INCOME TAX

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Taxable Income

- **Residency Rules Individuals**: (s.2)
  - Individual is deemed to be resident in Kenya if the person was present in Kenya;
  - for any period in a particular year and has a permanent home in Kenya or;
  - For an aggregate period of
    - 183 days or more in a particular year or
    - Average 122 days in a year of income and each of the preceding 2 years.

- **Residency Rules Companies**: (s.2)
  - Companies are resident in Kenya if;
    - The Company is incorporated in Kenya; or
    - The management or control of the Company during a particular fiscal year was conducted in Kenya; or
    - The Company is declared to be resident in Kenya by the Minister of Finance by notice in the Kenya Gazette.

- **Income Tax Act (Cap 470)** enacted in **1973**
  - Replaced *E. A. Income Tax Management Act* which serviced Kenya, Uganda and Tanzania
  - Income tax is charged on all the income of a person, whether resident or non resident which accrues in or is derived from Kenya

- **A resident** is liable to tax on worldwide employment income (s.2).
- A non resident is taxable on income which accrues in or is derived from Kenya (s.3(1)).
- The tax year for individuals runs from 1 January to 31 December.

- **Specified Sources of Income**: (s.15(7)(a))
  - Rent
  - Employment Income
  - Wife's employment/self employment income
  - Farming income
  - Surplus funds to an employer from registered pension/provident funds
  - Residential Rental Income (RRI)
  - Others
**Taxable Income**

- **Gains or profits from a business** carried out partly within and partly outside Kenya, by a resident person, the entire gain or profit from that business shall be deemed to have **accrued** in or to have been **derived** in Kenya.
- **Partnership** shall be the sum of:
  - **Remuneration** paid to the partner along with interest on capital.
  - **Share** of total income from the partnership net of all expenses and remuneration.

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**Taxable Income**

- **Gains or profits ...**
  - **Insurance** against loss of profits or received by way of damages for loss of profits.
  - **Reversal** of any **reserves or provisions** previously allowed as a deduction against income.

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**Taxable Income**

- **Payments** to a non resident by a resident person or a person having a permanent establishment in Kenya, of the following:
  - Management or professional fees
  - Royalties
  - Interest
  - Rent
  - Entertainment/sports performance & man. fees.
  - Is **deemed** to constitute income **accrued** or **derived** in Kenya;
  - These are subjected to withholding tax.
  - Liaison office not deemed to be carrying business.

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**Business Tax**

**Deductible expenditure** ([S.15](#))

- **Bad debts** specific provisions
- **Capital expenditure** on equipment, build. & vehicles
- **Capital expenditure** on legal costs and stamp duties ([S.15](#) (6))
- **for prevention of soil erosion** ([S.15](#) (6))
- **legal costs and stamp duties** ([S.15](#) (6))
- **scientific research** ([S.15](#) (6))
- **Expenditure before commencement** of business ([S.15](#) (6))
**Deductible expenditure (s.15) cont.**

- Structural alterations to the premises (s.15 (2) (f))
- Diminution in value of any implements, utensils (s.15 (2) (g))
- An entrance fee or annual subscription to a trade association which has made an election under S. 21(2) (s.15 (2) (h))
- Employer’s contributions to retirement benefits scheme (s.15 (2) )
- “Reasonable” advertising expenses (s.15 (2) (p))

**Non deductible expenditure (s.16) cont.**

- Surplus sums contributed to a registered or unregistered pension, savings, or provident scheme or fund (s.16 (2) (d))
- Restriction of interest (Thin cap rules) (s.16 (2) (j))

**BUSINESS TAX**

**Capital Deductions**

**Industrial Building Allowance – IBA**

<table>
<thead>
<tr>
<th>Qualifying expenditure</th>
<th>Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial buildings</td>
<td>2.5 (from 1.1.2010 - 25%)</td>
</tr>
<tr>
<td>Hostel, Educational &amp; Training buildings</td>
<td>10 (from 1.1.2010 - 50%)</td>
</tr>
<tr>
<td>Rental residential building (from 12th June 2009)</td>
<td>5% (from 1.1.2010 - 25%)</td>
</tr>
<tr>
<td>Commercial Buildings</td>
<td>25% (from 1.1.2010)</td>
</tr>
</tbody>
</table>
**Business Tax**

**Wear & Tear Allowance**

<table>
<thead>
<tr>
<th>Item</th>
<th>Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heavy self-propelling machinery such as tractors and combine harvesters</td>
<td>37.5</td>
</tr>
<tr>
<td>Computer and peripheral computer hardware, calculators, copiers and duplicating machines</td>
<td>30</td>
</tr>
<tr>
<td>Other self-propelling vehicles and aircrafts (non-com. vehicles is restricted to KShs. 2 million w.e.f 1.1.2006)</td>
<td>25</td>
</tr>
<tr>
<td>All other machinery including ships</td>
<td>12.5</td>
</tr>
<tr>
<td>Computer software (W.E.F 1 Jan 2010)</td>
<td>20</td>
</tr>
<tr>
<td>Indefeasible right to use a fibre optic cable</td>
<td>5</td>
</tr>
<tr>
<td>Telecommunication Equipment (W.E.F 1st Jan 2010)</td>
<td>20</td>
</tr>
<tr>
<td>Concession arrangements Spread over period</td>
<td></td>
</tr>
</tbody>
</table>

**Investment Deduction**

<table>
<thead>
<tr>
<th>Item</th>
<th>Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building and machinery used for manufacturing purposes and hotel buildings</td>
<td>100</td>
</tr>
<tr>
<td>Civil works and structures forming part of an industrial building used for purposes of manufacturing</td>
<td>100</td>
</tr>
<tr>
<td>Ships</td>
<td>40</td>
</tr>
<tr>
<td>Filming Equipment (W.E.F 12th June 2009)</td>
<td>100</td>
</tr>
<tr>
<td>Investment made outside Nairobi, Kisumu and Mombasa (W.E.F 12th June 2009) qualifying cost is Kshs. 200 million</td>
<td>150</td>
</tr>
</tbody>
</table>

**Farm Works Deduction**

<table>
<thead>
<tr>
<th>Year(s)</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1 Jan 1985</td>
<td>20%</td>
</tr>
<tr>
<td>Between 1 Jan 1985 and 31 Dec 2006</td>
<td>33.3%</td>
</tr>
<tr>
<td>Between 1 Jan 2007 and 31 Dec 2010</td>
<td>50%</td>
</tr>
<tr>
<td>1 January 2011 and thereafter</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Business Tax**

**Coverage**

- Returns of income
- Self assessment returns (SAR)
- Compensating tax returns
- Payment of tax
- Turnover tax
- Corporate tax rates
- Advance tax

**Returns of Income**

- Required on annual basis by all persons i.e. individuals, business companies and other bodies.
- Self assessment returns (SAR) Individuals within six months of the end of the year i.e. by 30 June each year.
- Companies not later than six months after the end of the accounting period.
- Banks, insurance companies by 30th June.
Business Tax

Returns of Income cont....

- Self assessment return must be accompanied by:
  - *audited accounts*, if applicable;
  - certified accounts, where no audit is required;
  - supporting computations or documents;
  - employee PAYE tax forms;
  - other support documents

Business Tax

Compensating Tax Returns

- Dividend tax account *only applies* to companies.
- Dividend income is subject to a low rate of tax.
- in some cases dividends may not be paid out of taxed income, such as
  - *tax-free capital disposals*, or
  - receipt of *substantial capital allowances*.
- The amount of such excess calculated is payable as compensating tax.

Business Tax

Payment of Tax

- Tax is payable on a quarterly basis on the following months and proportions:
  - 4\textsuperscript{th} month - 25\%
  - 6\textsuperscript{th} month - 25\%
  - 9\textsuperscript{th} month - 25\%
  - 12\textsuperscript{th} month - 25\%
- **Agricultural** enterprise
  - 9\textsuperscript{th} month - 75\%
  - 12\textsuperscript{th} month - 25\%
- Final tax due on 4th month after the accounting year.

Business Tax

Instalment Tax

- The amount of *installment tax* payable is based on the *lower of*:
  - the tax payable in respect of the *current* year income;
  - 110\% of the tax assessed or estimated as assessable in respect of the preceding year of income.

Business Tax

Turn-over tax

- This was introduced in the 2006 Finance Act.
- business revenues not exceeding Shs 5 million p.a. The rate is 3\% of turn-over (max at Shs150,000).

- Corporate Tax Rates
  - Resident companies – 30\%
  - Branches of non-resident companies – 37.5\%
  - Newly listed – 20-27\% (for 3-5 years)

Business Tax

Advance Tax

- For public service and commercial vehicles;
  - vans, pick-ups and lorries at the higher of:
    - Ksh 1,500 per ton per annum; or
    - Kshs 2,400 per annum.
  - saloons, station wagons, mini-buses, and coaches at the higher of:
    - Kshs. 60 per passenger capacity per month; or
    - Kshs 2,400 per annum.