



## INCOME TAX

John Muiruri

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email : jmuiruri@muirurimocharia.com



## Taxable Income

- Income Tax Act (cap 470) enacted in **1973**
- Commenced operation in January 1994.
- 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

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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**.

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## Taxable Income

- 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.

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## Taxable Income

- 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;

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## Taxable Income

- Specified Sources of Income:** (s.15(7)(e))
  - 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

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## 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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*The Life of every man is a diary in which he means to write one story, and writes another; and his **humblest hour** is when he **compares** the volume as it is with what he vowed to make it.*

- J.M. Barrie

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## BUSINESS TAX

### Deductible & Non Deductible Expenditure



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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 (2) (d))
  - for prevention of **soil erosion** (s.15 (2) (c))
  - legal costs and stamp duties (s.15 (2) (d))
  - **scientific** research (s.15 (2) (n))
- Expenditure **before commencement** of business (s.15 (2) (e))

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## Business Tax



### Deductible expenditure (s.15) cont.....

- **Structural alterations** to the premises (s.15 (2) (f))
- **Diminution** in value of any implements, utensil (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))

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## Business Tax



### Deductible expenditure (s.15) cont.....

- Club **subscription** paid by an employer (s.15 (2) (v))
- Cash **donations** (s.15 (2) (w))
- Capital expenditure, with the prior approval of the Minister, for the construction of a **public school, hospital, road** or any similar kind of **social infrastructure** (s.15 (2))
- Capital expenditure incurred in the purchase or acquisition of an indefeasible right to use a **fibre optic cable** by a telecommunication operator –5%per annum. (s.15 (2) (y))

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## Business Tax



### Non deductible expenditure (s.16)

- Expenditure or loss **not wholly and exclusively** incurred for business (s.16 (1) (a))
- **Depreciation** (s.16 (1) (b))
- Expenditure by a person in the **maintenance of himself** (s.16 (2) (a))
- Expenditure /loss recoverable under any **insurance contract** (s.16 (2) (b))
- **Income tax** or tax of a similar nature (s.16 (2) (c))

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## Business Tax



### 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))
- **Bad debts** general provisions
- Un-realised losses **Forex**
- Exp. payable on or after 18<sup>th</sup> June, 1976 under a contract of hiring of a road vehicle other than a commercial vehicle (s.16 (1) (i))
- ► Restriction of interest (**Thin cap rules**) (s.16 (2) (j))

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## BUSINESS TAX Capital Deductions



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## Business Tax



### Industrial Building Allowance – IBA

- On **construction** of industrial building to be used in business carried on by him or his lessee

Qualifying expenditure	Rate (%)
Industrial buildings	<b>2.5</b> (from 1.1.2010 -10%)
Hostel, Educational & Training buildings	<b>10</b> ( from 1.1.2010 -50%)
Rental residential building (from 12 <sup>th</sup> June 2009)	<b>5</b> ( from 1.1.2010 -25%)
Commercial Buildings	<b>25%</b> ( from 1.1.2010)

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## Business Tax



### Wear & Tear Allowance

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

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## Business Tax



### Investment Deduction

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

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## Business Tax



### Farm Works Deduction

Year (s)	Rate
Before 1 Jan 1985	<b>20%</b>
Between 1 Jan 1985 and 31 Dec 2006	<b>33.3 %</b>
Between 1 Jan 2007 and 31 Dec 2010	<b>50%</b>
1 January 2011 and thereafter	<b>100%</b>

### Mining Allowance

Based on capital expenditure incurred in mining specified minerals

- First year - 40%
- 2<sup>nd</sup> to 7<sup>th</sup> year - 10%

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## BUSINESS TAX RETURNS AND TAX PAYMENTS

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## Business Tax



### Coverage

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

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## Business 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 30<sup>th</sup> June.

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## 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

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## 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.

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## Business Tax



### Payment of Tax

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

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## 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.

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## 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)

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## 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.

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THE END



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