Taxation of the Media and Entertainment Sector in Kenya
# Table Of Content

EY understands your sector .................................................. 1

Taxation of the Media and Entertainment Sector .......................... 3

Key Tax Aspects Media and Entertainment Businesses .......................... 5

need to Consider

1. Tax registration ................................................................... 5
2. Corporation tax ................................................................... 5
3. Withholding tax ................................................................... 7
4. Employee taxes ................................................................... 7
5. Value Added Tax (VAT) .......................................................... 9
6. Excise duty .......................................................................... 11
7. Customs and International Trade ............................................. 12
8. Capital Gains Tax .................................................................. 13
9. Tax arbitration process ......................................................... 13

Contacts ..................................................................................... 19
EY understands your sector

EY is known for its deep Media and Entertainment sector knowledge, relationships with the industry’s key stakeholders, and strong global capabilities. Clients see us as the most globally connected organization among the Big Four. Whether you are already active in multiple geographies or are planning to expand your business to other countries, we can assemble a multinational team that combines deep industry knowledge and experience in resolving the issues you are facing, and savvy local advice.

In an industry synonymous with creativity and innovation, the bar for business excellence is set high. You need to embrace new technology, develop new distribution models and satisfy the demands of a voracious and outspoken consumer. At the same time, it’s important to manage costs, exceed stakeholder expectations and comply with new regulations. There’s always another challenge just around the corner. EY’s Global Media & Entertainment Sector can help. We bring together a high-performance, worldwide team of media and entertainment professionals with deep technical experience in providing assurance, tax, transaction and advisory services to the industry’s leaders. Our network of professionals collaborate and share knowledge around the world to deliver exceptional client service, leveraging our leading market share position to provide you with actionable information, quickly and reliably.

We are the most globally integrated organization with over 230,000 people across 150 countries. Whether you want to move into new growth markets or are planning to launch a product in a nearby market, we have the right connections. Our internationally seamless service and support can smoothen your path to new possibilities in both emerging and developed markets.

We are able to leverage our experience of working on complex cross-border issues and providing an integrated team that addresses your business agenda. We are constantly updating our information and services in line with new legislation and business changes in every country. We understand local customs, laws, languages and cultures – our global professionals can guide you wherever you do business.

Our alliances are spurring innovation in our services and in how we go to market, adding rapidly deployed, long-lasting assets to our portfolio and helping EY realize its vision of accelerating our clients’ innovation and digital transformation.

To help operators meet these challenges and opportunities, EY provides a sector-based perspective to address assurance, advisory, transaction and tax needs. Our Global Media and Entertainment Center brings together people, cultures and leading ideas from across the world to help you improve the performance of your business.

Our global reach
Our worldwide team of industry-focused assurance, tax, transaction and advisory professionals – with deep sector knowledge and technical experience – can help you address these myriad changes and compete effectively in this dynamic environment.

Our commitment
Whether it’s audit services, managing risk, improving transparency, replacing and developing systems or enhancing data quality, we’re committed to helping your organization reach its full potential.

Strength and depth in the M&E sector
EY is also the audit leader of M&E companies on the Fortune Global 500, Forbes Global 2000, Russell 3000 and Fast Company World’s 50 Most Innovative Companies list.

EY is the leader both in terms of revenues (68.0%) and market value (71.0%) on the 2016 US Russell 3000.

EY serves 98% of the M&E companies included on the Forbes Global 2000

EY serves 82% of the M&E companies listed on the Russell 3000

In Kenya, EY serves some of the leading media signal distributors in Kenya as advisors.
Media and entertainment market outlook

We understand your business operates in a sensitive political environment coupled with regulatory restrictions and is elastic to different stakeholders cadres. In response to the market dynamics, you have to curve out excellent customer service, ensure loyalty to the brand and still keep up with demand for innovative products for your audience. We are available to help you manage the ever changing and emerging complex tax risk you face across your business environment.
Taxation of the Media and Entertainment Sector in Kenya
Introduction

Kenya’s media enterprise taxpayers comprised 63 operational digital television stations, 167 FM radio stations, 5 digital signal distributors, 364 licensed informal cinema halls and more than 22 theatres with a sitting capacity of 7,000 seats in 2017. Sector players are members of umbrella organizations including: Pubs, Entertainment and Restaurants Association of Kenya (PERAK), Media Owners Association of Kenya (MOAK).

Regulators

Kenya’s constitution grants broadcasting and other electronic media freedom of establishment subject only to licensing procedures that are necessary to regulate the airwaves and other forms of signal distribution; and are independent of control by government, political interests or commercial interests.

The enterprises are regulated by Communications Authority of Kenya (CAK), Kenya Film Classification Board (KFCB) and the Commission on Administrative Justice (CAJ). The regulators are guided by the Kenya Information and Communications Act, Films and Stage Plays Act and Access to Information Act. Other stakeholders include: Media Council of Kenya, Kenya Film Commission, Kenya Institute of Mass Communication and Media Owners Association.

Who is in the M&E sector

A “media enterprise” means an organization whose business involves the collection, processing and dissemination of news or news articles, or in entertainment and education through the media. Media broadcast entails provision of national public broadcasting, private broadcasting and community broadcasting and signal distribution services.

Media enterprises, journalists and media practitioners provide the following services to consumers:

- publishing activities other than book publishing such as newspapers, journals, periodicals, directory and mailing lists;
- motion picture, video and television programme production;
- sound recording and music publishing activities;
- programming and broadcasting activities; and
- general entertainment.

M&E in Kenya

According to Media Council of Kenya, the government has made strides in supporting the growth of the digital economy through a switch from analogue to digital signal broadcast and distribution as well as recorded increase in media enterprise licensees. However, mainstream media in Kenya have been assessed to have similar broadcasted content under similar schedules thus limiting consumer choice and discouraging diverse pluralism of view.

With the ever increasing volume and complexity of transactions and the austerity that is characteristic of the Kenya Revenue Authority, the risk of exposure due to non-compliance to tax laws is a possibility. Whether the focus is on investments, financing, liquidity, or plans for growth or expansion, tax laws heavily influence the decision-making process. With the Kenya Revenue Authority looking for ways to maximize revenues, it is more important for media and entertainment businesses to understand the tax implications of all the business decisions they make, as well as the structure, processes and policies related to tax controversy and tax risk management.

Today, businesses in Africa face great opportunities while needing to deal with the changing tax realities and recent tax reforms. To sustain your growth, staying ahead means making informed tax decisions. Being able to anticipate and address tax issues at all times is key to achieving the business objectives. Non-compliance with tax legislations can wipe out the profit margin, make business unsustainable and ruin the reputation of the business.

Tax life cycle

The ‘tax life cycle’ consists of four stages - planning, provision, compliance and controversy with your needs at the centre. The stages of the life cycle are not sequential; there is no defined start or end point and the different stages may come in any order (e.g., compliance may lead directly to planning or managing a revenue authority enquiry). Through its different stages, it addresses tax in the context of the whole business, while bringing our specialist services to bear. It recognizes that planning, provision, compliance and controversy are not separate issues, they are all interconnected. It helps us provide quality service by linking all of the four elements.
Key media and entertainment businesses tax aspects

1. Tax registration
Any person with income chargeable to tax is required to register with the Kenya Revenue Authority (KRA). Registration is done online via the iTax platform and an online account is created for the tax payer. Recently, KRA issued notice of deregistering tax PINs that are not yet registered on iTax.

2. Corporation tax
Businesses resident in Kenya are required to pay corporation tax on their profits. Business means “any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade, but does not include employment.”

2.1 Corporation tax rate
The corporation tax rate is 30% for resident companies and 37.5% for non-resident companies (branch). Where a non-resident person carries on, in Kenya, the business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication, then the gains and profits from the business shall be the gross amount received for the transmission of messages which are transmitted by the apparatus established in or outside Kenya, whether or not those messages originate from Kenya, and such gains and profits are deemed to be income derived from Kenya. The applicable tax rate is 5% of the gross amount received from such business activities and is payable by the operator.

2.2 Allowable expenses
Expenditure wholly and exclusively incurred in generation of business income can be deducted against the business income to determine the taxable profit or loss. Allowable capital expenditure:
### Description of capital expenditure

<table>
<thead>
<tr>
<th>Description of capital expenditure</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital expenditure on purchase or acquisition of the right to the use of a computer software (% of expenditure over 4 years)</td>
<td>20%</td>
</tr>
<tr>
<td>A building in use for the training of film producers, actors or crew</td>
<td>100%</td>
</tr>
<tr>
<td>Purchase of filming equipment by a local film producer licensed by the Minister responsible for matters relating to Communication (investment deduction in the first year of usage)</td>
<td>100%</td>
</tr>
<tr>
<td>Construction of an industrial building to be used in the course of business (effective 2010)</td>
<td>10%</td>
</tr>
<tr>
<td>Purchase of machinery for use in the business (% of tax written down value) (a) tractors, combine harvesters, heavy earth-moving equipment and such other heavy self-propelling machines of a similar nature as in his discretion the Commissioner, having regard to the likely usage and depreciation in any particular case, may agree;</td>
<td>37.5% (Class a)</td>
</tr>
<tr>
<td>Purchase of machinery for use in the business (% of tax written down value) (b) other self-propelling vehicles, including aircraft</td>
<td>25% (Class b)</td>
</tr>
<tr>
<td>Purchase of machinery for use in the business (% of tax written down value) (c) all other machinery, including ships;</td>
<td>10% (Class b)</td>
</tr>
<tr>
<td>Construction of a building and the purchase and installation therein of new machinery (150% if outside Nairobi, Mombasa and Kisumu)</td>
<td>100%</td>
</tr>
<tr>
<td>Computers and peripheral computer hardware, calculators, copiers and duplicating machines;</td>
<td>30%</td>
</tr>
</tbody>
</table>

### 2.3 Disallowed expenses

Expenditure or loss which is not wholly and exclusively incurred in the production of income and capital expenditure or any loss, diminution or exhaustion of capital cannot be deducted against business income to determine profit or loss.

### 2.4 Corporate tax returns

Corporation tax, if any, is payable by way of instalment tax by the 20th day of the 4th, 6th, 9th and 12th months in that year of income. The instalment tax is based on the lower of preceding year’s tax multiplied by 110% or the current year’s estimated tax. Tax balance, if any, payable by the last day of the 4th month after the end of the financial year. Payment for the instalment taxes and tax balance if any is made by the taxpayer through KRA’s iTax system.

### 2.5 Payment of tax

Corporation tax, if any, is payable by way of instalment tax by the 20th day of the 4th, 6th, 9th and 12th months in that year of income. The instalment tax is based on the lower of preceding year’s tax multiplied by 110% or the current year’s estimated tax. Tax balance, if any, payable by the last day of the 4th month after the end of the financial year. Payment for the instalment taxes and tax balance if any is made by the taxpayer through KRA’s iTax system.

### 2.6 Loss carry forward

Where the computation of gains or profits of a person in a year of income derived from a specified source of income results in a loss, that loss may only be deducted from gains or profits of that person derived from the same specified source in the following year and, in so far as the loss has not already been so deducted, in subsequent years of income. Tax losses can be carried forward and deducted from gains or profits in subsequent years for a maximum of nine years.

### 2.7 Specified sources of income

Gains or profits of a person from specified sources of income should be computed separately. Any loss realised from a specified source of income can only be deducted against future gains or profits from the same source of income. The specified sources of income under the Income Tax Act include: rental income, employment income, income from agricultural activities (including pastoral, horticultural and forestry), surplus funds withdrawn from registered pension/p provident funds, disposal of interest in a person in the case of immovable property, natural resource income, dividend and interest.
3. Withholding tax

Withholding tax is deducted on specific payments such as management and professional fees, agency fees, consultancy and contractual fees, royalties, dividends, interest etc. The party making the payment should withhold tax at the relevant withholding tax rate and pay it to KRA. The rates as per appendix. Program fees, royalties comprising payments for right to use articles attract WHT. However, WHT does not apply on payments made by filming agents and filming producers to actors and crew members approved by the Kenya Film Commission relating to:

- an appearance or performance for purposes of entertaining, instructing, taking part in a sporting event or otherwise diverting an audience; or
- an activity by way of supporting, assisting or arranging such an appearance or performance.

3.1 Tax paid in advance

Withholding tax is a tax paid in advance by the party offering the service and can be used to offset the final tax liability on the income. There are however instances where withholding tax is a final tax. With mandatory online filing effective 1 August 2015, one can only utilize withholding tax to offset a final tax liability if the withholding tax certificate is reflected on their iTax ledger.

3.2 WHT due date

Withholding tax is deductible upon payment of a taxable amount and should be paid by the 20th day of the month following the month in which tax deduction is made.

4. Tax on Employment income

An “employee” is an individual receiving emoluments in respect of any employment, office, appointment or past employment. “Pay As You Earn” applies to weekly wages, monthly salaries, annual salaries, bonuses, commissions, directors’ fees (whether the director is resident or non-resident) and any other income from an office or employment. The tax is not applied on earnings from “casual employment” which means any engagement with any one employer which is made for a period of less than one month, the emoluments of which are calculated by reference to the period of the engagement or shorter intervals. Regular part-time employees and regular casual employment where the employees are employed casually but regularly are not considered to be casual employees.

An employer is obligated to deduct and remit to KRA PAYE on the 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;
- 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

4.1 Employment income

Employment income can be cash or non-cash benefits. Any benefit or advantage an employee receives by virtue of employment whose aggregate value is more than KES. 36,000 per annum is taxable. Where employer pays employees net of tax, the tax paid by the employer on behalf of employees is in itself a benefit chargeable to tax.

4.2 PAYE due date

PAYE should be remitted by the employer by the 9th of the month following payroll month. The employer is also required to file monthly PAYE returns. Late payment of tax - penalty of 25 % of the tax due and interest at 1% per month for the period the tax remains unpaid. Non-filing of PAYE return - penalty of 25% of the tax due or a minimum of KES. 10,000. Failure to register as a taxpayer - penalty of KES. 100,000.
4.3 Tax deductions
Contributions to a registered pension or provident fund, up to a maximum of KES. 240,000 p.a. Interest, up to a maximum of KES. 300,000 p.a. effective 1st January 2017, on borrowings to finance the purchase of owner-occupied residential property. Contributions to a home ownership savings plan, up to a maximum of KES. 48,000 per year.

4.4 Individual tax bracket rate
Withholding tax is deductible upon payment of a taxable amount and should be paid by the 20th day of the month following that in which tax is deducted.

<table>
<thead>
<tr>
<th>From (KShs) Effective 01 Jan 2017</th>
<th>To (KShs) Effective 01 Jan 2018</th>
<th>Tax Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>On the first 134,164</td>
<td>On the first 147,580</td>
<td>10</td>
</tr>
<tr>
<td>On the next 126,403</td>
<td>On the next 139,043</td>
<td>15</td>
</tr>
<tr>
<td>On the next 126,403</td>
<td>On the next 139,043</td>
<td>20</td>
</tr>
<tr>
<td>On the next 126,403</td>
<td>On the next 139,043</td>
<td>25</td>
</tr>
<tr>
<td>All income over 513,373</td>
<td>All income over 564,710</td>
<td>30</td>
</tr>
</tbody>
</table>

4.5 Tax Reliefs
Resident taxpayers are granted the following reliefs against tax payable:

- Personal relief in the amount of KES. 16,896 per year, effective 1st January 2018.
- Insurance relief (including life, education and health insurance) in the amount of 15% of premiums paid, up to a maximum relief of KES. 60,000 per year.
5. Value Added Tax

5.1 Registration
Any person who in the course of business has supplied, or expects to supply taxable goods or services or both with a value of KES. 5 million or more in a period of 12 months should apply for registration within thirty days. VAT registration is currently done online by adding a VAT obligation which must be reflected in the Taxpayer’s registration certificate or Personal Identification Number (PIN). However, a person who makes or intends to make taxable supplies but does not meet the turnover threshold of KES. 5 million may apply to the Commissioner for voluntary registration.

5.2 Deregistration
Where the value of taxable supplies made by a registered person in a period of 12 months is less than KES. 5 million, he may apply in writing to the Commissioner, for cancellation of the registration. Where the registered person ceases to make taxable supplies, the registered person shall apply in writing to the Commissioner, for cancellation of the registration.

5.3 Relevant definitions
"Information" includes all records held by a public entity or a private body, regardless of the form in which the information is stored, its source or the date of production.

"Information technology" means any equipment or software for use in storing, retrieving, processing or disseminating information.

"Entertainment" includes an exhibition, performance or amusement to which persons are admitted for payment, including the following—

A) stage plays and performances which are conducted by educational institutions approved by the Cabinet Secretary for time being responsible for education as part of learning; or

B) sports, games or cultural performances conducted under the auspices of the Ministry for the time responsible for culture and social services.

5.4 Place of supply
A supply of services is made in Kenya if the place of business of the supplier from which the services are supplied is in Kenya.

If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is not a registered person and-

A) the services are physically performed in Kenya by a person who is in Kenya at the time of supply;

B) the services are radio or television broadcasting services received at an address in Kenya;

C) the supply is a transfer or assignment of a right to use, or grant, a copyright, patent, trademark, or similar right in Kenya.
5.5 VAT obligation

VAT is payable by the 20th of the following month and a return should be submitted by the same day. All VAT returns should be filed online effective 1 August 2015. Registered suppliers are required to charge VAT (output tax) at the rates indicated below:

<table>
<thead>
<tr>
<th>VAT Rate</th>
<th>Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable</td>
<td>16</td>
</tr>
<tr>
<td>Zero-rated</td>
<td>0</td>
</tr>
<tr>
<td>Exempt</td>
<td>-</td>
</tr>
</tbody>
</table>

The following M&E services are exempt:

- Entertainment services comprising stage plays and performances which are conducted by educational institutions and sports, games or cultural performances approved by the relevant Ministry.

- Approved goods imported or purchased locally for use by the local film producers and local filming agents approved by Kenya Film Commission.

5.6 Input tax claim

Input tax is tax paid on supply to a registered person to be used by him for the purpose of his business. Input tax is claimable by a registered person provided that:

- The person is in possession of valid documentations such as a tax invoice, a certified copy of original tax invoice or a valid import document

- Not more than 6 months have lapsed after the input tax became due and payable

- Tax is not restricted (note: input tax on entertainment services offered by media enterprises is unrestricted hence claimable whereas purchase and repair of passenger vehicles is restricted)

- Tax does not relate to exempt supplies either directly or upon apportionment with taxable supplies

5.7 Imported services

A registered person is liable to VAT due on a supply of imported taxable services to the extent it relates to provision of exempt supplies and in such an instance obligated to prepare a tax invoice in respect of the supply containing:

- The name, address and PIN of the recipient;

- The name and address of the supplier;

- The individualised serial number of the tax invoice and the date on which the tax invoice is prepared;

- A description of the services supplied and the date of the supply;

- The extent to which the supply has been applied other than to make taxable supplies;

- The consideration for the supply and the amount of tax charged
5.8 VAT Regulations
The 2017 VAT regulations provide that taxable services are considered exported services hence zero rated when they are provided to a recipient outside Kenya for use, consumption, or enjoyment outside Kenya excluding taxable services provided in Kenya but paid for by a person who is not a resident in Kenya. A taxpayer is expected to support exported services through a copy of the invoice showing the recipient of the supply is outside Kenya and proof of payment for the supply. An example of such services include broadcast subscription services which are taxable at 16% to the extent they are supplied for use, consumption or enjoyment in Kenya and 0% if exported.

5.9 Withholding VAT
- Any person can be appointed as a withholding VAT agent by the Commissioner.
- Appointed agents are required to withhold 6% of the taxable value of the supply and remit the amount to KRA.
- The VAT withheld is remitted to Commissioner on or before the twentieth day of the month following the month in which the deduction is made.
- Any supplier may be exempted from VAT WHT if such supplier has sufficiently demonstrated that:
  - due to the nature of his business, and due to the application of this section,
  - he is going to be in a continuous credit position for a period of not less than twenty-four months
- A penalty of 10% of the amount involved is liable where a VAT withholding agent fails to withhold or remit the amount withheld to the Commissioner by the due date.

Withholding VAT certificates are generated through iTax once the withholding VAT agent remits the VAT withheld.

6. Excise Duty
Excise duty, commonly referred to as “sin tax” is a tax on the importation or local manufacture of excisable products and supply of excisable services.

Excisable goods and services and excise duty rates thereon are listed in the First Schedule to Excise Duty Act, 2015.

Examples of excisable services:
- Mobile cellular phone services, which are charged excise duty at the rate of 10% of their excisable value;
- Other wireless telephone services, which are charged excise duty at the rate of 10% of their excisable value;
- Excise duty on fees charged for money transfer services by cellular phone service providers is 10% of their excisable value.

Excise duty on excisable goods and services is due for payment not later than the twentieth day of the succeeding month.
7. Customs and International Trade

Goods are imported into a country either for home consumption, warehousing, transit, temporary importation, Export Processing Zone or re-export.

<table>
<thead>
<tr>
<th>Customs taxes</th>
<th>Rate</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Import duties</td>
<td>0%</td>
<td>Goods not subjected to any form of transformation in production.</td>
</tr>
<tr>
<td></td>
<td>10%</td>
<td>Goods that have undergone some degree of transformation.</td>
</tr>
<tr>
<td></td>
<td>25%</td>
<td>Goods that are ready for consumption</td>
</tr>
<tr>
<td></td>
<td>&gt;25%</td>
<td>Goods considered as essential goods which need protection from similar imported goods</td>
</tr>
<tr>
<td>Excise duties</td>
<td>Ad valorem and specific rates</td>
<td>Levied at the time of importation on excisable goods based on quantity (specific rates) or sum of customs value and import duties (ad valorem)</td>
</tr>
<tr>
<td>Import VAT</td>
<td>16%</td>
<td>Levied on taxable supplies at the standard rate at the time of importation.</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>Levied on taxable supplies at a rate of 0% at the time of importation</td>
</tr>
<tr>
<td>Other charges</td>
<td>2%</td>
<td>Additional charges based on the customs value that are collected on every import into Kenya.</td>
</tr>
<tr>
<td>Import declaration</td>
<td>1.5%</td>
<td>(IDF)</td>
</tr>
<tr>
<td>Railway Development</td>
<td></td>
<td>(RDL)</td>
</tr>
</tbody>
</table>

Software imported in form of magnetic disks or other non-abstract media is subjected to RDL and IDF whereas it is treated as a service if imported in form of a user license. Gazetted publishers are entitled to import duty remission on various paper grades for use in publication of text and exercise books.

Our support on your tax needs:

We help our clients develop/execute business strategies, blending local technical knowledge with regional and global tax insights in:

- Business Tax Advisory Services
- Cross Border Tax Advisory
- Global Compliance and Reporting
- People Advisory Services
- Tax Accounting Services
- Tax Performance Advisory
- Tax Policy
- Transaction Tax
- Value Added Tax

We also offer a holistic look at your business’ tax through our Tax Life Cycle

You will have access to our integrated organizational, mobility and compliance services

For cross border operations, our Global Tax Desks facilitate timely collaboration
8. Capital Gains Tax

Capital Gains Tax (CGT) is a tax chargeable on the gain to a company or an individual on the transfer of property situated in Kenya. CGT is chargeable on any transfer that occurred on or after 1st January, 2015. The rate of tax is 5% of the net gain. The net gain is the excess of the transfer value over the adjusted cost of the property. CGT is payable upon transfer of property but not later than the 20th day of the month following that in which the transfer was made.

Capital losses realised in any given period can be utilised against capital gains earned in that period, in so far as such losses have not already been utilised against gains from subsequent periods. Effective 1st January 2016, CGT does not apply to gains realised from securities listed on the Nairobi Securities Exchange.

9. Tax dispute process

Tax disputes may arise between a taxpayer and KRA on a tax assessment issued by KRA who would have made a demand for tax from the taxpayer. Outlined below is the process of handling a disputed assessment:

- Commissioner issues an assessment
- Taxpayer submits notice of appeal; in 30 days; pay Ksh.20,000
- Taxpayer submits documents; Memorandum of Appeal; Statement of Facts and Tax decision (in 14 days)
- Commissioner submits statement of facts
- Secretary to the tribunal advise time and place of hearing at least 14 days before nearing
<table>
<thead>
<tr>
<th>Tax issue</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax jurisdiction</td>
<td>There is an inherent difficulty when determining the jurisdiction in which value creation occurs especially when distributing content to users and delivery from multiple locations including cloud based distribution of electronic services.</td>
</tr>
<tr>
<td></td>
<td>Corporation tax is imposed on income derived or accrued from within the country with Media and Entertainment entities registered in Kenya and which operate branches outside the country required to report all their income in Kenya and claim relief of any tax paid in foreign countries if there's a double taxation agreement in place.</td>
</tr>
<tr>
<td></td>
<td>Other sector players structure their businesses to deliver services in Kenya without having a physical presence in the country. In lieu of this, they prefer to appoint a tax representative who act on behalf of the entity and who has, and habitually exercises, authority to conclude contracts in the name of that person.</td>
</tr>
<tr>
<td>Withholding tax compliance</td>
<td>Sector players face numerous assessments from the revenue authority on sale of digital services due to non-compliance with their withholding tax obligation under the income tax act.</td>
</tr>
<tr>
<td>Reverse charge VAT</td>
<td>M &amp; E sector players provide taxable services to consumers. Where exempt supplies are provided by the businesses, the taxpayers are required to remit reverse charge VAT to the revenue authority by the 20th of the following month. This obligation is fulfilled by the resident entity while the non-resident entity providing the services is not required to register for VAT.</td>
</tr>
<tr>
<td>ICT products customs tariff</td>
<td>Tooling and equipment used by industry players are taxed at a higher rate compared to requisite items needed by other sector.</td>
</tr>
<tr>
<td>Transfer pricing on intangibles</td>
<td>Pricing of intercompany transfers of content/broadcasting rights should be determined by considering various factors including actual control over ownership functions, security, privacy, people controlling development, enhancement, maintenance, protection and exploitation of the electronic services. An in-country transfer pricing policy is required to provide a basis for such pricing.</td>
</tr>
<tr>
<td>Export of services</td>
<td>Kenya’s service export rules are controversial with various judgements providing precedence regarding “service delivery outside Kenya” and “consumption outside Kenya”. Each conceivable scenario has to be considered under specific tax statutes to determine whether the services have been exported.</td>
</tr>
<tr>
<td>Business-to consumer transaction structure</td>
<td>Consideration of the structure and operations of M&amp;E businesses and related contractual arrangements with its suppliers and customers informs the appropriate tax treatment. The ERP system in use should have the ability to cover the various scenarios the taxpayer conducts business across countries.</td>
</tr>
</tbody>
</table>
Overview
To position tax as an enabler of change and a business asset, businesses must respond to trends and adopt effective methodologies.

EY understands today’s issues and works tirelessly to create processes and innovative tools to stay in front of the curve and help navigate the complexity of change.

We know the world of tax will continue to grow and change, expectations will increase and the demand for better technologies to extract “clean” data will continue to surge. Our Tax professionals and clients know how to leverage technology and change as we step forward on the journey to modernize the tax function.

Issues and drivers
Given increases in cloud-based, borderless business models and the greater scrutiny of those models, telecommunications operators are facing increased pressures around IP ownership and the transfer pricing of related intragroup/intercompany services.

Moreover, the digital revolution is well underway. Connected lifestyles are the norm as use cases such as connected cars, digital health, smart cities and remote monitoring proliferate, and data traffic and infrastructure buildout rises exponentially. This presents opportunities for operators, as well as challenges.

At the same time, operators must take measures to comply with the OECD base erosion and profit shifting (BEPS) effort and its aftermath in the individual taxing authorities around the globe.

Key Tax Services
Business Tax: Provides corporate tax advice throughout every stage of the tax life cycle – planning, provision, compliance and controversy. Also provides personal tax compliance and advisory services for senior executives.

Human Capital: Offers tax compliance and advisory services to companies and their international or domestic assignees. The services include global mobility advisory, assignment administration, process risk assessments, business immigration and expatriate tax return processing. We also advise clients on performance and reward programs.

Indirect Tax: Focuses on advisory and compliance services for all aspects and types of indirect tax, including value added tax (VAT), goods and services tax, and customs duties.

International Tax: Provides cross-border corporate income tax advice on cross-border financing and structuring, transfer pricing and tax-efficient supply chain management.

Transaction Tax: Focuses on tax due diligence and transaction support services, including tax structuring advice.
## Appendix 1: Withholding Tax Rates

<table>
<thead>
<tr>
<th>Description</th>
<th>Notes</th>
<th>Residents</th>
<th>Non-Residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividends</td>
<td>(a)</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Housing Bonds</td>
<td>(b)</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>- Government bearer bonds</td>
<td>(c)</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>- Other sources</td>
<td>(d)</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>- Deemed interest</td>
<td>(e)</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>- Insurance Brokers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Others</td>
<td>(f)</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>Royalties</td>
<td></td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Sporting or entertainment income</td>
<td></td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>Real estate rent</td>
<td></td>
<td></td>
<td>30</td>
</tr>
<tr>
<td>Lease of equipment</td>
<td></td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Pension and retirement annuities</td>
<td>(g)</td>
<td>0 to 30</td>
<td>5</td>
</tr>
<tr>
<td>Management, professional &amp; training fees</td>
<td>(h)</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Contractual fees</td>
<td>(h)</td>
<td>3</td>
<td>20</td>
</tr>
<tr>
<td>Telecommunication service fees</td>
<td>(i)</td>
<td>-</td>
<td>5</td>
</tr>
<tr>
<td>Betting &amp; gaming</td>
<td></td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>
## Appendix 1: Withholding Tax Rates Note

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>a</strong></td>
<td>Withholding tax rate applicable to citizens of East African Community Partner States in respect of dividends is 5% of the gross sum payable.</td>
</tr>
<tr>
<td><strong>b</strong></td>
<td>Qualifying interest in respect of Housing Bonds is limited to KES 300,000 per year</td>
</tr>
<tr>
<td><strong>c</strong></td>
<td>Withholding tax rate in respect of interest arising from bearer bonds with a maturity of 10 years for residents is 10%. In respect of interest arising from bearer instrument other than a Government bearer bond of at least two years duration, the withholding tax rate is 25% of the gross amount payable. Interest income accruing from all listed bonds used to raise funds for infrastructure and social services are exempt from tax provided that the bonds shall have a maturity of at least 3 years.</td>
</tr>
<tr>
<td><strong>d</strong></td>
<td>Withholding tax on interest income received by a resident individual from the following sources is final; banks or financial institutions licensed under the Banking Act, building societies licensed under the Building Societies Act, and Central Bank of Kenya.</td>
</tr>
<tr>
<td><strong>e</strong></td>
<td>Deemed interest refers to an amount of interest equal to the average 91 day T-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 loans have been provided free of interest.</td>
</tr>
<tr>
<td><strong>f</strong></td>
<td>Commissions payable to non-resident agents for purposes of auctioning horticultural produce outside Kenya are exempt from withholding tax.</td>
</tr>
<tr>
<td><strong>g</strong></td>
<td>Tax deducted at source on withdrawals from provident and pension schemes in excess of the tax-free amounts made after the expiry of fifteen years, or on the attainment of the age of fifty years, or upon early retirement on health grounds is final.</td>
</tr>
<tr>
<td><strong>h</strong></td>
<td>Withholding tax on payments to resident persons for management, professional and training fees applies to payments of KES 24,000 or more in a month to both registered and non-registered businesses. The non-resident rate in respect of consultancy fees payable to citizens of the East African Community Partner States is 15%.</td>
</tr>
<tr>
<td><strong>i</strong></td>
<td>The tax is subjected to payments made to non-resident telecommunication service providers and is based on gross amounts.</td>
</tr>
</tbody>
</table>
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