FOREWORD

A country's tax regime is always a key factor for any business considering moving into new markets. What is the corporate tax rate? Are there any incentives for overseas businesses? Are there double tax treaties in place? How will foreign source income be taxed?

Since 1994, the PKF network of independent member firms, administered by PKF International Limited, has produced the PKF Worldwide Tax Guide (WWTG) to provide international businesses with the answers to these key tax questions.

As you will appreciate, the production of the WWTG is a huge team effort and we would like to thank all tax experts within PKF member firms who gave up their time to contribute the vital information on their country's taxes that forms the heart of this publication.

The PKF Worldwide Tax Guide 2016/17 (WWTG) is an annual publication that provides an overview of the taxation and business regulation regimes of the world's most significant trading countries. In compiling this publication, member firms of the PKF network have based their summaries on information current on 30 April 2016, while also noting imminent changes where necessary.

On a country-by-country basis, each summary such as this one, addresses the major taxes applicable to business; how taxable income is determined; sundry other related taxation and business issues; and the country's personal tax regime. The final section of each country summary sets out the Double Tax Treaty and Non-Treaty rates of tax withholding relating to the payment of dividends, interest, royalties and other related payments.

While the WWTG should not to be regarded as offering a complete explanation of the taxation issues in each country, we hope readers will use the publication as their first point of reference and then use the services of their local PKF member firm to provide specific information and advice.

Services provided by member firms include:

- Assurance & Advisory;
- Financial Planning / Wealth Management;
- Corporate Finance;
- Management Consultancy;
- IT Consultancy;
- Insolvency - Corporate and Personal;
- Taxation;
- Forensic Accounting; and,
- Hotel Consultancy.

In addition to the printed version of the WWTG, individual country taxation guides such as this are available in PDF format which can be downloaded from the PKF website at www.pkf.com
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I. TREATY AND NON-TREATY WITHHOLDING TAX RATES
BASIC FACTS

Full name: The Republic of Kenya
Capital: Nairobi
Main languages: Swahili, English
Population: 44 million (2013 PRB)
Major religion: Christianity
Monetary unit: Kenyan Shilling (KES)
Internet domain: .ke
Int. dialling code: +254

KEY TAX POINTS

- Resident and non-resident companies are subject to income tax on income accrued or derived from Kenya. Different rates apply to resident and non-resident companies.
- Capital Gains Tax (CGT) was re-introduced with effect from 1 January 2015. The rate of tax is 5% of the net gain on the transfer of property. It is a final tax and cannot be offset against other income taxes.
- VAT is chargeable on imports and the supply of goods and services in Kenya. The standard rate is 16%. Certain goods and all exports are zero-rated. Some goods and services such as unprocessed agricultural products and financial services are exempt.
- Payments made to a resident in respect of rent, premium or similar consideration for the use or occupation of immovable property is subject to withholding tax at the rate of 12%.
- Kenyan resident individuals are taxed on Kenyan-source income and on income from employment or services rendered abroad.
- Non-residents are taxable on any income from employment with, or services rendered to, an employer resident in Kenya or the permanent establishment in Kenya of a non-resident employer.
- There are no foreign exchange controls applicable in Kenya and foreign currency is freely transferable in Kenya.

A. TAXES PAYABLE

CORPORATION TAX

Corporation tax is based on adjusted taxable profits. The rates are:
- Resident companies: 30%.
- Non-resident companies: 37.5%.

CAPITAL GAINS TAX

Capital Gains Tax (CGT) was re-introduced effective 1st January 2015. The rate of tax is 5% of the net gain on the transfer of property. It is a final tax and cannot be offset against other income taxes.

BRANCH PROFITS TAX

Branch of a foreign entity pays tax at the rate of 37.5%.
VALUE ADDED TAX (VAT)

The VAT rates are 16% and 0%. Exports are zero rated. Some goods and services such as unprocessed agricultural products and financial services are exempt.

WITHHOLDING VAT

Withholding VAT is deductible at the rate of 6% on taxable value of goods and services supplied to appointed agents such as Government Ministries, Departments, Agencies, and any other person appointed by the Commissioner.

TURNOVER TAX

Turnover tax: 3% of turnover (with effect from 1 January 2007 for turnover of up to KES 5,000,000).

EMPLOYMENT BENEFITS TAX

Cash and non-cash benefits are taxable on the higher of the cost incurred by the employer or the fair market value. The taxable value is added to the emoluments for tax purposes. Non-cash benefits are not taxable where the total aggregate value does not exceed KES 36,000 per annum. In addition meals whose aggregate value is less than KES 48,000 per annum are not taxable.

Motor Vehicles
The benefit is the higher of 2% per month of the initial cost of the vehicle or the commissioner prescribed rates. For leased vehicles the benefit is the cost of leasing.

Housing
For non-executive directors the benefit is the higher of 15% of total income (emoluments - for a whole time service director), fair market rental value and rent paid. For agricultural employees it is 10% of emoluments. For other employees it is the higher of rent paid and 15% of emoluments.

Loans to employees
Loans to employees are taxed at a corporate tax rate on the difference between the interest rate prescribed by the Commissioner and the actual interest rate paid by the employee.

Other benefits
The taxable benefit of furniture is 1% of cost per month, telephone is 30% of the bill, and employee share ownership plans (ESOPs) is the difference between the market price of shares and the offer price at the date the option is granted.

EMPLOYMENT TAX

Employment income is taxed on a withholding basis known as Pay As You Earn (PAYE) at a graduating scale of 10% - 30%.

OTHER TAXES:

LAND RATES

Land rates are based on the percentage of the site value.

NATIONAL SOCIAL SECURITY FUND (NSSF)

Contributions are set at the rate of a combined minimum of 12% of the pensionable earnings made up of equal contributions of 6% by the employee and employer. The NSSF contributions as per the NSSF Act 2013 are set to an upper limit of KES 2,160 per employee earning above KES 18,000 per
month. However, an employee earning below the Lower earnings limit of KES 6,000 will contribute up to a maximum of KES 720. The effective date for the NSSF Act 2013 is yet to be set due to impending court case.

The old NSSF contributions are therefore still applicable and are set at 10% of monthly income up to a maximum of KES 400 per month, half paid by the employer and the balance by the employee are currently being applied.

**NATIONAL HOSPITAL INSURANCE FUND (NHIF)**

NHIF payments are set at graduated scale rates starting at KES 150 per month to a maximum of KES 1,700 per month and self-employed persons KES 500.

**SINGLE BUSINESS PERMIT**

The business permit cost is applicable and varies based on county governments.

### B. DETERMINATION OF TAXABLE INCOME

#### CAPITAL ALLOWANCES

The rates for capital allowances are as follows:

<table>
<thead>
<tr>
<th>Wear and Tear:</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tractors/heavy vehicles (Class I)</td>
<td>37.5%</td>
</tr>
<tr>
<td>Computers hardware, copiers, scanners (Class II)</td>
<td>30.0%</td>
</tr>
<tr>
<td>Other motor vehicles, aircrafts (Class III)</td>
<td>25.0%</td>
</tr>
<tr>
<td>Ships, plant, machinery, furniture and equipment(Class IV)</td>
<td>12.5%</td>
</tr>
<tr>
<td>Telecommunication equipment</td>
<td>20.0%</td>
</tr>
<tr>
<td>Computer software</td>
<td>20.0%</td>
</tr>
<tr>
<td>Loose tools and implements (straight-line)</td>
<td>33.3%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Industrial building allowances:</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factories (2.5% up to 2009)</td>
<td>10% from 1 January 2010</td>
</tr>
<tr>
<td>Commissioner certified hotels - (up to 2006 was 4%)</td>
<td>10% from 1 January 2010</td>
</tr>
<tr>
<td>Hostels or approved educational building - (from 2007 was 10%)</td>
<td>100% from 1 January 2016</td>
</tr>
<tr>
<td>Commercial Buildings (with roads, power water, sewers &amp; other social infrastructure)</td>
<td>25% from 1 January 2013</td>
</tr>
<tr>
<td>Residential Rental Buildings constructed in a planned development area approved by the Cabinet Secretary (CS) in charge of housing.</td>
<td>25% up to 31 December 2012</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Farm works</th>
<th>100% from 1 January 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment deductions eligible for building and machinery used for manufacture (from 2008)</td>
<td>100%</td>
</tr>
<tr>
<td>Investment deductions eligible for construction of an industrial building or purchase and installation of machinery costing KES 200 million and above outside Nairobi, Mombasa &amp; Kisumu municipalities</td>
<td>150%</td>
</tr>
</tbody>
</table>
Shipping investment deduction for vessels above 125 tonnage | 100% from 1 January 2016
---|---
Purchase of filming equipment by licensed film producers | 100%
Investment deduction on buildings in use for training of film producers, actors or crew | 100%
Mining allowance - (on capital expenditure on machinery for the first use) | 100% from 1 January 2015

**DEPRECIATION**

This is an accounting expense which is not allowable for tax purposes. However, wear and tear allowances indicated above are allowable deductions while computing income tax.

**STOCK / INVENTORY**

The cost of sales is deducted as allowable expenditure before arriving at the accounting profits. General provisions on slow moving stock and stock write offs may be allowable in arriving at the taxable profit based on certain established criterion.

**CAPITAL GAINS AND LOSSES**

Capital Gains Tax (CGT) at the rate of 5% on net gains was reintroduced with effect from 1st January 2016 and is final tax. However, gain on transfer of securities traded on any securities exchange licensed by Capital markets Authority is not subject to CGT.

**DIVIDENDS**

Dividends are taxed on a Withholding Tax (WHT) basis which is final tax. Expenses are therefore not allowable on the dividends' income or any other income of the taxable person. Dividends are tax-exempt for resident companies controlling more than 12.5% shareholding.

Dividends received by financial institutions shall be deemed to be income chargeable to tax. However, compensating tax (corporation tax) may arise if non-taxed income is distributed, e.g. capital gain or profits on capital allowances. This is arrived at through an annual Dividends Tax Account which captures the movement of dividends received and paid and takes into consideration taxes paid by the entity.

**INTEREST DEDUCTIONS**

Interest incurred wholly and exclusively in the production of income is tax allowable. However, where a company is controlled by a non-resident person together with four or fewer resident persons, the interest deductibility is restricted only to the extent that the total indebtedness of the company does not exceed three times the paid-up share capital and revenue reserves or an amount of deemed interest (thinly capitalised).

The Commissioner of Income Tax is empowered to prescribe the form and manner in which deemed interest is to be computed. Realised foreign exchange losses are deferred as long as the Company is thinly capitalised.

**LOSSES**

Tax losses can be carried forward to be offset against future taxable income. However this is subject to a ten year limit effective 1 January 2016. The tax loss is only allowable on taxable income derived from the same specific source. These sources are:
a) Income from renting or occupation of immovable property;
b) Income from employment;
c) Income from agriculture, horticulture, forestry, etc;
d) Income from withdrawals from a registered pension/provident fund by employer;
e) Business activities.

Losses are not transferable from one entity to another.

FOREIGN SOURCE INCOME

Income that is not accrued or derived from Kenya is not assessable in Kenya except:
a) Employment income for an employee who at the time of employment was a resident person in
respect of any employment by him outside or inside Kenya; and
b) Business activities carried out across borders.

RESIDENTIAL RENTAL INCOME TAX

Residential rental income tax at the rate of 10% is imposed on gross residential rental income
effective 1 January 2016. This classification targets residential property owners whose turnover is less
than KShs 10 million annually. However, a taxpayer may opt to pay tax under the normal rates
provided by the Income Tax law upon making an application to the commissioner.

WITHHOLDING TAX ON USE OF IMMOVABLE PROPERTY

Payments made to a resident in respect of rent, premium or similar consideration for the use or
occupation of immovable property is subject to withholding tax at the rate of 12%.

TAX INCENTIVES

Capital deductions are allowable and provided for on assets based on the asset classification. A ten
year tax holiday is available to certain designated enterprises that undertake activities consisting of
the manufacture of goods for exports only (under the Export Processing Zones). At the end of the tax
holiday, a reduced rate of tax of 25% is available.

Dividends received by Special Economic Zones (SEZ) developer, and operators licensed under the
SEZ Act are exempted from tax. SEZ developers and operators are taxed at the rate of 10% for the
first ten years and thereafter 15% for the next ten years. Supply of goods and services to SEZ are
VAT exempt.

A lower corporation tax of 27%, 25% and 20%, for the first 3-5 years for companies newly listed on a
securities exchange, with at least 20%, 30% and 40% respectively, of the issued share capital listed.

Companies which list their shares or any other security by way of introduction enjoy a lower
corporation tax rate of 25% for a period of five years. Tax exemptions apply for organisations
undertaking charitable, medical, alleviation of poverty, and religious activities.

C. FOREIGN TAX RELIEF

Foreign tax relief is limited only to countries which have a Double Taxation Agreements with Kenya.
Kenya has Double Tax Agreements with the following countries:
• Canada;
• Denmark;
• East African Community;
• France;
• Germany;
• India;
• Mauritius;
Kenya

- Norway;
- South Africa;
- Sweden;
- United Kingdom; and,
- Zambia.

D. CORPORATE GROUPS

Generally for tax purposes, a corporation tax rate of 30% applies to all incorporated companies irrespective of groups in Kenya. The rate is 37.5% for non-resident companies.

E. RELATED PARTY TRANSACTIONS

Related party transactions are allowable expenses if incurred wholly and exclusively in the production of income and taxed as income if earned or accrued in Kenya as business activities. In addition, any foreign exchange loss or gain with respect to net assets or liabilities purportedly established between the permanent establishment in Kenya and the non-resident person are disregarded in determining gains or profits. Companies which have related party transactions are required to prepare and document Transfer pricing Documentation, as per the Kenyan Transfer Pricing Rules effective 1 July 2006.

F. WITHHOLDING TAX

The relevant rates are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Resident</th>
<th>Non-Resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>Artists and entertainers</td>
<td>–</td>
<td>-</td>
</tr>
<tr>
<td>Management fees</td>
<td>5%</td>
<td>20%</td>
</tr>
<tr>
<td>Professional fees</td>
<td>5%</td>
<td>20%</td>
</tr>
<tr>
<td>Training fees (inclusive of incidental costs)</td>
<td>5%</td>
<td>20%</td>
</tr>
<tr>
<td>Winnings from betting and gaming (w.e.f. 1 Jan 2014)</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>Royalties</td>
<td>5%</td>
<td>20%</td>
</tr>
<tr>
<td>Dividends (nil for resident shareholders with &gt;12.5%)</td>
<td>5%</td>
<td>10%</td>
</tr>
<tr>
<td>Equipment (movable) Leasing</td>
<td>N/A</td>
<td>5%</td>
</tr>
<tr>
<td>Interest (bank)</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Interest (Housing bond-HBI)</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>Interest on two-year government bearer bonds</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Other bearer bonds interest</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>Rent - buildings(immovable)</td>
<td>12%</td>
<td>30%</td>
</tr>
<tr>
<td>Rent - others (except aircraft)</td>
<td>N/A</td>
<td>15%</td>
</tr>
<tr>
<td>Pensions/provident schemes (withdrawal)</td>
<td>10-30%</td>
<td>5%</td>
</tr>
<tr>
<td>Insurance commissions</td>
<td>10%</td>
<td>20%</td>
</tr>
<tr>
<td>Consultancy and agency (from 1 July 2003)</td>
<td>5%</td>
<td>20%</td>
</tr>
<tr>
<td>Contractual (from 1 July 2003)</td>
<td>3%</td>
<td>20%</td>
</tr>
<tr>
<td>Telecommunication services/Message transmission</td>
<td>–</td>
<td>5%</td>
</tr>
<tr>
<td>Natural Resource Income (w.e.f. 01/01/2015)</td>
<td>5%</td>
<td>20%</td>
</tr>
</tbody>
</table>

G. EXCHANGE CONTROL

There are no foreign exchange controls applicable in Kenya at present, and foreign currency is freely transferable in Kenya. The Proceeds of Crime and Anti-Money Laundering Act provides that any
transaction which involves the movement of USD 10,000 or more must be supported by documentary proof of the reason of such a transfer.

H. PERSONAL TAX

The tax rates are as follows:

<table>
<thead>
<tr>
<th>Yearly Income (KES)</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 121,968</td>
<td>10%</td>
</tr>
<tr>
<td>121,969 to 236,880</td>
<td>15%</td>
</tr>
<tr>
<td>236,881 to 351,792</td>
<td>20%</td>
</tr>
<tr>
<td>351,793 to 446,704</td>
<td>25%</td>
</tr>
<tr>
<td>Over 446,704</td>
<td>30%</td>
</tr>
</tbody>
</table>

I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The withholding tax rates are as follows:

<table>
<thead>
<tr>
<th>Details</th>
<th>United Kingdom (%)</th>
<th>Germany &amp; Canada (%)</th>
<th>Denmark, Norway, Sweden &amp; Zambia (%)</th>
<th>India (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management and professional fees</td>
<td>12.5</td>
<td>15</td>
<td>20</td>
<td>17.5</td>
</tr>
<tr>
<td>Royalties</td>
<td>15</td>
<td>15</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Dividends</td>
<td>10</td>
<td>10</td>
<td>10¹</td>
<td>10</td>
</tr>
<tr>
<td>Interest</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Pension and retirement annuities</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Entertainment and sporting events</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Promoting entertainment or sporting events</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Rent - immovable property</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>Rent - Other than immovable property</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
</tbody>
</table>

NOTES:
1. 0% if the dividend is subject to tax in Zambia