

INDIVIDUALS

Income Tax

Income tax is the most common direct tax that is payable in Kenya. The different forms of income tax imposed on income derived from Business, Employment, Rent, Dividends, Interests, and Pensions among others.

There are several methods of collecting Income Tax in Kenya which include:

1. Pay As You Earn (PAYE)
2. Withholding Tax
3. Installment Tax
4. Advance Tax
5. Turnover Tax
6. Capital Gains Tax

1. Pay As You Earn (PAYE)

PAYE is collected from individuals in gainful employment. This particular method of collecting tax is applicable to, both residents and Non-residents. The income taxed in this category includes all forms of wages, casual wages, monthly salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, or subsistence, travelling, entertainment or other allowances received in respect of employment or services rendered.

An employer is required to register for PAYE tax obligation.

PAYE is chargeable to persons earning employment income of Kshs. 24,000 and above per month.

Incomes chargeable to PAYE

- Fringe Benefit Tax (FBT)
- Non-Cash Benefit above 3,000 pm e.g. airtime, internet etc
- Car Benefit – including motorbike benefit
- Value of Premises provide by Employer

Incomes not chargeable to PAYE

- Meals provided by employer to employee not exceeding Kshs. 48,000 pa (Ksh 4,000 per month)
- Subsistence, Night-out of Kshs. 2,000 per day
- Medical Cover by employer
- Pension Contribution made by employer

Computation of PAYE

The following tax rates shall apply to individual employment income with effect from 1st January 2021.

Tax Band	Rate of Tax
First Kshs 24,000 per month or Kshs 288,000 per annum	10%
Next Kshs 8,333 per month or Kshs 100,000 per annum	25%
Amount in excess of Kshs 32,333 per month or Kshs 388,000 per annum	30%
Personal Relief	
The applicable monthly personal relief is Kshs 2,400 per month or Kshs 28,800 annually	

On pensions the new tax rates are:

Pension Tax Bands	Annual Tax Rates
Any amount in excess of tax free amounts:	
On first 400,000	10%
On next 400,000	15%
On next 400,000	20%
On next 400,000	25%
On any amount in excess of Kshs 1,600,000	30%

Emerging Issues

- House Ownership Savings Plan is no longer an allowable deduction
- Change of Personal relief and PAYE bands
- Bonuses and Overtime paid to low income earners are now chargeable to tax
- Distinction between an employee and consultant
- Non-inclusion of taxable benefits

2. Withholding Tax

This is a method of collecting tax where the payer of certain incomes is responsible for deducting tax at source from payments made and remitting the deducted tax to KRA.

The percentage deducted varies between incomes and is dependent on whether you are a resident or non- resident.

Any amount of tax withheld, should be remitted to KRA on or before the 20th day of the following month.

3. Installment Tax

Installment tax is a periodic estimated income tax. It is paid in anticipation of the tax payable for a year of income. Installment tax is a form of advance tax administered under the Income Tax Act Cap 470, laws of Kenya. Installment Tax is paid in advance at four equal installments. It is paid before the year of income is over and before the accounts of the business are prepared to establish the actual tax payable.

- It is payable by every person subject to tax (individuals and non-individual)
- Installment taxes are not payable by persons who are subject to Turnover Tax (TOT)
- Installment taxes are paid by individual taxpayers who have a tax liability that is not fully covered under PAYE, of over Kshs. 40,000 payable for any year.
- Projection is done at the beginning of the financial year. While projecting the annual tax liability, the expected withholding tax for the year is netted off in arriving at the net estimated tax liability to use in determining installment taxes payable.

Calculating installment tax

This may be done in either of the two ways:

- I. Prior year basis – Prior year tax payments is increased by ten percent
 - II. Current Year basis – mainly used for new business or those who were in losses and turned to profitability, installment tax is determined by estimating the current year profit and tax payable thereon.
- The installments are spread evenly at 25% of the tax due and payable on the 20th day of the 4th, 6th, 9th and 12th months of the year of income for all taxpayers except those in the Agricultural Sector.
 - Taxpayers in the Agricultural Sector pay in installments of 75% in the 9th month and 25% in the 12th month.
 - Balance of Tax (return balance) is paid by end of the 4th month after the year-end. i.e. by 30th April 2020 for December year-end cases.
 - Installment tax already paid in the year of income is claimed as an advance payment made in the given year of income.

4. Advance Tax

This is a tax paid in advance before a public service vehicle or commercial vehicle is licensed at the rates applicable.

Tax rates for advance tax

- vans, pick-ups, trucks, prime movers, trailers and lorries; Kshs. 1,500 per ton of load capacity subject to a minimum of Kshs. 2,400 per year of income;
- Saloons, station-wagons, mini-buses, buses and coaches; Kshs. 60 per passenger capacity per month subject to a minimum of Kshs. 2,400 per year of income.

Advance tax is not a final tax. Taxpayers who have paid any advance tax are required to declare the same in their income tax returns submitted yearly and pay any additional tax due.

Advance Tax is due on 20th of January or before transfer of ownership of vehicle.

5. Turnover Tax (TOT)

Turnover Tax (TOT) is a tax charged on gross sales of a business as per Sec. 12 (c) of the Income Tax Act effective 01/01/2020

(TOT) is payable by resident persons whose gross turnover from business is more than Kshs. 1,000,000 and does not exceed or is not expected to exceed Kshs 50,000,000 in any given year.

TOT does not apply to:

1. Persons with business income below Ksh. 1,000,000 and above Kshs. 50,000,000 per annum
2. Rental Income,
3. Management, Professional and Training Fees,
4. Any income that is subject to a final withholding tax under the Income Tax Act

Note:

- A taxpayer whose turnover is within the above threshold, but chooses not to be taxable under TOT, shall be deemed to have informed the Commissioner of this choice by not registering for TOT.
- Turnover Tax is charged at the rate of 1% on gross monthly sales
- Expenses are not deductible.
- TOT is a final tax.
- TOT is filed and paid on a monthly basis on or before 20th of the following month.

Emerging Issues under TOT

- The tax rate reduction from 3% to 1%
- The removal of Presumptive Tax (with effect from 25.04.2020)
- The change in filing regime from quarterly basis to a monthly basis.
- The change in threshold from below Ksh. 1M to between Ksh. 1M and Ksh 50M. This will imply that businesses with annual taxable supplies of Ksh. 5,000,000 and above will required to register for both TOT and VAT.

6. Capital Gains Tax (CGT)

CGT is tax that is levied on transfer of property situated in Kenya, acquired on or before January 2015. CGT is declared and paid by the transferor of the property

Rate of Tax

The rate of tax is 5% of the net gain. Capital Gains Tax is a final tax i.e. the Capital Gain is not subject to further taxation after payment of the 5% rate of tax.

Net Gain is Sales Proceeds minus the Acquisition and Incidental cost. CGT is on gains arising from sale of property.

Exemptions on Capital Gains Tax

- Income that is taxed elsewhere as in the case of property dealers
- Issuance by a company of its own shares and debentures
- Disposal of property for purpose of administering the estate of a deceased person
- Transfer of property between spouses as part of divorce settlement

Payment for Capital Gains Tax

Capital Gains Tax is due on or before transfer of property but not later than the 20th day after the transfer. Payment should be initiated online via iTax.