



Principles of Taxation and Itax in Kenya

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History of taxation in Kenya



- ✦ Taxation in Kenya dates back before the colonization by Britain.
- ✦ The Arabs who colonized East Africa in the Seventh Century taxed the local coast region of East Africa on the basis of Islamic law. The taxes imposed were mainly based on trade.
- ✦ The British introduced direct taxation since external trade was minimal and customs dues would not raise enough taxes.
- ✦ The 1937 legislation remained in effect until 1952 when the Income Tax Act (ITA) was enacted. The 1952 ITA laid down the basis of liability, assessment, collection and management.
- ✦ In 1973, a new ITA was legislated and it came into effect in January 1974.

Imposition of Income Tax

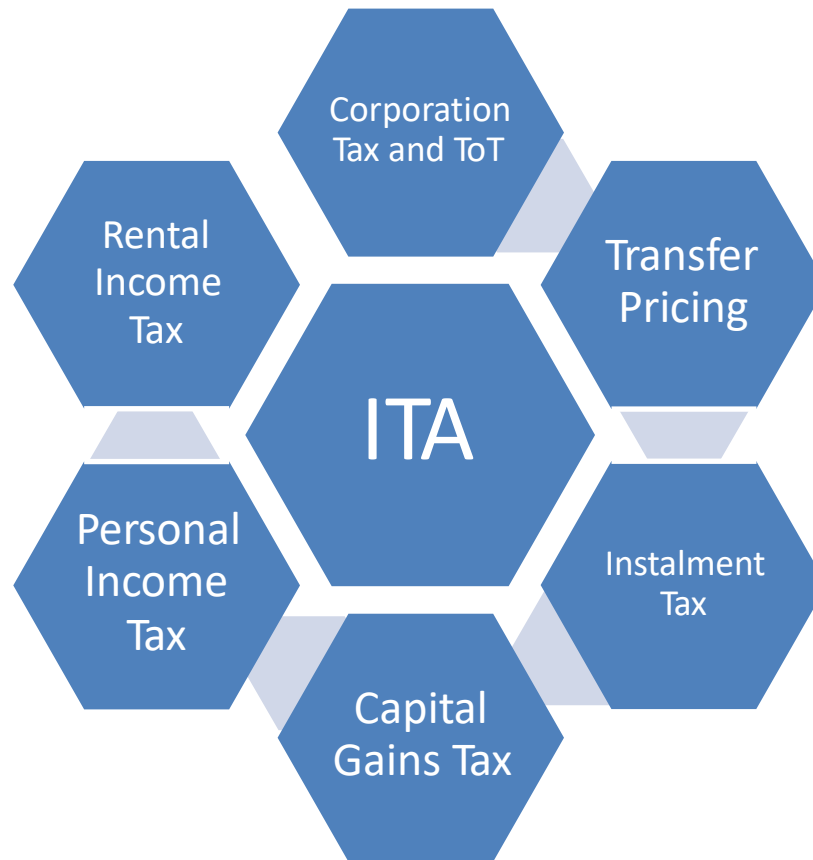


- a) Corporation tax is imposed on the taxable income, which is the accounting profit adjusted for allowable and disallowable expenses.
- b) The corporation tax rate for resident companies is 30%.
- c) Section 10 to the Income Tax Act provides for the exemption of certain income.

The Income Tax Act



The types of taxes imposed under the Income Tax Act are as follows:



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The Income Tax Act Cap 470



- ✦ The imposition of taxes under the ITA is also affected by public policy.
- ✦ Article 201 of the Constitution which details the principles of public finance provides that there shall be openness and accountability including public participation in financial matters.
- ✦ Every year, the budget making process involves calls to the public to participate in which we as the public get to make proposals on what should be included in the upcoming Finance Bill.
- ✦ The Bill is published and if passed by the Parliament, assented to by the President.

What are allowable expenses (Sec 15)



What deductions are allowed?

- ✦ All expenditure incurred wholly and exclusively in the production of the income of a person.
- ✦ Some of the common deductions which are not allowed:
 - 1) Bad debts incurred;
 - 2) Capital deductions;
 - 3) Fines and Penalties;
 - 4) Expenses Incured that are personal in nature;

Contentious issues in disallowable expenses



Deductions done away with by the Finance Act 2020:

- ✦ Entrance fee or subscription fee paid during an year of income;
- ✦ Legal costs and incidental fees incurred on authorisation and issue of shares, debentures or any securities for the purpose of listing the same, raising additional capital or whether they are offered for purchase to the public;
- ✦ Club subscriptions paid by an employer on behalf of an employee;

Contentious issues in disallowable expenses



Further contentious issues arising:

- ✦ The issue of the meal benefit whereby a benefit below KES 4,000 is an allowable deduction but a figure above KES 4,000 is taxed in whole and not just the amount over and above;
- ✦ Allowability of airtime in times of COVID-19 period? and
- ✦ Allowability of donations in times of COVID-19 period?

Key dates to note



Below are critical dates to note from a tax compliance perspective.

Obligation	Due date
First Instalment	20 th of the fourth month after year end
Second Instalment	20 th of the sixth month after year end
Third Instalment	20 th of the ninth month after year end
Fourth Instalment	20 th of the twelfth month after year end
Balance of Tax	30 th of the fourth month after year end

Instalment taxes are computed either on a prior year basis; or on a current year basis.



Challenges of implementation of Income Taxes

Uphold public interest

Challenges



- ✦ Kenya operates a self-assessment tax system where tax payers evaluate their business operations, report taxable income and compute tax liability.
- ✦ While significant improvements have been made to improve the tax system, the following key challenges have arisen and most particularly:
 - 1) Failure to provide transition provisions on the recently introduced second schedule on capital/Investment allowances;
 - 2) Update of the iTax platform to effect changes in legislation;
 - 3) Offset of the tax overpayments;
 - 4) Lack of knowledge among taxpayers;

Challenges cont'd



- 5) Time frame within which the Commissioner is supposed to issue objection;
- 6) Delay by the Commissioner to issue private rulings despite clear timelines being provided in the Tax Procedures Act for the issue of the same;
- 7) Minimum tax – Injunction imposed by court.



Tax Principles & best practice

Uphold public interest

Principles of Taxation



EQUITY

Taxes should be fair as one of the principles that guide tax policy. Equity can be either, vertical or horizontal.

A tax system is horizontally equitable if taxpayers, in similar circumstances, pay similar amounts of tax. With vertical equity people with a greater ability to pay, that is individuals earning higher incomes or rich people, should pay higher level of tax compared to poorer people.¹⁰

Principles of Taxation



PREDICTABILITY AND/OR CERTAINTY

Adam Smith argues that “the tax which each individual is bound to pay ought to be certain, and not arbitrary” .

A predictable tax system is – among other reasons – essential for business planning.

Business entities prefer to plan costs ahead in advance and this includes tax liabilities.

A predictable tax system is an important ingredient in enticing investment in an economy.

Although a tax system changes overtime due to alterations in the local economy, these changes in the tax system should be timely and inclusive.

Principles of Taxation



SIMPLICITY

A tax assessment and determination should be easy to understand by an average taxpayer.

A tax system should be easy for tax payers to comply.

This among other reasons includes the design of a tax system. Normally taxpayers find it easy to comply when a tax system is easy to deal with.

When taxpayer's for instance find it easy and convenient to make a tax payment, the likelihood to comply is high. The opposite is also true.

International tax rates



NEUTRALITY

In as much as one of the key functions of taxation is to raise revenue, the OECD observes that, taxation should seek to be neutral and equitable between forms of business activities

A good tax system should raise revenue and promote or support the growth of investments. It is imperative to understand that when a tax system supports the growth of investment undertaking, ultimately more investments triggers an expanded tax base that will lead to more tax revenue collection.

Best practices in taxation



1. Tax deducted at source - are you an appointed agent for wtax and wvat
2. Beware of public notices
3. Tax changes - it helps to avoid fights with KRA
4. Be Aware of Section 47 of The TPA 2015
5. Learn how to manoeuvre itax and declare correct details on itax - it is a self declaration - review contents done by your agents before they are filed
6. Do not lump figure together on itax but separate all line items as required
7. Know your RM at KRA and to communicate in writing - adhere to set deadlines by legislation

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