

Kenya Tax and Investment Guide

Sources:

PricewaterhouseCoopers, Deloitte Touche Tohmatsu, Ernst & Young

The Kenyan government has taken pains to show that it welcomes and seeks to attract foreign investment into the country. However, it is keen to encourage investment that spurs job creation and does not negatively affect the country's security or environmental considerations. That said, restrictions on foreign ownership still exist in the infrastructure (telecoms, power), insurance and media sectors, since these have been only partially liberalised.

There are 37 export-processing zones (EPZs) in Kenya, of which only two are under government ownership. Other incentive schemes are available to foreign companies that invest in rural or other poorly developed regions of the country.

There is no overall framework for incentives in Kenya, although this will probably change. Existing and future incentive programmes in Kenya will in all likelihood be aligned with East African Community (Kenya, Tanzania and Uganda) plans for a common external tariff, the finalisation of which is uncertain. Incentives are open to foreign and domestic investors alike. The right to repatriate capital and profits is guaranteed, as are safeguards against the expropriation of property.

Kenya boasts a competitive cost of labour and a good infrastructure that is propelling the country to be the hub of choice in Africa. Kenya's education system is one of the best in Africa, annually churning out thousands of highly skilled English speaking graduates who are passionate about playing an active role in the global economy.

Pursuant to the Investment Promotion Act, foreign investors who intend to invest in Kenya shall apply to the Kenya Investment Authority for an investment certificate, which is only granted if the amount to be invested by a foreign investor is at least US\$500,000 or the equivalent in any currency, and the project to be invested in shall be legal and beneficial for Kenya.

There are no restrictions on foreign investment, foreign ownership, repatriation of profits or capital. As a matter of fact, a foreign investor can invest in any economic sector in Kenya free of any product limit. The formal limits on foreign ownership only exist in telecommunications and insurance, in which foreign ownership of a business is limited by policy to 70 percent and 77 percent respectively. Companies listed on the Nairobi Stock Exchange are required to have at least 25 percent of national ownership.

The Kenyan Government has set different treatment standards for foreign investment in terms of business areas, products, enterprise ownership, and the use of land, and has imposed many restrictions on business activities conducted by foreign investors. All these have seriously deterred foreign investors from investing in Kenya.

Tourism is Kenya's second largest foreign exchange earner. The enduring appeal of the country's scenery, wildlife, climate and tropical coastline has allowed the establishment of a large hotel industry and a sound tourism base.

Kenya has the best developed hotel industries in sub-Saharan Africa, offering on an average some 31,400 beds per night. The high standard of services in Kenya hotels is assisted by the Utalii College which offers training programmes in all aspects of tourism and catering.

Most foreign investment in Kenya is governed by the Foreign Investments Protection Act (FIPA).

There are no legal limitations on the percentage of foreign ownership but general preference is given to those projects with Kenyan participation, guaranteed export markets, potential for employment of labour, or those with a rural base. Priority sectors are export-oriented ventures, intermediate industry, and agro-processing.

Corporate Taxation:

Resident and non-resident companies are taxed on income derived from or accrued in Kenya. The corporate tax rate is 30% for locally incorporated companies and 37.5% for branches of foreign companies. Companies newly listed on the Nairobi stock exchange are subject to a reduced corporate tax rate of 20% for five years, subject to certain conditions.

Dividends received by a resident company owning more than 12.5% of the paying company are exempt from tax; otherwise a 5% withholding tax applies to domestic dividends. The withholding tax on domestic dividends is a final tax. A 10% withholding tax applies to dividends paid to non-residents.

Dividends paid out of exempt income are subject to a compensating tax, equivalent to 30/70 of the dividends paid, less any credits to the dividend tax account arising from income tax paid and 30/70 of any dividends received.

No.	Tax source	Rate (Resident)	Rate (Non-resident)
1	Corporate Tax (Entity)	30%	37.5%
2	EPZ - first 10 years - next 10 years	Nil 25%	Nil 25%

Withholding Tax:

The main withholding tax rates for residents are: 15% on commissions paid by insurance companies to agents, 10% on interest, except when this is paid to banks and financial institutions, 10% on dividends, 5% on sale of certain farm produce.

No.	Tax source	Rate (Resident)	Rate (Non-resident)
3	Withholding tax on:-		
	(i) Dividends >12.5% voting rights	Exempt	10%
	(ii) Dividends <12.5% voting rights	5%	10%
	(iii) Other withholding payments	15%	15%
	(iv) Interest – bearer instruments - government bearer bonds - other	25% 15% 15%	25% 15% 15%
	(v) Qualifying Interest – housing bonds - bearer instruments - other	10% 20% 15%	N/A N/A N/A
	(vi) Rent - immovable property - others	N/A N/A	30% 15%
	(vii) Royalties	5%	20%
	(viii) Management & professional fees	5%	20%
	(ix) Consultancy, agency	5%	20%
	(x) Contractual fee	3%	20%

	(xi) Lease rental payments	10%	15%
	(xii) Insurance commission - brokers - others	5% 10%	20% 20%

Business Losses:

Tax losses may be carried forward indefinitely. However, losses incurred in any specified source may only be offset against future profits from the same source in following or future years.

There are no provisions for group tax relief.

Capital losses may not be offset against trading income.

No allowance is made for terminal loss but certain expenditure incurred after cessation of business may be regarded as incurred in the year in which the business ceased.

Income tax rates for individuals:

Personal tax is charged on the income earned in Kenya by any person resident in Kenya. Individual income tax is taxable at rates graduated to 30%. Tax allowances are provided for all individual taxpayers. Taxable income includes all business income, employment income, dividends, interest and property income.

Residents are subject to tax on income accruing in or derived from Kenya and from employment or services rendered abroad. Non-residents are taxed only on Kenyan-source income. An individual who has a permanent home in Kenya and is present in Kenya for any part of the year, or who does not have a home in Kenya but is present for an aggregate of 183 days in the tax year, is regarded as resident. Also, a person who is present in Kenya in the tax year and in the two preceding years for at least 122 days in each year is also regarded as resident. Individual income tax is charged at progressive rates up to 30%. Personal relief of KShs 13,944 per annum and life insurance relief of 15% of the premium subject to a maximum of KShs 36,000 per annum (KShs 60,000 for 2007) are available.

Capital Gains Tax:

Gains are not taxed.

Disposals of property after January 1st 2007 are liable to 10% capital gains tax on the net gains. The purchase price and any amounts spent on enhancing or preserving the value of the property, as well as professional fees, stamp duty and advertising expenses, are allowable costs in determining net gain. There is also a requirement for the purchaser to withhold 3% of the gross consideration and remit the same to the Kenya Revenue Authority.

Capital gains from the sale of private residences, certain agricultural land, shares, motor vehicles, and plant and machinery are not taxable in Kenya.

Taxation treaties:

Kenya has signed double taxation treaties with Canada, Denmark, India, Italy, Norway, Sweden, Zambia and United Kingdom. Awaiting conclusion of the EA Double Tax Agreement.

Value Added Tax (VAT):

VAT was introduced in 1990. It is charged on: the manufacture and supply of taxable goods, the import of taxable goods or services, the supply of taxable services, and dealings in certain designated goods.

Value Added Tax (VAT) is levied on the supply of goods imported into or manufactured in Kenya and taxable services imported or provided in Kenya. The standard VAT rate is 16%. Hotel and restaurant services are taxable at 16%.

Unprocessed agricultural products are exempt from VAT. Inputs into health care, education and agricultural sectors are zero rated. All exports of goods and services are zero rated.

Excise duties are levied on beer, tobacco products, matches, spirits, wines, mineral water and biscuits (confectioneries).

S/N	TAX HEAD	TAX RATES
4.	Value Added as (VAT) rates	0% and 16%
i)	VAT Threshold	Over K.shs. 3 million turnover
ii)	Supply of taxable goods and services	16%
iii)	Importation of taxable goods and services	16%
iv)	Export of goods and services outside of Kenya	0%
	Other Taxes	
5.	Stamp Duty	
	Transfer of immovable property	2% and 4% within/outside a municipality
	Issue of Debentures or Mortgage	0.2% Primary, 0.1% Auxiliary, 0.05% Transfers
	Transfer of unquoted stock	1% of the value
	Creation or increase of share cap.	1%
	Lease	1% for 0-3 years, 2% more than 3 years

Export Processing Zone (“EPZ”) Enterprises:

Generous tax and other incentives are to be given to companies carrying on business in an EPZ. These include: a corporation tax holiday for 10 years, a reduced rate of corporation tax of 25% for the next ten years, zero rating for VAT purposes, exemption from withholding tax on certain payment to non-residents, certain reliefs from exchange control.

Acquisition of Real Estate:

No restrictions currently apply to leasing or ownership of land by foreign-owned companies unless the land is classified as agricultural.

Investment incentives:

Kenya has no generalised incentives schemes governed by an industrial development law. Certain fiscal incentives may be available on a case-by-case basis.

To encourage industrial development the Government allows an investment allowance of 85%, (35% in Nairobi and Mombasa) on plant, machinery, buildings and equipment in the first year of business. This is also applicable to the hotel industry. The allowances are given as tax deductions in the year of expenditure. Depending on the earnings of the business, the investment allowance can produce a tax free holiday of several years.