



## KENYA FINANCE ACT 2016 UPDATE

The Finance Act, 2016 was assented to by the President in September 2016 after being passed by the National Assembly, with some amendments made to the Finance Bill, 2016, which was tabled in the National Assembly by the Cabinet Secretary for the National Treasury, Henry Rotich, in June 2016.

Some measures not initially included in the Bill have now been added in the Act.

These are some of the amendments to the Income Tax Act, the Excise Duty Act 2015, Value Added Tax 2013, the Tax Procedures Act 2015 and various other Acts plus the dates when they became effective.

### A. INCOME TAX ACT:

Measure	Impact On:	Effective Date:
The minimum residential rental income subject to residential rental income tax has been set at KES. 144,000 per annum while the maximum amount per annum is set at KES. 10 million. Further, the withholding rate for rental income paid to residents has been reduced from 12% to 10%.	Income Tax (decrease, on low income landlords)	9 <sup>th</sup> June 2016
Lotteries, Betting and Gaming companies will no longer pay withhold tax of 7.5% on paid out winnings.	(See update on the Betting, Lotteries &	1 <sup>st</sup> January 2017

Gaming Act below).

Expenses that are incurred in sponsoring sports activities by both individuals and corporates are now tax deductible, subject to approval by the Sports Cabinet Secretary. Corporate Income Tax (decrease) 1<sup>st</sup> January 2017

The maximum mortgage interest relief amount allowable per annum as an allowance against taxable income has been increased from KES. 150,000 to KES. 300,000. Income Tax (decrease) 1<sup>st</sup> January 2017

Bonuses, overtime and retirement benefits for low income workers (income below the lowest tax bracket of 10%, upto KES. 11,180 per month) have been exempted from income tax to ease the cost of living. Income Tax (decrease) 1<sup>st</sup> July 2016

PAYE tax brackets have been expanded by 10% and personal relief\* also increased by 10% to ease the cost of living: Income Tax (decrease) 1<sup>st</sup> January 2017

Monthly Taxable Pay (KES.)	Annual Taxable Pay (KES.)	Tax Rate (%)
Up to 11,180.33	Up to 134,164	10
11,181 - 21,714	134,165 - 260,567	15
21,715 - 32,248	260,568 - 386,970	20
32,249 - 42,781	386,971 - 513,373	25
Above 42,781	Above 513,373	30

\*Personal relief set at KES. 15,360 per annum.

The corporate income tax rate has been reduced from 30% to 15% for developers who construct at least 400 units of low cost housing per year. Income Tax (decrease) 1<sup>st</sup> January 2017

The transfer of assets between spouses, between former spouses as part of a divorce settlement or bona fide separation agreement, or to an immediate family or to a company where spouses and immediate family hold 100% shareholding shall be exempted from capital gains tax.	Capital Gains Tax (decrease)	9 <sup>th</sup> June 2016
Interest income on bonds issued by the East African Development Bank is now exempt from Income Tax.	Income Tax (decrease)	1 <sup>st</sup> July 2016
The definition of 'deemed interest' has been clarified as follows: "An amount of interest equal to the average 91-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 a loan is provided free of interest."	Income Tax (no change)	9 <sup>th</sup> June 2016

## B. EXCISE DUTY ACT:

Measure	Impact On:	Effective Date:
Goods now subject to Excise Duty include:	Excise Duty (increase)	9 <sup>th</sup> June 2016
<ol style="list-style-type: none"> <li>1. Excisable goods removed from an SEZ (Special Economic Zone) for sale in the local market.</li> <li>2. Kerosene: Excise duty has been introduced at the rate of KSh 7,205 per 1000 litres to curb increased adulteration of fuel.</li> <li>3. Cosmetics &amp; beauty products: Excise duty has been introduced at the rate of 10 percent to move towards the harmonization of the excise duty regime in the EAC.</li> </ol>		
Goods now exempt from Excise Duty include:	Excise Duty (decrease)	9 <sup>th</sup> June 2016
<ol style="list-style-type: none"> <li>1. Locally assembled motor vehicles.</li> <li>2. School buses intended for public schools.</li> <li>3. Locally assembled motor cycles.</li> <li>4. Goods imported for direct use in the manufacture of sanitary towels.</li> <li>5. All goods including material supplies, equipment, machinery and motor vehicles</li> </ol>		

- for the official use by the Kenya Defence Forces and the National Police Service.
6. Goods imported or purchased locally for direct and exclusive use in the implementation of an Official Aid-Funded Project.

#### Special Notes:

1. Specific rates of excise duty have been removed and an ad valorem rate of excise duty of 20 percent on non-commercial motor vehicles has been introduced, based on the value of the vehicle.
2. The definitions for the words “import” and “export” now include imports/ exports of goods into/ out of Special Economic Zones (SEZs).

### C. VALUE ADDED TAX (VAT) ACT:

Measure	Impact On:	Effective Date:
<p>Goods/ services now exempt from VAT include:</p> <ul style="list-style-type: none"> <li>• Service charges paid in lieu of tips, subject to a maximum of 10% of the service fee.</li> <li>• Goods/ services imported or purchased locally for use by the local film producers and local filming agents, upon recommendation by the Kenya Film Commission subject to approval by the Cabinet Secretary to the National Treasury.</li> <li>• Goods for use in the assembly, manufacture or repair of clean cooking stoves approved by the Energy Cabinet Secretary.</li> <li>• Inputs for animal feeds.</li> <li>• Inputs used in the manufacture of sanitary towels.</li> <li>• Inputs used in the construction of specialized hospitals with accommodation facilities upon the recommendation by the Health Cabinet Secretary.</li> <li>• Supplies for Construction of Industrial Parks and Recreational Facilities.</li> <li>• National park entry fees and commissions earned by tour operators.</li> <li>• Motor vehicles for use in implementation of official Aid Funded projects.</li> <li>• Supplies to the Kenya Defence Forces and the National Police Service.</li> <li>• Direction-finding compasses, instruments and appliances for aircraft.</li> <li>• Wheat seeds of tariff number 1001.11.00 and 1001.91.00.</li> </ul>	VAT (decrease)	9 <sup>th</sup> June 2016 (except Service charges paid in lieu of tips, effective 1 <sup>st</sup> January 2017)

- Museum and natural history exhibits and specimens and scientific equipment for public museums. Also chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to customs clearance by the National Museums of Kenya.
- Garments and leather footwear manufactured in an Export Processing Zone at the point of importation.

#### Special Notes:

3. The transition period for imposition of VAT on petroleum products (set to expire in Sept. 2016) has been extended by another one year, to Sept. 2017.
4. The supply of LPG has been changed from being subject to VAT at 16% to being zero-rated at 0%.
5. The sale of Vatable goods by an SEZ entity to the local market will now be subject to VAT.
6. KRA can now appoint or revoke the appointment of Withholding VAT agents. No penalties will be imposed on agents who didn't withhold VAT between 19.01.2016 and 08.06.2016.

#### D. TAX PROCEDURES ACT:

Measure	Impact On:	Effective Date:
Wealthy Kenyans and Kenyans in the diaspora who have stashed assets abroad will get a blanket amnesty to repatriate the money tax-free in a move meant to attract local investors who have opted for offshore investments. The amnesty will be given in respect to taxes, interest and penalties arising from taxable income earned from outside Kenya for any year of income ending on or before 31 <sup>st</sup> December 2016 by a person who files the returns and accounts for the year 2016 on or before 31 <sup>st</sup> December 2017. However, the amnesty will not be applicable if one is currently under investigation or has been assessed in the period.	Income Tax (decrease)	1 <sup>st</sup> January 2017
The period for a refund of overpaid tax has now been extended from 1 year to 5 years. However, this shall not apply to refunds relating to VAT which still have to be applied for within 12 months. KRA is required to refund overpaid taxes within 2 years from the	All taxes, except VAT	1 <sup>st</sup> January 2017

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refund application date.

Tax refunded in error shall attract interest of 1% per month if payment is not made within 30 days of the date of service demand by the Commissioner. Interest chargeable shall however not exceed 100% of the tax originally due.	All taxes	1 <sup>st</sup> January 2017
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Tax payers will be able to apply waiver of interests (in addition to penalties) on unpaid taxes or additional assessments. Remission of interest is only applicable where there is uncertainty as to any question of law or fact, the remission is in consideration of hardship or equity or it's impossible, difficult or expensive to recover the tax.	All taxes	1 <sup>st</sup> January 2017
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Non-resident persons who do not have a fixed place of business in Kenya and who are required to register for tax must appoint tax representatives, failure to which the Commissioner may appoint a representative on their behalf.	N/A	1 <sup>st</sup> July 2016
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#### E. BETTING, LOTTERIES & GAMING ACT:

Measure	Impact On:	Effective Date:
A new tax known as <b>betting tax</b> has been introduced, charged at a rate of 7.5% of the betting revenue, with gaming revenue being gross turnover minus the amount paid out as winnings.	Betting companies	1 <sup>st</sup> January 2017

<b>Lottery Tax:</b> this tax will be chargeable at a rate of 5% of a lottery's turnover. This shall be paid by a person authorized to promote lotteries.	Lotteries	1 <sup>st</sup> January 2017
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<b>Gaming Tax:</b> this tax will be chargeable at a rate of 12% of gaming revenue.	Gaming	1 <sup>st</sup> January 2017
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<b>Prize Competition Tax:</b> this tax will be chargeable on the cost of entry into a competition which is premium rated, at the rate of 15% of the gross turnover.	companies	
	Premium Rated Competitions	1 <sup>st</sup> January 2017

The above new taxes will be payable on the 20<sup>th</sup> day of the following month.

## F. COMPANIES ACT:

Measure	Impact On:	Effective Date:
The requirement that a Kenyan company must have at least 30% of its shareholding held by Kenyan citizens by birth, to be registered in Kenya, has been removed.	N/A	N/A

## TALK TO US TODAY

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