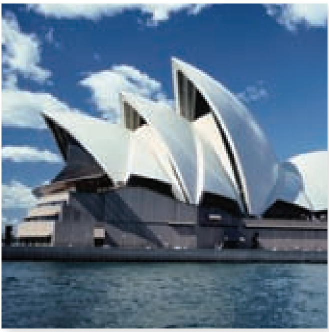
PKF



Kenya Tax Guide 2013

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. This handy reference guide provides clients and professional practitioners with comprehensive tax and business information for over 90 countries throughout the world.

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

I hope that the combination of the WWTG and assistance from your local PKF member firm will provide you with the advice you need to make the right decisions for your international business.

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PREFACE

The PKF Worldwide Tax Guide 2013 (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 1 January 2013, while also noting imminent changes where necessary.

On a country-by-country basis, each summary 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.

In addition to the printed version of the WWTG, individual country taxation guides are available in PDF format which can be downloaded from the PKF website at www.pkf.com

PKF INTERNATIONAL LIMITED
MAY 2013

ABOUT PKF INTERNATIONAL LIMITED

PKF International Limited (PKFI) administers the PKF network of legally independent member firms. There are around 300 member firms and correspondents in 440 locations in around 125 countries providing accounting and business advisory services. PKFI member firms employ around 2,270 partners and more than 22,000 staff. PKFI is the 11th largest global accountancy network and its member firms have $2.68 billion aggregate fee income (year end June 2012). The network is a member of the Forum of Firms, an organisation dedicated to consistent and high quality standards of financial reporting and auditing practices worldwide.

Services provided by member firms include:

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PKF member firms are organised into five geographical regions covering Africa; Latin America; Asia Pacific; Europe, the Middle East & India (EMEI); and North America & the Caribbean. Each region elects representatives to the board of PKF International Limited which administers the network. While the member firms remain separate and independent, international tax, corporate finance, professional standards, audit, hotel consultancy and business development committees work together to improve quality standards, develop initiatives and share knowledge and best practice cross the network.

Please visit www.pkf.com for more information.

STRUCTURE OF COUNTRY DESCRIPTIONS

A. TAXES PAYABLE

FEDERAL TAXES AND LEVIES
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BRANCH PROFITS TAX
SALES TAX/VALUE ADDED TAX
FRINGE BENEFITS TAX
LOCAL TAXES
OTHER TAXES

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DEPRECIATION
STOCK/INVENTORY
CAPITAL GAINS AND LOSSES
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INTEREST DEDUCTIONS
LOSSES
FOREIGN SOURCED INCOME
INCENTIVES

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D. CORPORATE GROUPS

E. RELATED PARTY TRANSACTIONS

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G. EXCHANGE CONTROL

H. PERSONAL TAX

I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

INTERNATIONAL TIME ZONES

AT 12 NOON, GREENWICH MEAN TIME, THE STANDARD TIME ELSEWHERE IS:

A

Algeria . . . 1 pm
Angola . . . 1 pm
Argentina . . . 9 am
Australia -
Melbourne . . . 10 pm
Sydney . . . 10 pm
Adelaide . . . 9.30 pm
Perth . . . 8 pm
Austria . . . 1 pm

B

Bahamas . . . 7 am
Bahrain . . . 3 pm
Belgium . . . 1 pm
Belize . . . 6 am
Bermuda . . . 8 am
Brazil . . . 7 am
British Virgin Islands . . . 8 am

C

Canada -
Toronto . . . 7 am
Winnipeg . . . 6 am
Calgary . . . 5 am
Vancouver . . . 4 am
Cayman Islands . . . 7 am
Chile . . . 8 am
China - Beijing . . . 10 pm
Colombia . . . 7 am
Cyprus . . . 2 pm
Czech Republic . . . 1 pm

D

Denmark . . . 1 pm
Dominican Republic . . . 7 am

E

Ecuador . . . 7 am
Egypt . . . 2 pm
El Salvador . . . 6 am
Estonia . . . 2 pm

F

Fiji . . . 12 midnight
Finland . . . 2 pm
France . . . 1 pm

G

Gambia (The) . . . 12 noon
Germany . . . 1 pm
Ghana . . . 12 noon
Greece . . . 2 pm
Grenada . . . 8 am
Guatemala . . . 6 am
Guernsey . . . 12 noon
Guyana . . . 7 am

H

Hong Kong . . . 8 pm
Hungary . . . 1 pm

I

India . . . 5.30 pm
Indonesia . . . 7 pm
Ireland . . . 12 noon
Isle of Man . . . 12 noon
Israel . . . 2 pm
Italy . . . 1 pm

J

Jamaica . . . 7 am
Japan . . . 9 pm
Jordan . . . 2 pm

K

Kenya . . . 3 pm

L

Latvia . . . 2 pm
Lebanon . . . 2 pm
Luxembourg . . . 1 pm

M

Malaysia . . . 8 pm
Malta . . . 1 pm
Mexico . . . 6 am
Morocco . . . 12 noon

N

Namibia . . . 2 pm
Netherlands (The) . . . 1 pm
New Zealand . . . 12 midnight
Nigeria . . . 1 pm
Norway . . . 1 pm

O

Oman . . . 4 pm

P

Panama . . . 7 am
Papua New Guinea . . . 10 pm
Peru . . . 7 am
Philippines . . . 8 pm
Poland . . . 1 pm
Portugal . . . 1 pm

Q

Qatar . . . 8 am

R

Romania . . . 2 pm

Russia -
Moscow . . . . .3 pm
St Petersburg. . . . . .3 pm

S

Singapore . . . . .7 pm
Slovak Republic . . . . .1 pm
Slovenia . . . . .1 pm
South Africa. . . . . .2 pm
Spain . . . . .1 pm
Sweden. . . . . .1 pm
Switzerland . . . . .1 pm

T

Taiwan .8 pm
Thailand . . . . .8 pm
Tunisia . . . . 12 noon
Turkey. .2 pm
Turks and Caicos Islands . . . . . . .7 am

U

Uganda .3 pm
Ukraine .2 pm
United Arab Emirates . . . . .4 pm
United Kingdom . . . .(GMT) 12 noon
United States of America -
New York City. . . . . .7 am
Washington, D.C. . . . . .7 am
Chicago. . . . . .6 am
Houston. . . . . .6 am
Denver . . . . .5 am
Los Angeles. . . . . .4 am
San Francisco . . . . .4 am
Uruguay . . . . .9 am

V

Venezuela . . . . .8 am

Z

Zimbabwe . . . . .2 pm

KENYA

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City:	Name:	Contact Information:
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A. TAXES PAYABLE

COMPANY TAX
Company tax is based on computed tax profits as follows:

Turnover tax	3% of turnover (with effect from 1 January 2007 for turnover of up to Kshs 5,000,000)
Resident companies	30%
Non-resident companies	37.5%.

CAPITAL GAINS TAX
Not applicable as this tax is presently suspended in Kenya.

BRANCH PROFITS TAX
Branch of a foreign entity pays a tax rate of 37.5%.

SALES TAXES/VALUE ADDED TAX (VAT)
The tax rate is 16% and 0%. Exports are zero rated and there is a lower rate of 12% for industrial fuel and electricity. Some goods and services such as unprocessed agricultural products and financial services are exempt.

FRINGE AND EMPLOYMENT BENEFITS TAX
Generally, 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. Exempt if aggregate total does not exceed KES 36,000 per annum.

MOTOR VEHICLES
The benefit is the higher of 2% per month of the initial cost of the vehicle or the 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), market 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
These are taxed at corporate tax rate on difference between the interest rate prescribed by the Commissioner and the actual rate paid by employee.

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

LOCAL TAXES
Employment income is taxed on a withholding tax 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 10% of monthly income up to a maximum of KES 400 per month, half paid by the employer and the balance by the employee.

NATIONAL HOSPITAL INSURANCE FUND (NHIF)
Payments are set at graduated scale rates starting at KES 30 per month to a maximum of KES 320 per month on salaries of KES 15,000 and above.

SINGLE BUSINESS PERMIT

Depending on the type of business, this permit costs a minimum of KES 2,000 to a maximum of KES100,000.

B. DETERMINATION OF TAXABLE INCOME

CAPITAL ALLOWANCES

The rates for capital allowances are as follows:

Wear and tear:	Rate
Tractors/heavy vehicles	37.5%
Computers	30%
Other motor vehicles, aircrafts	25%
Ships, plant, machinery, furniture and equipment	12.5%
Telecommunication equipment	20%
Computer softwear	20%
Industrial building allowances:	**Rate**
Factories (2.5% up to 2009)	10% from 1 January 2010
Prescribed hotels-(up to 2006 was 4%)	10% from 1 January 2010
Prescribed low-cost residential housing developments	5%
Hostels or approved educational building-(from 2007 was 10%)	50% from 1 January 2010
Commercial Buildings	10% up to 31 December 2012
Commercial Buildings with services	25% from 1 January 2010
Residential Buildings with services	25% up to 31 December 2012
Farm works	100% from 1 January 2010
Investment deductions eligible for building and machinery for manufacture (from 2008)	100%
Investment deductions eligible for construction of a building or purchase and installation of machinery of 200m or over outside Nairobi, Mombasa & Kisumu	150%
Manufacturing under Bond – combined investment deduction	100%
Shipping investment deduction	40% of cost of ship
Purchase of filming equiptment by licensed film produders	100%
Mining allowance (on capital expenditure or mining)	
Year 1	40%
Years 2–7	10%

DEPRECIATION

This is an accounting expense not allowable for tax purposes but wear and tear allowances as shown above are given instead.

STOCK/INVENTORY

The cost of sales is deducted as allowable expenditure before arriving at taxable profits.

CAPITAL GAINS AND LOSSES

Gains are not taxable and losses are not allowable since the suspension of capital gains tax.

DIVIDENDS

Dividends are taxed on a withholding tax 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 are exempt.

However, compensating tax (corporation tax) may arise if non-taxed income is distributed, e.g. capital gain or profits on capital allowances. It is worked out through an annual dividends tax account which traces the movement of dividends received or paid and taxes paid.

INTEREST DEDUCTIONS
Interest incurred wholly and exclusively in the production of income is 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 firm is thinly capitalised.

LOSSES
Tax losses in Kenya used to be carried forward perpetually to be allowed against future income. However, a five year time limit has been introduced effective 1 January 2010 inclusive of the year incurred. The loss is only allowed on income 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, however, not transferable from one entity to another.

FOREIGN SOURCED INCOME
Income that is not income 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
(b) business activities carried out across borders
(c) foreign bank branches' income on investments or trading abroad using locally generated income.

INCENTIVES
Capital deductions are as given under 'Capital allowances' above.

There are currently double taxation treaties with UK, India, Germany, Zambia, Norway, Sweden, Denmark and Canada.

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.

A lower rate of corporation tax at 27% for the first three years for companies newly listed on a securities exchange, with at least 20% of the issued share capital listed.

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 with double taxation relief.

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. Transfer pricing rules were brought into operation with effect from 1 July 2006.

F. WITHHOLDING TAX

The relevant rates are as follows:

	Resident	Non-Resident
Artists and entertainers	–	20%
Management fees	10%	20%
Professional fees	10%	20%
Training fees (inclusive of incidental costs)	10%	20%
#Winnings from betting and gaming	20%	20%
Royalties	5%	20%
Dividends (nil for shareholders with >12.5%)	5%	10%
Equipment Leasing	N/A	5%
Interest (bank)	15%	15%
Interest (Housing bond-HBI)	10%	15%
Interest Two-year government bearer bonds	15%	15%
Other bearer bonds interest	25%	25%
Rents – buildings (immovable)	N/A	30%
Rents – others (except aircraft)	N/A	15%
Pensions/provident schemes (withdrawal)	10-30%	5%
Insurance commissions	10%	20%
Consultancy and agency (from 1 July 2003)	5%	20%
Contractual (from 1 July 2003)	3%	20%
Telecommunication services/Message transmission	–	5%

With effect 1 January 2012

G. EXCHANGE CONTROL

The Foreign Exchange Control Act was repealed in 1995 and there are no restrictions in place.

H. PERSONAL TAX

The tax rates are as follows:

Yearly income (Kshs)	Rate
0 to 121,968	10%
121,969 to 236,880	15%
236,881 to 351,792	20%
351,793 to 446,704	25%
Over 446,704	30%

I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The withholding tax rates are as follows:

	United Kingdom (%)	Germany & Canada (%)	Denmark, Norway, Sweden & Zambia (%)	India (%)
Management and professional fees	12.5	15	20	17.5
Royalties	15	15	20	20

	United Kingdom (%)	Germany & Canada (%)	Denmark, Norway, Sweden & Zambia (%)		India (%)
Dividends	10	10	10	(i)	10
Interest	15	15	15		15
Pension and retirement annuities	5	5	5		5
Entertainment and sporting events	20	20	20		20
Promoting entertainment or sporting events	20	20	20		20
Rent - immovable property	30	30	30		30
Rent - Other than immovable property	15	15	15		15

(i) 0% if dividend subject to tax in Zambia.