



# PERSONAL TAXES AND WITHHOLDING TAX OBLIGATIONS

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# Presentation agenda

## Personal taxes



- ✦ Assesable Income
- ✦ Deductions and Allowances
- ✦ Withholding Tax
- ✦ Tax Filling and Payments
- ✦ Tax Payers and Obligations

# Personal taxes: Assesable Income



ITA Section 3(1) provides:

*‘a tax to be known as **income tax** shall be charged for each year of income upon **all the income** of a person, whether **resident** or **non-resident**, which **accrued in**, or **was derived from Kenya**’.*

# Personal taxes: Assesable Income



Section 3 (2) (a) (ii) provides:

*‘tax is chargeable in respect of gains or profits from employment or services rendered’*

Section 5 (1) (a) & (b) provides that an amount paid to:-

# Personal taxes: Assesable Income



- a) a person who is, or was at the time of the employment or when the services were rendered, a **resident** person in respect of any **employment** or services rendered by him **in Kenya or outside Kenya**.
- b) a **non-resident** person in respect of any **employment** with or services rendered to an **employer who is resident** in Kenya or the **permanent establishment in Kenya** of an employer who is not so resident,

# Who is a resident individual?

- ✦ Permanent home, present in Kenya for any day in a year of income =resident
- ✦ No permanent home, present in Kenya for aggregate of 183 days or more in a year of income = resident
- ✦ No permanent home, present in Kenya for an average of more than 122 days in current year of income and

# Income subject to tax



2 preceding years of income = resident

- ★ As a general rule, all types of remuneration and benefit received by an employee constitute taxable income. **Sec.5 (2)**
- ★ Emoluments can be in cash or non – cash form.
- ★ Taxable employment income includes: wages, salary, leave pay, sick pay, payment in lieu of leave, fees,

# Non-taxable income



commission, bonus, gratuity, or subsistence, traveling, entertainment, allowance, tax paid by employer on behalf or employee etc.

Benefit	Comment
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# Non-taxable income cont..

Passage	Passage between Kenya and another place for an employee recruited or engaged outside Kenya and who is in Kenya solely for the purpose of serving the employer and is not a Kenyan.
Medical services and insurance	Insurer has to be approved by the Commissioner of Insurance
Employer pension contribution	Employer should be a person chargeable to tax.

Benefit	Comment
Education fees for dependant/relatives	If taxed on the employer
Interest free loans subject to fringe benefit tax	
Meals not exceeding Kshs. 48,000 p.a.	Provided at employer's or 3 <sup>rd</sup> party's premises. 3 <sup>rd</sup> party should be a registered taxpayer.

# Non-taxable income cont..



Gratuity	Paid into a registered pension scheme.
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Benefit	Comment
Per-diem - when away from normal work station	First Kshs. 2,000 per day Above this to be accounted for.

# Taxation on non-cash benefits cont..

Non-cash benefit	Not expressly provided for in the Act Aggregate value does not exceed Kshs. 36,000 p.a.
Bonus, overtime, retirement benefits	Employees taxable employment income before these emoluments should not exceed 10% tax band.

- ✦ How to determine taxable value of some non-cash benefit is outlined in the ITA e.g. car, housing.
- ✦ Taxable value of those not specifically provided for is the higher of actual cost to the employer and the fair market value.

# Taxation on non-cash benefits cont..



The Commissioner may prescribe the value where the cost or the fair market value of a benefit cannot be determined.

- ✦ Provision of furniture – 1% of the cost of furniture to employer.
- ✦ Telephone (landline and mobile phone) – 30% of bills.
- ✦ Electricity (communal or from generator) – KShs. 1,500 p.m.

✦ Water (communal or from borehole) – KShs. 500 p.m.

# Taxation on non-cash benefit – Motor vehicle



Company car taxed at the higher of 2% p.m. of the initial cost of the car or Commissioner's prescribed rates. **S. 5 (2B)**

W.e.f.1.1.2008, employees who have restricted use of motor vehicles, the Commissioner may determine a lower rate of the benefit depending on the usage of the vehicle upon proof. **S.5 (2B)**



# Taxation on non-cash benefits - Housing



Hired or leased car - the taxable benefit is the lease or hiring cost. **S.5 (2B) (a) (ii)**

Employer pays rent under an agreement **at arm's length**, value of the benefit is the higher of:-

- ★ 15% of gross emoluments (excluding the value of the house), or actual cost to the employer.

Employer pays rent under an agreement **not at arm's length**, value of the benefit is the higher of the fair market value of the premises for that year or rent paid by employer.

# Taxation on non-cash benefits – Group life cover



Premises are owned by the employer, the value of the benefit is the fair market rental value.

Employer pays a premium for an insurance on the life of his employee and for the benefit of the employee or his dependants - taxable unless;

- ★ The amount is paid to a registered or unregistered pension scheme, pension fund, provident fund or

# Taxation of terminal benefits



individual retirement fund; ✦ The cover confers a benefit to the employer.

- ✦ An amount received in respect of employment in a year of income different from the year of accrual, such income is deemed to be income of the year of accrual.

# Taxation of terminal benefits

- If the year of accrual is earlier than

4 years prior to the year of receipt, the income is spread back over 5 years prior to the year in which the income is received or employment ceased.

- ✦ The service gratuity amount is to be spread backwards and taxed together with income earned in the relevant years.

# Taxation of terminal benefits



- ✦ Notice pay is assessable in the period immediately after date of leaving employment.
- ✦ Pay in lieu of leave should be taxed in the year to which the leave days relate.

- ★ Where there is a specified term contract, the amount of the compensation will be spread over the unexpired period at equal amounts and taxed accordingly.
- ★ 5 year contract terminated after 3 years.  
Compensation is Kshs. 1,000,000.

# Taxation of terminal benefits



- ★ Where the contract is for unspecified term and provides for terminal payment, then the compensation will be spread forward and assessed at the rate of the employee's remuneration p.a. immediately before termination.
- ★ Terminal payment is Kshs. 5,000,000, employee's remuneration prior to termination was Kshs. 1,000,000 p.a.

# Taxation of terminal benefits



- ★ Where the contract is for unspecified term and does not provide for terminal payment, the compensation is to be spread forward in equal amounts for three years following the termination.

Contributions to **registered** pension, provident, individual retirement schemes allowable amount is the lesser of;

- ★ 30% of pensionable pay;



# Deductions – pension deduction



★ KShs.20,000 p.m.;

★ Actual contributions.

Contributions by employers who are not taxable to unregistered schemes or excess contributions to registered schemes are a taxable benefit on employee. **S.5 (4) (c)**

An employee is eligible to a deduction of a maximum of KShs. 4,000 p.m. up to a maximum of 10 years in respect of funds deposited in approved institutions, provided;

# Deductions – Home ownership savings plan (HOSP)



- ★ The employer has evidence that the approved Institution is registered by the Commissioner.
  - ★ The employer deducts and remit the amount to the Institution on behalf of the employee.
- “Approved Institution” – means a licensed financial institution or a licensed Insurance Company.
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- Mortgage deduction to owners of residential houses who occupy them; no claim for more than 1 residence.
- ★ Applies to purchase or improvement of premises.

# Deductions - mortgage



- ★ Deduction of interest not exceeding KShs. 25,000 p.m. (effective 01/01/2017)
- ★ Deduction given on interest on loans from banks, insurance companies, building societies and National Housing Corporation only.
- ★ Loans from Saccos do not qualify.
- Relief of lesser of 15% of premiums paid up to a maximum of KShs. 5,000 p.m. Applies to:-
- ★ Life insurance cover commences on or after 1.1.2003.

# Insurance relief



- ✦ Education policy with maturity period of at least 10 years commences on or after 1.1.2003.
- ✦ Health insurance commences on or after 1.1.07.

If policy is surrendered before its maturity, all the relief granted is recovered from the surrender value of the policy and remitted to the Commissioner by the insurer.

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Every tax **resident individual** is entitled to personal relief

# MEALS

Value of meals to employees provided by the employer not exceeding Kshs. 4,000 p.m per employee is not a taxable benefit.  
Effective date: 13th June, 2014

# Personal relief



Individuals

serving several employers qualify for personal relief from only **one employer**.

- ★ Relief effective 01 January 2017 - Kshs. 1,280 p.m
  - ★ Relief prior to 01 January 2017 - KShs. 1,162 p.m.
  - ★ Relief effective 01 January 2018 – Kshs. 1,408 p.m

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★ Control

# Withholding tax

# Presentation agenda

## Withholding tax



- ✦ Introduction
- ✦ Payments subject to withholding tax
- ✦ Exemptions from withholding tax
- ✦ Tax planning
- ✦ Consequence of non-compliance
- ✦ Withholding tax” is deducted on specific payments in accordance with Section 35 of the ITA. ✦ The payer acts as an agent for KRA.



# Introduction



★ Withholding tax is an advance tax but can be a final tax in some cases.

★ Why withhold tax:

- Cash flow to the government
- Tax Compliance
- Cost effective
- Tax Point for non-residents

# Introduction



- ★ Withholding tax is deductible upon payment of a taxable amount. “Payment” defined to include accrual/crediting of the amount payable.
- ★ Responsibility of the person making payment to:
  - Compute and deduct the tax at the relevant rate; and
- ★ File a return on iTax and remit the tax deducted to the Commissioner of Domestic Taxes by the 20<sup>th</sup> day of the month following that in which tax is deducted. Withholding tax certificate is sent to supplier.

# Payments subject to withholding tax



- ★ Royalty
- ★ Dividend
- ★ Interest on loans and management fees
- ★ Agency fees
- ★ External civil, building and engineering contract fees
- ★ Professional fees- accountancy, legal, taxation, pension fund managers fees, doctor fees, actuarial fees
- ★ Training- conducted by external consultants including incidental costs effective 12 June 2009

★ Valuation fees

# Payments subject to withholding tax



## Definitions

**"Agency fees"** payments to a person for acting on behalf of any other person, group of persons or the Government and excludes reimbursements.

**"Consultancy fees"** payments to any person for acting in an advisory capacity or providing services on a consultancy basis.

**"Royalty"** a payment made as consideration for the use of or the right to use.

**"Contractual payments"** payments for work done in respect of building, civil or engineering work.

**"Management or professional fee"** payment made to a person, other than a payment made to an employee by his employer, as consideration for managerial, **technical**, agency, contractual or consultancy services however calculated.

# Payments subject to withholding tax



Description		Notes	Residence Status	
			Residents	Non-Residents
Dividends		(a)	5%	10%
Interest	- Housing Bonds		10%	15%

	- Other sources	(b)	15%	15%
Commission		(c)		
	- Insurance brokers		5%	20%
	- Others		10%	20%
Royalties			5%	20%

## Payments subject to withholding tax

Description	Notes	Residence Status	
		Residents	Non-Residents
Sporting or entertainment income	-		20%

# Payments subject to withholding tax



			Real estate
rent* 10% 30% Lease of equipment- 15%			
Pension and retirement annuities	(d)	0 to 30%	5%
Management, professional & training (e) 5% 20% fees			
Contractual fees		3%	20%

Telecommunication service fees - 5% **Notes**

- Withholding tax rate on dividends for East African citizens is 5%
- Withholding tax on interest received by a resident individual from the following sources is final:
  - Banks or financial institutions licensed under the Banking Act.



# Payments subject to withholding tax



- Building

societies licensed under the Building Societies Act.

- Central Bank of Kenya

- c) Commissions payable to non-resident agents for purposes of auctioning horticultural produce outside Kenya are exempt from withholding tax

## Notes ( Cont'd)

- d) Withholding tax is final on withdrawals from provident and pension schemes in excess of the tax-free amounts after expiry of fifteen years, or on the attainment of the age of fifty years, or upon early retirement on medical grounds.

# Payments subject to withholding tax



- e) Non-resident rate in respect of consultancy fees payable to citizens of the East African Community Partner States is 15%.

Third schedule to the ITA.

Description	Classification
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Architects fees	Consultancy fee –5%
Civil Engineer fee	Consultancy fee – 5%
Quantity surveyor fee	Consultancy fee – 5%
Contractor fee	Contractual fee – 3%
Cost of material (unspecified)	Contractual fee – 3%
Cost of material (Specified)	No withholding tax

Payee Resident in	Dividends	Interest	Royalties/Management & Professional Fees
	%	%	%
Canada	10	15	15
Denmark	10	20	20
Germany	10	15	15
India	10	15	20 (c)
Norway	10	15	20
Sweden	10	15	20
U.K	10	15	15 (a)
Zambia	0 (b)	15	20

France	10	12	20 (d)

# Withholding tax rates under double tax treaties



## Notes:

- a) The rate is **12.5%** for management and professional fees in UK

- b) No tax is due in Kenya if the dividend is subjected to tax in Zambia
- c) The rate is **17.5%** for management and professional fees in India
- d) The rate is **10%** for royalties

Other considerations in applying treaty:-

# Withholding tax rates under double tax treaties



50% or more of the underlying ownership of the entity receiving payment should be held by an individual or individuals who are residents of the other contracting state.

✦ company listed in a stock exchange in that other contracting state

# Exemptions from withholding tax



Where the treaty rate is higher than the non-treaty rate, the lower rate applies.

- ★ Where recipient of the income is **exempted from tax** and has furnished the paying entity with valid exemption certificates
- ★ Where the **Cabinet Secretary certifies** that a payment is required to be paid free of tax by the



terms of an agreement to which the Government is a party either as principal or guarantor and that it is in the public interest that the income shall be exempt from tax (**Para 11** of 1st Sch. and Sec.

13 of ITA).

★ Where the supplier is exempt from tax under the 1<sup>st</sup> Schedule to the ITA.

# Exemptions from withholding tax



Where the payment is **not eligible** for withholding tax purposes, for instance, payment for water supplied.

# Exemptions from withholding tax



- ✦ Instances where there is a **double tax treaty** or Host Country Agreements exempting tax deduction on specific items.

Exempt payments W.e.f 12 June 2009

- ✦ a **commission** paid to a non-resident agent in respect of **flowers, fruits** or **vegetables** exported from Kenya and auctioned in any market outside Kenya; and

# Tax planning around withholding tax



★ audit

fees for analysis of maximum residue limits paid to a non-resident laboratory or auditor.

- ★ Utilization of double tax treaties.
- ★ Contracts should be negotiated gross of taxes.

# Consequence of noncompliance



- ✦ Penalty – 10% of the tax due subject to a maximum of Kshs. 1,000,000.
- ✦ Interest – 1% per month subject to a maximum of the principal tax payable.

★ Withholding tax not withheld becomes the payer's responsibility.