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# TAX TIPS KENYA

Tax Consultancy and Management Services

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(Incorporating)

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## Tax Tips- 2010

### PERSONAL TAX-ANNUAL RATES

#### Individual Income Tax Rates

Taxable Income Shs. p.a.	Rate %	Cumulative Tax Shs. p.a.
<b>Years 2005/6/7/8/9/10</b>		
0 - 121,968	10	12,196
121,969 - 236,880	15	29,432
236,881 - 351,792	20	52,414
351,793 - 466,704	25	81,142
Over 466,704	30	
<b>Years 2002/3/4</b>		
0 - 116,160	10	11,616
116,161 - 225,600	15	28,032
225,601 - 335,040	20	49,920
335,041 - 444,480	25	77,280
Over 444,480	30	

### Reliefs

	Kshs.	Years 2008 - 2010	
		Per annum	per Month
Personal relief		13,944	1,162
Mortgage interest relief on owner occupied property (for purchase or improvement) - maximum	150,000		12,500
Home ownership savings plan (For first 10 years. Interest earned on deposits of up to Shs. 3 million exempt)	48,000		4,000
Life, health and education insurance relief - 15% of premium to a maximum of	60,000		5,000

### Tax free income

**Disabled persons-** Kshs 150,000 per month, further Tax deduction Kshs 50,000

**Pensioners:** Persons above the age of 65 years. Others Kshs 25,000/ m

### Tax free employment benefits

§ Medical services provided to a full-time employee and a whole-time service director (holding less than 5% shares).

§ Medical benefits provided to a non-whole-time service director subject to a maximum value of Shs. 1 million (w.e.f. 1<sup>st</sup> Jan 2006).

§ Education fees of an employee's dependants or relatives, if taxed on the employer.

§ Education fees paid by an educational institution for low income employee's dependants attending the institution.

§ International passage cost for non-citizen employee recruited outside Kenya.

§ Non-cash benefits not exceeding Shs. 36,000 p.a.

§ Shs. 2,000 per day towards subsistence and traveling allowance for person working outside usual place of work.

§ Meals for low-income employees subject to conditions approved by the Commissioner (w.e.f.) 1<sup>st</sup> Jan 2008).

### Taxable Employment Benefits

All benefits are taxable at the higher of cost to the employer of providing the benefit and the fair market value.

#### (a) Motor vehicles

Taxed at the higher of 2% p.m. of the initial cost of the vehicle and the rates prescribed below:

Saloons and Estates		Pickups or Panel Vans	
cc	Shs. p.a.	cc	Shs. p.a.
Upto - 1200	43,200	upto 1750	43,200
1201 - 1500	50,400	over 1750	50,400
1501 - 1750	69,600		
1751 - 2000	86,400	Landrovers &	
2001 - 3000	103,200	Landcruisers	86,400
Over 3000	172,800		

Leased and hired vehicles are taxed at the cost of hiring or leasing the vehicle. Where there is restricted use, the Commissioner may determine a lower rate based on usage.

#### (b) Housing

Director 15% of total income

Whole-time service director: Higher of 15% of total employment income or rent paid

Agricultural employee 10% of total employment income

Other employees (including whole-time service director) 15% of total employment income or rent paid, whichever is higher

Rental recovered from an employee is deducted in calculating housing benefit.

#### (c) Domestic benefits

Benefits including staff meals, club subscriptions, house helps, water, security, electricity etc. are taxable at the higher of cost or fair market value. The Commissioner has prescribed the value of benefits where the cost to the employer is difficult to ascertain. The prescribed rates are:

§ Telephone (incl. mobile) 30% of cost to employer

§ Furniture 1% of cost to employer

#### (d) Employee loans

§ Loans made prior to 11<sup>th</sup> Jun 1998 are taxed on the employee at the difference between the interest charged to the employee and the lower of the prescribed interest rate (15%) or the market lending rate (average 91-day Treasury Bill rate for the previous quarter).

§ Loans granted after 11<sup>th</sup> Jun 1998 are subject to Fringe Benefit Tax payable by the employer at the resident corporate tax rate on the difference between the market interest rate and the interest paid by the employee.

#### (e) Registered Employee Share Ownership Plan

Taxable on the employee at the difference between the market value and the offer price per share on the earlier of the date the option is vested in the employee or is exercised by him.

#### (f) Pension and Provident Funds

§ Deductible contributions to registered funds in respect of employees is the lower of 30% of pensionable income, actual contribution or Shs. 240,000 p.a.

§ From 1<sup>st</sup> Jul 2004, employees of tax exempt bodies to be taxed on contributions in excess of the permitted limits that such bodies make on their behalf to retirement benefit schemes.

§ Tax exempt lump sum withdrawals from a:

\* Registered pension fund - Shs. 48,000 for each year of pensionable service subject to a maximum of Shs. 480,000.

\* Registered provident fund - Shs. 48,000 for each year of pensionable service subject to a maximum of Shs. 480,000 plus all lump sums based on contributions prior to 1<sup>st</sup> Jan 1991.

\* Registered fund payable to the estate of a deceased employee - a maximum of Shs. 1.4 million.

Withdrawals above these limits are subject to withholding tax.

§ Tax exempt pension from a registered scheme – Shs 300,000 –or 25,000 p/m (Shs. 180,000 p.a.). Persons over 65 years exempted.

§ Pension contributions to unregistered retirement benefit schemes are fully taxed on the employee. Pension income from such schemes is tax exempt.

§ Utilisation of surpluses are deemed taxable on the employer.

## EMPLOYER'S STATUTORY OBLIGATIONS

### National Hospital Insurance Fund (payable by 5<sup>th</sup> of the month)

Monthly Contribution		Monthly Contribution	
Income Shs.	Per Month Shs.	Income Shs.	Per Month Shs.
1,000 - 1,499	30	8,000 - 8,999	180
1,500 - 1,999	40	9,000 - 9,999	200
2,000 - 2,999	60	10,000 - 10,999	220
3,000 - 3,999	80	11,000 - 11,999	240
4,000 - 4,999	100	12,000 - 12,999	260
5,000 - 5,999	120	13,000 - 13,999	280
6,000 - 6,999	140	14,000 - 14,999	300
7,000 - 7,999	160	15,000 & over	320

Also applicable to casual employees.

### National Social Security Fund

10% of monthly income up to a maximum of Shs. 400; half paid by employer and half by employee. For casual employees, a special contribution of 5% of gross wage is payable by the employer. Compulsory registration for an employer with one or more employees. Voluntary registrations permitted for casual or self-employed workers. Payable by 15<sup>th</sup> of the subsequent month.

### DIT Levy

Payable by every employer at Shs. 50 per employee including an apprentice, indentured learner, other trainee, temporary, seasonal and casual worker. Not applicable to those who are registered with and contributing catering levy.

## INCOME TAX - CORPORATIONS

Resident company 30%

Unincorporated entities with turnover of upto Shs. 5 million - w.e.f 1<sup>st</sup> Jan 2008 on gross receipts 3%

Non-resident company 37.5%

Export Processing Zone enterprises:

First ten years Nil Next ten years 25%

Newly listed companies (NLC) following the year of listing:

\* Lists at least 20% of its shares 27% for 3yrs

\* Lists at least 30% of its shares 25% for 5yrs

\* Lists at least 40% of its shares 20% for 5yrs

## PAYMENT OF TAXES

§ **Installment Tax**- Payable by 20<sup>th</sup> of the indicated month

	Fourth Month	Sixth Month	Ninth Month	Twelfth Month
Agricultural enterprises	-	-	75%	25%
All other taxpayers	25%	25%	25%	25%

**Basis for Installment Tax:** Lower of preceding year's tax multiplied by 110% and current year's estimate. For individual taxpayers, installment tax is payable if preceding year's tax liability is Shs. 40,000 or more.

## SELF ASSESSMENT RETURNS (SAR)

§ A married woman can opt to file a separate tax return and declare income from arms length employment, professional services, rent, dividend and interest separately from the husband.

## CAPITAL ALLOWANCES

§ **Wear and Tear Allowances** (calculated on cost, net of investment deduction allowance, on a reducing balance basis):

\* Tractors, lorries over 3 tonnes and heavy self-propelled vehicles 37.5%

\* Computer hardware, calculators, copiers, and duplicating machines 30%

\* Motor vehicles (if not commercial, limited to a cost of Shs. 2 million - 2006 and Shs. 1 million - 2005) and aircraft 25%

\*Ships, plant, machinery, furniture, fittings and other equipment 12.5%

\* Telecommunication/fibre optic (w.e.f. 1.1.2010) 20%

§ **Section 15(2)(G) Claim:** Utensils and loose tools - what is just and reasonable to the Commissioner's satisfaction - 33<sup>1/3</sup>% straight line by practice

§ Computer software (w.e.f 2010) 5%

§ **Industrial Building Allowance** (calculated on cost, net of investment deduction, on a straight-line basis):

\* Industrial buildings 2.5%

\* Hotels - 2006 and prior years 4%

\* Hotels and hostels and educational buildings certified by the Commissioner-w.e.f 1<sup>st</sup> Jan 2007 10%

\* Rental residential buildings in planned development areas approved by the Minister - w.e.f. 1<sup>st</sup> Jan 2008 5%

§ **Farm Works Allowance** cost of structures excluding machinery necessary for proper operation of a farm (on a straight line basis) - w.e.f. 1<sup>st</sup> Jan 2007- 50% (Prior to 2007 - 33 1/3%)

**Investment Deduction** (cost of building and machinery used for manufacturing, workshop machinery used for factory maintenance, hotel buildings and electricity generation for national grid), Film producers (2010): Single allowance in the first year of use (2004 to 2008) **100%, outside Nairobi, Mombasa, Kisumu- 150%**  
Training facilities 50%

§ **Manufacturing Under Bond** (over and above the normal investment deduction - 2004 to 2008) **0%**

§ **Shipping Investment Deduction** **40%**

§ **Mining Allowance** (on capital expenditure incurred in mining specific minerals):

\* Year 1 **40%** \* Year 2-7 **10%**

**TAX LOSSES-** w.e.f 2010, tax loss carry forward is limited to maximum 4 years, except with authority from tax commissioner.

## ADVANCE TAX (MOTOR VEHICLE & PSV STAFF)

Applicable to all commercial vehicles:

§ **For vans, pickups, trucks and lorries**, the higher of Shs. 1,500 per tonne of load p.a. or Shs. 2,400 p.a.

§ **For saloons, station wagons, mini-buses, buses and coaches**, the higher of Shs. 60 per passenger capacity p.m. or Shs. 2,400 p.a.

§ **For drivers and conductors of PSV vehicles** : Shs. 3,600 p.a. per driver and Shs. 1,200 p.a. per conductor respectively.

## STANDARDS LEVY

Payable monthly by manufacturers at 0.2% of ex-factory price subject to a minimum of Shs. 1,000 p.m. and a maximum of Shs. 400,000 p.a.

## CUSTOMS DUTY

Rates vary from 0% to 35%. East African Community (EAC) tariffs apply from 1<sup>st</sup> Jan 2005. Certain capital goods, subject to Treasury approval, are eligible for duty remission.

## WITHHOLDING TAX RATES

Withholding tax is payable by the 20<sup>th</sup> day of the month subsequent to the month of deduction.

	Resident	Non-Resident
Telecommunication services	-	5%*
Artists and entertainers	-	20%*
Royalties	5%	20%*
Dividends (1)	5%*	10%*
Dividends paid to companies having 12.5% or more voting power	Exempt	10%*
Renting and leasing equipment (2)	3%	15%*
Interest (>10-year s Gov't bearer bonds) (3)	10%	
Interest (including 2-year Gov't bearer bonds) (3)	15%	15%*
Interest from other bearer bonds (4)	25%	25%*
Housing bond interest (3)/(4)	10%	15%*
Rent - land & buildings	-	30%*
Pension and taxable withdrawals from pension / provident funds (5)	10-30%*	5%*
Insurance commissions (6)	10%	20%*
Contractual fees (7)/(8)	3%	20%*
Management, professional or training fees (7)/ (8)/(9)	5%	20%*
Surplus pension fund withdrawals	30%	30%
Shipping business	-	2.5%
* Final tax		

- (1) East African Community citizens at resident rate of 5%.
- (2) Aircraft leasing exempt. For residents, applicable to assets leased under the Income Tax (Leasing) Rules, 2002.
- (3) Final tax for individuals unless received from sources other than financial institutions. Not final tax for resident companies, trusts, clubs etc.
- (4) Limited to income of Shs. 300,000 p.a.
- (5) Rates apply only to the graduated PAYE tax rates (for early withdrawal) or in bands of Shs. 400,000 (for withdrawals after a 15-year period or 50 years of age).
- (6) 5% if paid to a resident broker.
- (7) 15% if paid to East African Community countries.
- (8) For all payments in excess of Shs. 24,000 p.m.
- (9) Exempt on agency fees paid on export of flowers and fruits and vegetables (w.e.f. 1<sup>st</sup> Jul 2006) and on audit fees for analysis of maximum residue limits paid to non-resident laboratories or auditors.

**Double tax treaties:** Lower rates may apply where tax treaties are in force. Currently with Canada, Denmark, India, Norway, Sweden, Zambia, United Kingdom and Germany.

#### SET-OFF OF TAX

- § Any tax or duty payable to the Kenya Revenue Authority (except VAT and duty on imports) may be offset on request against any refund of tax or duty confirmed by the Authority. The request must be made 30 days prior to the tax due date.
- § Tax paid in another country on employment income by a Kenyan resident can be offset against tax payable on that income in Kenya to the maximum of tax payable in Kenya on the said income.

#### INCOME TAX & PAYE PENALTIES

Offence	Penalty
§ Failure to furnish a return by due date	5% of tax due (min. Shs. 10,000 for companies and Shs. 1,000 for individuals)
§ Penalty on unpaid tax	20% of unpaid tax
§ Interest on unpaid tax	2% per month
§ Underpayment of tax	20% on the difference
§ Underestimation of installment tax	20% on the difference
§ Fraud or willful omission in a return	<ul style="list-style-type: none"> <li>· Double the amount of tax underpaid</li> <li>· Fine not exceeding Shs. 200,000</li> <li>· Imprisonment not exceeding 2 years</li> </ul>
§ Failure to deduct or remit PAYE	25% of the amount of tax involved (min. Shs. 10,000)

Penalties and interest restricted to a maximum of the principal tax due.

#### STAMP DUTY

Creation or increase of share capital	1%
Transfer of stock or marketable security (except quoted securities, which are exempt)	1%

#### Transfer of immovable property:

Within a municipality	4%
Outside a municipality	2%

#### Lease:

Between 1 and 3 years	1% of annual rent	Over 3 years	2% of annual rent
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#### Exemptions

- § New or expanded listing on stock exchange.
- § Transfer of immovable property between husband and wife or transfer of a family property to a limited liability company wholly owned by the family.
- § Land acquired for construction or expansion of educational institutions.
- § Instruments creating asset-backed securities through a scheme approved by the Capital Markets Authority.

#### TURNOVER TAX

Individuals with annual turnover(sales) between 500,000 and 5 million except in professional, rent income should register for Turnover tax

#### VALUE ADDED TAX

##### Rates

Standard rate (including hotels, restaurants and non-residential buildings)	16%
Catering levy for hotels and restaurants	2%
VAT as a fraction of inclusive price (standard rate)	4/29

**Registration threshold** - Shs. 5 million turnover p.a.

**Non-residential buildings** - Vatable from 1<sup>st</sup> Jan 2008.

**Reverse VAT** - payable on all imported services.

**Input VAT** - recovery of VAT restricted on passenger cars, repairs and maintenance of passenger cars, restaurant and hotel accommodation services, entertainment services and certain furniture and fittings.

- (1) Hire purchase providers to issue letter of undertaking or clearance certificate to enable the purchaser to claim input tax.
- (2) Where a registered person acquires taxable goods for trading on which VAT was not charged, they will be deemed to be inclusive of VAT and therefore eligible for claim of input VAT. Output VAT is to be charged on sale of such goods.
- (3) Disposal of items of property, plant and equipment by an exempt person is not subject to VAT.
- (4) Certain capital goods, subject to Treasury approval, are eligible for VAT exemption.
- (5) No VAT to be withheld on payments for goods/services supplied by persons registered under Turnover Tax.

#### VAT PENALTIES

Penalties and interest restricted to a maximum of the principal tax due.

#### Offence

Offence	Penalty
§ Non display of registration certificate	Shs. 20,000 default penalty plus fine not exceeding Shs. 200,000 and/or 2 years imprisonment
§ Failure to issue a tax invoice or cash sale, or maintain proper books and records	From Shs. 10,000 to Shs. 200,000. Goods connected with offence can be forfeited
§ Failure to furnish a return on time	5% of tax due (min. Shs. 10,000)
§ Failure to pay tax on time	Interest of 2% per month compounded
§ Failure to produce books of accounts or records	Shs. 15,000 and/or 6 months imprisonment
§ Failure to keep proper books or records	From Shs. 10,000 to Shs. 200,000
§ Making false statements or fraudulent claims or providing false information	Shs. 400,000 or double the tax evaded and/or 3 years imprisonment
§ Making a fraudulent claim for refund of tax	Two times the amount of claim
§ Failure to maintain an ETR and other non-specified offences	Max. fine of Shs. 500,000 and/or up to 3 years imprisonment

#### KEY COMPARISONS

	Kenya	Tanzania	Uganda
<b>Corporate rate:</b>			
Residents	30%	30%	30%
Non-residents	37.5%	30%	30%
Repatriated income of a branch	Nil	10%	15%
Individual rate - max	30%	30%	30%
<b>Capital gains tax:</b>			
Individuals - Residents	Nil	10%	30% on non-depreciated assets
Individuals - Non residents	Nil	20%	30%
Corporates	Nil	30%	30%
VAT standard rate	16%	20%	18%
<b>Stamp Duty:</b>			
Transfer of property	2% - 4%	1%	1%
Transfer of shares	4%	1%	1%
Lease up to 3 years	1%	1%	1%

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