributions to an unregistered fund or on the excess contribution (i.e. contributions over the set threshold) to a registered fund are taxable;
(c) the educational fees of an employee's dependents or relatives that are

paid and treated as a non-deductible expense by the employer.

(d) the value of a benefit, advantage, or facility of whatsoever nature the aggregate value whereof is less than Kshs.36,000/= per employee per year, granted in respect of employment or services rendered.

(e) the value of meals served to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer (whether the meals are supplied in the premises of the employer or the premises of the third party) where the value of the meal does not exceed the sum of Kshs.48,000/= per year per employee".

Annual tax rates are given below. The Kenya Revenue Authority will provide monthly tax tables and directions regarding staff joining mid-year. Businesses are recommended to acquire a local payroll package and to take advice on non-routine matters.

KShs.	Rate
0 – 121,968	10%
121,969 – 236,880	15%
236,881 – 351,792	20%
351,793 – 466,704	25%
466,705 +	30%

Personal relief of KShs 13,944 per annum is available to a resident individual and deductible from his income tax liability on a monthly basis under the PAYE system.

Employee contributions to registered pension funds are deductible, subject to a monthly limit of KShs 20,000.

Section 3 on tax planning is mainly confined to corporate taxes and Section 4 deals with personal taxation from the perspective of the individual, and includes guidance on the taxation of income other than from employment.

The various forms of share option or employee share ownership schemes from which an employee may benefit will generally be subject to tax in Kenya. However, the schemes vary to such a degree that bespoke advice is nearly always required.

Payment of PAYE is due from employers by the 9th of the month following that to which the deductions relate.

13. Fringe Benefits Tax

Fringe benefits tax payable by an employer in Kenya arises only on the low interest rate loans provided to employees or directors. Other benefits are taxed on the employee, through the PAYE system.

The benefit is determined as the difference between the actual interest paid and the interest on the loan calculated at the market interest rate published by the Commissioner quarterly (9% for Q4 2014). Fringe benefit tax is computed at the corporate income tax rate, currently 30% and is payable quarterly.

14. Social Security Contributions

A contribution to the National Social Security Fund is, in most cases, mandatory. The maximum total contribution by the employer and the employee is KShs 400, of which half is due from the employer and half from the employee. New NSSF rates were proposed under the NSSF ACT 2013 but they have not been implemented as to date.

A graduated monthly contribution must also be made to the National Hospital Insurance Fund. Effective from 1 April 2015 the graduated scale of contribution was amended to provide for much higher rates as provided below:-

Gross Income (KShs)	Proposed Premiums (KShs)
5,999	150
6000 – 7,999	300
8,000 – 11,999	400
12,000 – 14,999	500
15,000 – 19,999	600
20,000 – 24,999	750
25,000 – 29,999	850
30,000 – 34,999	900
35,000 – 39,999	950
40,000 – 44,999	1,000

45,000 – 49,999	1,100
50,000 – 59,999	1,200
60,000 – 69,999	1,300
70,000 – 79,999	1,400
80,000 – 89,999	1,500
90,000 – 99,900	1,600
100,000 and over	1,700
Self – employed (special)	500

15. Other Business Taxes

15.1 Value Added Tax

Value Added Tax (VAT) is levied on taxable goods and services in Kenya supplied in the course of furtherance of business and on goods and services imported into Kenya. Only the former aspect is dealt with by the Domestic Taxes Department of the Kenya Revenue Authority. The threshold at which registration becomes compulsory is KShs. 5 million per year.

The standard rate of VAT is 16%. Exports and goods having socio-economic priority are zero-rated. Most foodstuffs are either exempt or zero-rated. VAT returns are filed by the 20th of the following month with any payment due.

15.2 Customs and Excise

Import duty and VAT on imports is controlled by the Customs Services Department of the Kenya Revenue Authority. Kenya is a member of both the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA). As a result, there are preferential tariffs for goods imported from the Member States subject to agreed conditions including Rules of Origin. Goods originating in Kenya also enter into the countries in question at preferential rates.

Kenya's main commodities subject to excise duty are soft drinks, alcoholic beverages, tobacco, fuel and motor vehicles. Other excisable commodities are plastic bags and importation of second hand computers. Excisable services mainly include mobile telephone services and gambling.

15.3 Export Duties

Export duties are charged on the export of raw hides and skins.

15.4 Stamp Duty

The transfer of shares listed on the Nairobi Stock Exchange is exempt from stamp duty. Stamp duty is charged on the creation or increase of share capital (1%), on transfers of shares of non-quoted companies (1%), on property transfers (4% in the municipalities, otherwise 2%), and on leases and debentures.

15.5 Other Taxes, Levies and Fees

The Customs Services Department of the Kenya Revenue Authority manages the collection of the following taxes and levies: Petroleum Development Levy; Sugar Levy; Road Maintenance Levy; Import Declaration Fee; Road Transit Toll; Directorate of Civil Aviation Fees; Air Passenger Service Charge; Kenya Airports Authority Concession fees; and Fees on Motor Vehicle Permits. The Road Traffic Department is part of the Kenya Revenue Authority and deals with driving licenses and vehicle registration.

A variety of other charges on business arise, including rates, business licenses and for work permits.

16. Investment Incentives

Various incentives are available in Kenya, as described below.

16.1 Export Processing Zones

Incentives in export processing zones consist of a ten year tax holiday followed by a 25% income tax rate for the next ten years; exemption from all withholding taxes on dividends and other payments to non-residents in the first ten years; exemption from management or technical agreements; and exemption from VAT and stamp duty. (No import duty or VAT relief is available with respect to passenger cars, fuel and spare parts). Businesses operating in Export Processing Zones get duty free fuel for use in generators and boilers, subject to the Commissioner's prescribed conditions.

16.2 Duty Remission

Materials imported for use in the manufacture of exports, for the production of raw materials for use in export manufacture, or for the production of duty-free items for domestic sale are eligible for duty remission.

C. TAX PLANNING

17. Taxation of Groups of Companies

Kenya provides for the filing of consolidated returns; however where consolidated returns are filed there is a requirement that the returns of individual companies are also filed, and self-assessment is on the basis of the individual company return. Tax losses may not be transferred between group companies.
Transactions between a resident and a non-resident company under common control, if carried out at artificial prices, can be taxed on the basis of the profits that would have accrued to the resident company if dealings had been at arm's length.

Withholding tax does not apply on dividends paid to a resident company that owns more than 12.5% of the resident company paying the dividend.

18. Tax Treatment of Branches and Subsidiaries Compared

Generally, it will be more tax efficient to operate as a local company rather than the branch of a foreign company. The corporate income tax rate for branches is 37.5% against 30% for a subsidiary or other company. A 10% withholding tax is levied on dividends paid by a subsidiary to a non-resident parent. This withholding tax does not apply to branches. Compensating Tax will apply in the case of subsidiaries but not to branches.

Payments of interest, royalties or management fees by a subsidiary to its parent are deductible (subject to deduction of withholding tax) provided the amounts are reasonable. These payments are not deductible in the case of a branch. No account is taken of foreign exchange gains or losses arising from transactions between a branch and its head office.

19. Thin Capitalisation

Restrictions are placed on the allowance of foreign exchange losses arising from loans by controlling interests to thinly capitalised companies. The realized foreign exchange losses are deferred if a company is thinly capitalised, determined from the 3:1 threshold of the accounting ratio of total loans to share capital and related revenue reserves. In the case of the extractive industry the ratio the threshold is 2:1.

20. Capital Gains and Compensating Tax on Distributions of Capital Profits

Capital gains tax at the rate of 5% is charged on the transfer of property. Property is defined in the eighth schedule to the Income Tax Act. There are a few exemptions from capital gains tax including transfer of property for purposes of securing debt, transmission of property in succession, transfer between spouses as part of divorce settlement, vesting of property in a liquidator or an official receiver and on compensation of government in a case of compulsory acquisition of someone's property by the government.

Expenditure of a capital nature is not an allowable deduction from income. Where assets on which wear and tear or similar capital allowances have been claimed are subsequently sold, the unrestricted proceeds are credited to the asset pool for the relevant asset class and this will either reduce the pool on which allowances are claimed or, if it becomes 'overdrawn', give rise to a balancing charge. As a result, gains on disposal of such assets are effectively taxed.

In the event of a capital gain being realised on disposal of other assets, Compensating Tax may arise should the company wish to distribute the gains to shareholders as dividends out of untaxed profits or profits taxed at a rate less than 30%.

However, dividends paid out of untaxed profits or taxed at a rate less than 30% are subject to Compensating Tax, which is not recoverable against tax payable on future revenue profits. The same situation might arise where tax is deferred due to investment and capital allowances. A Compensating Tax account (also referred to a 'Dividend Tax Account' is filed with the annual tax return.

21. Tax Treatment of Losses

Income from each of four sources, business, investment, rent and agriculture, is considered separately and tax losses from one cannot be offset against profits from another. Since 2009, unutilised tax losses may only be carried forward into the succeeding four years of assessment, although this may be extended on application in very exceptional circumstances.

22. Transfer Pricing

The Income Tax (Transfer Pricing) Rules, 2006 are brief and require the application of the arm's length principle to related party transactions. The Rules also provide the administrative framework for the determination of transfer prices. The Kenya Revenue Authority has also issued draft transfer pricing guidelines which broadly follow the OECD guidelines on transfer pricing.

23. Artificial Transactions

The Commissioner has a right, where he considers it just and reasonable, to ignore the legal form of a transaction and tax it according to its substance. This may only be applied where he considers that the main purpose or one of the main purposes or the main benefit of a transaction was to avoid or reduce tax, measured against the horizon of the current year of account and three further years.

D. PERSONAL TAXATION

This section deals with aspects of personal taxation that are the responsibility of the individual. Where such individual is in employment in Kenya, they will have had tax deducted at source under the PAYE system (see Section 2 above) and will have been issued with a certificate of earnings and tax deducted. If the individual has no other income to report, then there is no obligation to file a tax return. However, it may be useful for expatriate employees to file a return to speed up the process of tax clearance when they leave Kenya.

24. Tax Treatment of Resident Individuals

24.1 Scope of Taxation

Taxable income is the aggregate of various types of income accrued in or derived from Kenya, including business income, employment income, rental and investment income, and income from pensions. Pensions from foreign sources relating to service in Kenya are taxable in Kenya. Income from other foreign sources is generally not taxable, since it is not derived from Kenya. If losses arise, they may only be offset against subsequent profits from the same source.

The personal income tax rates for the 2011 year of income are set out in Section B.

24.2 Employment Income

Where the individual is resident in Kenya for tax purposes employment income is taxable on a worldwide basis. However, only Kenyan nationals with chargeable employment income derived from another country may set off the tax paid in the other country against tax charged in Kenya on the same income. The credit should not exceed the Kenyan tax component.

24.3 Residence of Individuals

An individual is regarded as resident in Kenya for tax purposes if he or she:

(a) has a permanent home in Kenya and was present in Kenya for any period in the year of income under consideration; or
(b) has no permanent home in Kenya but:
   i. was present in Kenya for a period or periods amounting in

total to 183 days or more in that year of income; or

ii. 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.

An expatriate worker arriving in Kenya will be treated as resident from the month of arrival and until the month of departure.

24.4 Income Other than from Employment

The business income of individuals is calculated in the same way as that of companies. The adjusted profits of a partnership are shared between partners and taxed on them in their individual capacity.

Dividend income and interest income received from financial institutions are not included in taxable income. They are instead paid net of withholding taxes, as described in Section 2, and such taxes become final.

24.5 Interest

Mortgage interest is deductible from income up to KShs 150,000 per year on approved borrowings for the construction or improvement of owner-occupied houses. Interest relating to rental properties is deductible against the related income.

24.6 Joint and Separate Returns

A married woman may elect to file her own income tax return in respect of all sources of income. Where the wife's income is taxed jointly with that of her husband, the tax on her income from employment or business is computed separately, allowing the couple to each retain the benefit of the lower tax bands for their earned income.

25. Assessment and Payment of Income Tax

The tax year is the calendar year, to 31 December. The rules regarding assessments and payments are generally the same as those described for corporate entities in Section A above, with underpaid tax determined by self-assessment being due by 30 April, and the related returns being due by 30 June.

26. Tax Treatment of Non-resident Individuals

Employment income subject to tax in Kenya may arise for a non-resident individual where that person is employed by, or on the payroll of, a Kenyan resident employer whether operating as a company or branch or other Permanent Establishment.

The income of a non-resident consultant who derives income from Kenya is subject to withholding tax at 20% (15% if from the East African Community). The rate is reduced under some of Kenya's tax treaties. The withholding tax is a final tax so far as Kenya is concerned.

E. FURTHER INFORMATION

Further information on the ease of doing business in Kenya can be obtained on the World Bank's *Doing Business* website at: http://www.doingbusiness.org/data/exploreeconomies/kenya and there is a good range of Kenyan commercial law in the associated online law library, including the Companies Act, the Banking Act and the Employment Act.

The Kenya Revenue Authority is divided into Domestic Taxes and Customs Services and has an integrated Large Taxpayer Unit. Professionalism, integrity and fairness are cornerstones of their vision statement. Their website is at http://www.kra.go.ke/ and provides access to information, forms and some legislation and portals for online filing of tax returns.

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