

Income Taxes in Kenya

Presentation by:

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Agenda



- Developments from the new income tax
- Withholding taxes
- Taxation of local and expatriate employees
- Corporation taxes

Income Tax



PART II – IMPOSITION OF INCOME TAX

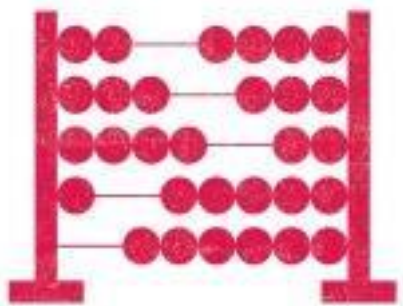
Charge of tax
13 of 1975, s.2,
8 of 1978, s. 9,
8 of 1978 s.9,
14 of 1982, s.17

- 3 (1)** Subject to, and in accordance with, this Act, 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.

Legislative provisions



Incomes
taxable: (S3)



Business



Rent



Employment
income



Dividend or
interest



Agricultural income



Pension



Any amount deemed under the ITA to be the income of a person

Income Tax Bill 2018



Reduced ITA changes in 2019 FA on anticipation of repeal of Cap 470

Highlights of expected changes:

Increase of CGT rate plus
indexation

Reduced investment deduction
rate

New income tax rate of 35%

2% penalty on cross border
transactions -TP

Withholding tax



Section 10 –

Where a resident person or a person having a permanent establishment in Kenya makes a payment to any other person in respect of, the specific payments the amount thereof shall be deemed to be income which accrued in or was derived from Kenya

Section 35 (1) and (2)

A person shall, upon payment of an amount to a non-resident person not having a permanent establishment (in Kenya in respect of the specific payments Subject to subsection (3A), a person shall, upon payment of an amount to a person resident or having a permanent establishment in Kenya in respect of

Legislative provisions



Management &
Professional fees

Training fees

Contractual fees

Commission

Agency fees

Royalty

Dividend

Use of property
(rent)

Interest &
Deemed interest

Resident rates



Income	Rate
Management or professional fees: (> KES 24,000) – 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	5%
Contractual fees:(>24,000) - Building, civil and engineering works	3%
Contractual payments for work done in respect of building, civil or engineering work.	
Royalties	5%
a payment made as consideration for the use of or the right to use	
a) The copyright of a literary, artistic or scientific work; or cinematograph film, including film or tape for radio or television broadcasting; or	
b) A patent, trade mark, design or model, plan, formula or process; or	
c) Any industrial, commercial or scientific equipment; or for information concerning industrial, commercial or scientific equipment; or	
d) Experience, and gains derived from the sale or exchange of any right or property giving rise to that royalty	

Resident rates



Income	Rate
Rental income	10%
Interest	15%
Dividends:	5%

WHT on rental income to be deducted only by appointed WHT agents

For purposes of WHT on dividends EA citizens (Ug and Tz) are considered Kenyan residents

Non-Resident Rates



Income	Rate
Management and professional fees	20%
Royalties	20%
Dividends:	10%
Interest and deemed interest	15%
Rent : moveable property	15%
Immoveable property	30%
Pension and retirement annuities	5%

The rates above are subject to the various DTA provisions

“deemed interest” means an amount of interest equal to the average ninety-one day Treasury Bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the non resident, where such loan is provided free of interest

However Calculated



Disbursements

- Transport
- Accommodation
- Printing and stationery
- etc

Reimbursable



Gulf contested assessment where CIT computed WHT on incidental costs

Gulf African Bank vs CIT

Computation of WHT



XYZ Consulting

	KShs
Professional fees	100,000
Transport and accomodation	20,000
	<hr/>
	120,000
VAT @16%	19,200
	<hr/>
Total	<hr/> <hr/> 139,200

Deduct $(120,000 \times 5\%) = \text{Kshs } 6,000$

Pay $(114,000 + 19,200) = \text{Kshs } 133,200$

Where negotiated “net of tax”

Paid full 139,200 to XYZ

To KRA $(120,000 \times 100 / 95) \times 5\% = \text{Kshs } 6,316$

For the recipient of income



100

Professional, contractual, training,
royalties, agency fees

5%

Withholding tax

70

Deductible expenses

Salaried professional

PAYE @ 30%

30

× 30%

9

—

5

=

4

30th April

Consultant vs Employee



Everret vs KRA

Helicopter charter services using freelance pilots



Facts

- Pilots not integrated to business
- Pilots would procure license independently
- Everret could not dismiss them or force them to fly
- Did not carry out management duties
- Hired for special skills
- Employed for a few hours or a few weeks

Ruling

- Contract of service not contract for service.
- No regard to duration of employment
- Income derived from Kenya
- Guided on how to work
- Liable to pay PAYE

Consultant vs Employee



Test to Apply

whether the person's duties are an integral part of the employer's business

M

The greater the direct control of the employee by the employer, the stronger the grounds for holding it to be an employment contract

I

The way in which the parties themselves treat the contract and the way in which they describe and operate it;

Sufficient mutuality of obligations to justify a finding that there was a contract of employment;

C

Control i.e. In the contract for service the master can order or require what is to be done, while in the contract of service he cannot only order or require what is to be done but how it shall be done;

E

Taxation of expatriates



For the purposes of section 3 (2) (a) (ii), an amount paid to-

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**; or

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,

shall be deemed to have **accrued** in or to have been **derived from Kenya**.

Taxation of expatriates



REPUBLIC v KENYA REVENUE AUTHORITY [2009] eKLR



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS CIVIL APPLICATION 1044 OF 2006

REPUBLICAPPLICANT

VERSUS

THE KENYA REVENUE AUTHORITY.....RESPONDENT

CIVICON LIMITED..... EXPARTE APPLICANT

Computation of taxable income

	Ksh	Ksh
Net profit per accounts/ ledger for a source		XX
ADD		
Non-allowable expenses for the source	XX	-
Expenses relating to exempt income	XX	XX
LESS		
Capital Allowances		
Other deductible expenses for the source	(XX)	
Exempt Income	<u>(XX)</u>	<u>(XX)</u>
Adjusted Profit/(Loss) for Tax		XX

Corporation taxes



Current year

Prior year

Estimation of current years tax payable

25% of 110% of tax assessed for the previous year.



“Current year basis is more appropriate where the operating results fluctuate substantially. In case of variance of 10% or more, penalties and interest are levied”

