Payroll Compliance

A short guide for payroll professionals navigating the latest employees' tax legislation.

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Kenyan Shilling (KES)

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January to December

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Kenya Revenue Authority (KRA)

www.kra.go.ke

2. Administration and Compliance

2.1 Monthly PAYE report

The submission of the PAYE tax return for the month is done electronically via the KRA's online portal called iTax.

The deadline for the PAYE remittances is the 9th of every month.

2.2 Tax Deduction Cards - (P9A, P9A (HOSP), P9B

Immediately after 31st December each year the employer should prepare a Tax Deduction Card

(P9A/P9AHOSP/P9B) for each employee from whose salary P.A.Y.E. tax was deducted at any time during the year. Copies of Forms P9 should be distributed to the employees representing certificate of pay and tax for the year.

2.3 Form P.10B – Fringe Benefits Tax Return

Since Fringe Benefit Tax is payable by employer, the details of the fringe benefits and tax paid thereon should not be reflected on the employee's Tax Deduction Card – P.9A.

Employers are therefore required to submit a return to the Department at the end of the year using Form P.10B to show names of the employees involved, loan amounts, rate of interest charged by employer, taxable fringe benefit values and amount of tax paid. The fringe benefit tax return – (P.10B) should be submitted by employer.

3. PAYE tax rates

3.1 Tax tables

Monthly PAYE tax table for 1 January 2023 – 30 June 2023.

Income Band (KShs)	Rate (%)
First 24 000	10%
Next 8 333	25%
Over 32 333	30%

Monthly PAYE tax table for 1 July 2023 – 31 December 2023.

From (KShs)	To (KShs)	Rate
0,00	24 000,00	10%
24 000,01	32 333,33	25%
32 333,34	500 000,00	30%
500 000,01	800 000,00	32.5%
800 000,01	and above	35%

The PAYE tax calculation is based on the current income only. Except where you calculate the tax on certain lump sum earnings.

3.2 Secondary employees

There are employees who have two or more sources of income which fall within P.A.Y.E. provisions, e.g. a person with several directorships or a person with several part-time employments not falling within the definition "casual employment".

Their P.A.Y.E is calculated on the highest tax bracket of the taxable income:

- 1 January 2023 to 30 June 2023 – **30%**

- 1 July 2023 to 31 December – **35%**

Secondary employees are not entitled to the deductions and reliefs on the payroll.

Such employees should be granted monthly personal relief and deductions by the employer at their main source of employment income.

Part time directors fall under the category of Employees with multiple PAYE Sources of incomes.

3.3 Taxable Income

Income Tax Act, Section 5

"Monthly pay" includes income in respect of any employment or service rendered, accrued in or derived from Kenya.

This will include:

- Wages, salary, leave pay, sick pay, payment in lieu of leave, directors' fees and other fees, overtime, commission, bonus, gratuity or pension whether payable monthly or at longer or shorter intervals.
- Cash allowances, e.g. house or rent allowance, telephone allowance, round sum allowance etc.
- The amount of any private expenditure of the employee paid by the employer otherwise than as a loan, e.g. house rent, grocery bills, electricity, water, telephone bills, school fees,
- Non-cash benefits when the aggregate value exceeds KShs 3 000 per month.
- The value of housing, where provided by the employer.
- Non-cash benefits

4. Value of Benefit

Income Tax Act, Section 5

Where an employee enjoys a benefit, advantage or facility of whatsoever nature in connection with employment or services rendered; the value of such benefit should be included in employee's earnings and charged to tax.

Note that the minimum taxable aggregate value of a benefit, advantage or facility is ***KShs 3 000*** per m*onth or KShs 36 000 per annum*). In other words, Non-cash benefits are only taxable when the aggregate taxable value of the benefits exceeds KShs 3 000 per month or KShs 36 000 per annum.

4.1 Motor vehicles

Income Tax Act, Section 5(2B) & Section 5(5)

Taxed on the higher of Commissioner's fixed scale rate (see below) and the annual prescribed rate, which is calculated as 2% per month of initial cost of the vehicle to the employer.

Where an employee has been provided with a hired or leased vehicle, the taxable value of the car benefit is the lease or hire charges.

However, the Commissioner may determine a lower rate for the benefit where the employee can demonstrate and provide proof of restricted usage of the company car.

Fixed Monthly Rates for Motor Cars

Type of Car	Monthly rates (KShs)
Salon, Hatch Backs and Estates	
0 - 1200 cc	3 600
1201 - 1500 cc	4 200
1501cc - 1750 cc	5 800
1751 - 2000 cc	7 200
2001 - 3000 cc	8 600
Over 3000 cc	14 400
Pick-ups, Panel Van Unconverted	
0 - 1750 cc	3 600
Over 1750 cc	4 200
Land Rovers/Cruisers	
All sizes	7 200

EXAMPLE

Initial cost of car to employer	500 000
Prescribed rate	2%

Calculation of taxable benefit

Rate for type of car = 7 200

2% x 500 000 = 10 000

Type of Car	Hatch back	Higher of 10 000 and 7 200
Engine size	2 000	= **10 000 per month**

4.2 Housing

Income Tax Act, Section 5(3)

The value of premises, excluding the value of any furniture or other contents so provided, is determined as follows:

TYPE OF EMPLOYEE	OWNED OR RENTED	TAXABLE VALUE	DEFINITIONS
Normal employee	Employer owns the property	Higher of 15% employment income and the fair market rental value of the premises in that year.	"*Employment income*" is the taxable income. Excludes the value of the housing benefit, includes full taxable value of the car benefit. If taxable value of other benefits is less than KShs3 000, they must not be included.
Normal employee	Employer rents the property	Higher of 15% employment income and actual rent paid by employer if paid under an agreement made at arm's length with a third party, otherwise use fair market rental value .	*"Arm's length"* means a transaction in which the buyers and sellers of a product act independently and have no relationship to each other.
Agricultural employee	Employer own or rents the property	10% of the employment income.	"*Plantation*" does not include a forest or timber plantation. "*Agricultural employee*" does not include part-time director.
Director	Employer own or rents the property	Higher of 15% of total income (or employment income, in case of full time director), fair market rental value and the actual rent paid by the employer.	*"Full time"* director who spends substantially all of this time on company business and who does not own or control more than 5% of the company's share capital or voting power.

Subtract the actual rent paid by the employee from the taxable value calculated above.

4.3 Employee share ownership plans (ESOPs)

Income Tax Act, Section 5(5)
Registered ESOPs qualify for beneficial taxation. The taxable benefit shall be the difference between the offer price and the fair market value of the shares at the date of grant. The benefit will be taxable upon vesting of shares. Benefits from unregistered ESOPs are subject to the general rules on taxation of other employment benefits.

4.4 Employer pension contributions

Employees of employers who are tax exempt are liable to tax on all employer pension contributions to an unregistered scheme or on the excess contribution to a registered fund.

4.5 Medical Benefits

Where an employer has a written plan or scheme, or by practice, provides free medical service to all his employees the value of such medical services is a non-taxable benefit of all employees and all directors. However, for the non-whole time service director the medical benefit is limited to a maximum of KShs1 000 000 per year.

Where there is no plan or scheme, payments made to employees' towards medical services is a taxable cash payment and must be included in the employees' pay for the month in which payment is made and taxed accordingly.

4.6 School fees

Education fees of employee's dependants or relatives is taxable where the same was not taxed on the employers.

4.7 Employee staff meals

All employees can receive a non-taxable meal benefit of up to KShs 4,000 per month. The meals can be provided by either the employer's own canteen/cafeteria or provided by a registered taxpayer, whether the meals are provided at the employer's premises or the third party's registered supplier premises.

4.8 Utility benefits

The Commissioner's current prescribed monthly rates for some utilities are:

- **Furniture** – Higher of amount paid per month if hired OR 1% of actual cost (purchase price).

  Furniture owned by employer is a separate benefit from housing benefit.

- **Telephone** - 30% of the phone bill.

This telephone benefit includes both landline and mobile phone usage.

- **Water** where provided communally – KShs 500 (KShs 200 for agricultural employees)
- **Electricity** where provided communally - KShs 1 500 (KShs 900 for agricultural employees)

All other benefits e.g. security, water, servants, electricity etc. are taxable at the higher of the cost to the employer of providing the benefit or the fair market value.

4.9 Loans to employees

See Fringe Benefits Tax section.

5. Exempt Income

Income Tax Act, Section 5(4)

5.1 Meal Benefit

Meal benefit is tax exempt up to KShs4 000 per month.

5.2 School fees

Education fees of employee's dependants or relatives will not be taxed on the employees provided the same has been taxed on the employers.

5.3 Life Insurance

Employer contributions towards the employee's life insurance is taxable except where paid to a registered or unregistered pension fund/scheme or individual retirement fund.

5.4 Group life insurance

Premiums paid by the employer for group life policy are not taxable benefits on the employees unless such a cover confers a benefit on an employee.

5.5 Subsistence Allowance (Per diems)

Employees working outside their normal duty station will be required to account for per diems received in excess of the tax free threshold of KShs2 000 or be taxed on the unsupported amount.

The first KShs2 000 per day spent while away on business trips is tax free. This applies to allowance for both local and international travel.

5.6 Medical Benefits

Where an employer has a written plan or scheme, or by practice, provides free medical services to all his employees the value of such medical services is a non-taxable benefit of all employees and all directors. However, for the non-whole time service director the medical benefit is limited to a maximum of KShs 1 000 000 per year.

5.7 Employers' pension contributions

Employers' contribution to a pension or provident fund or individual retirement fund.

Also see non-cash benefits section.

5.8 Passages

When an employer himself pays for or reimburses the cost of tickets for passages, including leave passages for his employee and family, the value of the passages is a non-taxable benefit of the employee if the employee is recruited outside Kenya and is in Kenya solely for the purpose of serving his employer and he is not a citizen.

Where, however, such employee receives a cash sum either periodically or in one amount which he is free to save or spend as he chooses or for any other purposes and for the expenditure of which he does not have to account to the employer, the amount received is a taxable cash allowance. Passages paid for by the employer in circumstances other than what is explained above are a taxable benefit on the employee.

5.9 Gratuity

An amount paid by an employer as gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme is exempt up to a maximum of KShs240 000 for each year of service. See lump sum and gratuity section below.

This does not apply to any person who is eligible for deductions for employee contributions made to a registered pension or provident fund. E.g. The tax deduction for NSSF contributions.

5.10 Pension

Monthly or lump sum pension granted to a person who is sixty five year of age or more is exempt from tax.

5.11 Persons with disabilities

Persons with disabilities are exempt from tax on their taxable income of up to Kshs. 1.8 million p.a (Kshs. 150,000p.m). The employee should provide a valid exemption certificate from the KRA. See Legal Notice No. 36 of 2010 amended the Persons with Disabilities Act (Act No. 14 of 2003).

5.12 Low interest loan benefit

Income Tax Act, Section 12B
Employees are not taxed on the low interest loan benefit. The employer is taxed instead.

6. Lump Sum Payments and Gratuities

Every Employer has an obligation under section 37 of the Income Tax Act to recover appropriate tax from any lump sum amount before releasing the difference/balance to the employee. The following is a Guide to Employers on how to compute tax on lump sum payments:

6.1 Employment Income Treatment - General

Employment income is assessable on accrual basis; that is, over the period it has been earned and become due for payment. The time the Income is received is, therefore, immaterial.

Income from employment or services rendered is chargeable to tax under section 3(2) (a)(ii) of the Income Tax Act. This is expounded by section 5(2) which spells out that gains or profits from employment includes: wages, salary, payment in lieu of leave, fees, commission, bonus, gratuity, subsistence, travelling, entertainment or any other allowance received in respect of employment or services rendered.

Where an amount is received in respect of employment or a service rendered in a year of income different from the year of accrual, such income is deemed to be income of the year of accrual. However, there is a provision which states that where the year of accrual is earlier than 4 years prior to the year of receipt, the income is to be treated as that of year of income which expired 5 years prior to the year in which the income is received or prior to the year of income in which employment ceased.

Example (Terminal Dues):
Mr. Peter Bakari left employment in September 2016 after 30 years of service and was paid severance pay/service gratuity of Kshs. 660,000; three months' notice pay Kshs. 90,000 and Kshs. 25,000 for his 20 leave days not taken for the year 2015. For the purposes of calculation of tax payable, the service gratuity amount is spread backwards and taxed together with income earned

in the relevant years. Notice pay is assessable in the period immediately after date of leaving employment and pay in lieu of leave should be taxed in the year to which the leave days relate (i.e. 2014, 2015 etc.).

Breakdown of Lump sum payment

Year	Earning	Taxable Amount Kshs.
2016	Notice Pay	90 000
2015	Leave pay	25 000
	Service gratuity	22 000
2014	Service gratuity	22 000
2013	Service gratuity	22 000
2012	Service gratuity	22 000
2011	Service gratuity	22 000

6.2 Calculation of Tax on Lump Sum

i. Take total taxable pay for the year as per the Tax Deduction Card (P9A).

ii. Add Lump Sum amount for that year

iii. Calculate tax chargeable on the revised total taxable income - (i) + (ii).

Apply annual individual rates of tax.

iv. Deduct personal relief for the year

v. Deduct total PAYE deducted and already paid - (per P9A)

vi. The balance is tax payable on the Lump Sum.

This is the method of calculating the tax to be followed for all the years involved to arrive at the total tax due and payable on the terminal dues.

IMPORTANT

- Pay in lieu of notice (i.e. notice pay) is assessable in the period immediately after the date of termination of employment.
- Leave pay should be assessed in year to which it relates.
- If termination of employment occurs in the course of the year, the portion of lump sum payment for that period is taxable in that particular year.

Calculate the tax for each year using annual rates of tax and then add up tax for all the years involved to arrive at total tax to be deducted from the lump sum payment. It should be noted that any lump sum payment relating to the year of income 2010 and prior years is assessable in 2011 being the 5th year prior to the year of receipt (2016) as per example in Table (i) above.

6.3 Compensation for Termination of Employment

Liability extends to any payment, whether voluntary or obligatory made to a person to compensate him for the termination of his contract of employment or services, whether the contract is written or verbal and whether or not there is provision in the contract for such payment.

Following the amendment to proviso (i) and (iii) to section 5 (2) (c) the determination and method of assessing compensation received on termination of contract shall be as follows:-

Methods of Spreading Compensation

Where the contract is for an unspecified term and provides for terminal payment, the amount paid as compensation is to be spread forward and assessed at the rate equal to employee's remuneration per annum received from the contract immediately before termination.

Where the contract is for unspecified term and does not provide for compensation, amount received as compensation shall be deemed to have accrued evenly over three years period immediately following termination of contract. The effect of the amendment is that any amount paid as compensation on termination of contract shall be taxed in full.

Note the following:

• The methods outlined above apply to all employees including whole time service directors.

• If an Ex-gratia is paid it would be assessable in the year of receipt. Use the current rates of tax until subsequent years rates are enacted.

• Personal Relief should not be granted in advance before commencement of any year of income.

7. Allowed Tax deductions

7.1 Pension contributions

Income Tax Act, Section 22A

For the NSSF and other registered pension / Provident funds, the deduction is the lowest of:

- The actual contribution or

- KShs 240 000 p.a. (or KShs 20 000 per month) or
- 30% of taxable pensionable income

Pensionable income is equal to the employee's cash pay; no fringe benefits included.

7.2 Owner Occupied Interest

Income Tax Act, Section 15(3)(b)

In ascertaining the total income of a person for a year of income interest paid on amount borrowed from specified financial institution shall be deductible. The amount must have been borrowed to finance either:

- the purchase of premises or
- improvement of premises - which he occupies for residential purposes.

The amount of interest allowable under the law must not exceed KShs 300 000 per year (KShs 25 000 per month).

If any person occupies any premises for residential purposes for part of a year of income the allowable deduction shall be limited to the period of occupation.

On the other hand, no person may claim a deduction in respect of more than one residence.

Note the following:

- Interest which has accrued but has not been paid does not rank as an allowable deduction for this purpose.
- Secondary employees are not entitled to this deduction, they may claim from the primary employer.

8. Tax Reliefs

Income Tax Act, Third Schedule

8.1 Resident's Personal Relief

Every individual in receipt of income liable to tax is entitled to a relief, known as "Personal Relief", granted against tax payable and is not refundable to Taxpayer.

A resident individual with taxable income is entitled to a personal relief of KShs2 400 per month, KShs28 800 per year.

This is a uniform relief and employers are advised to automatically grant personal relief to all employees irrespective of their marital status. Individuals serving several employers qualify for personal relief from only one employer (i.e., main employment).

8.2 Insurance relief

Insurance relief is 15% of premiums paid subject to maximum relief amount of KShs 5 000 per month (or KShs 60 000 per annum).

This relief applies to premiums paid by the employee for life insurance and NHIF contributions.

8.3 Affordable housing relief

A new personal relief called the "affordable housing relief" which is **15% of gross emoluments**, but not exceeding Ksh. 108 000 per annum (Ksh. 9 000 per month) was introduced in 2018.

The wording of the Act suggests that this relief can only be applied by an employer where the employer is satisfied that the Commissioner approved of granting the relief. The KRA needs to provide guidance on how this provision will be applied and whether the KRA will provide the employee with proof that all conditions are complied with.

According to the Income Tax (PAYE) Rules, "emoluments" mean:

(a) gains or profits from employment or services rendered which are payable in money; and

(b) the value of housing provided by an employer ascertained under section 5 (3) of the Act;

(c) the value of benefit or facility provided by the employer, where the total value exceeds three thousand shillings per month.

but does not include gains or profits which, in the opinion of the Commissioner, are in respect of casual employment only.

9. Fringe Benefits Tax

Income Tax Act, Section 12B

Only affects low interest loan and no interest loan benefits.

Not taxable in hands of employees.

9.1 Loans to employees

When employer provides loan to an employee and charges interest which is below the prescribed rate of interest, then the difference between the prescribed rate and employer's loan rate is a benefit from employment chargeable to tax. The benefit is computed as the difference between the interests charged by employer and prescribed rate of interest.

Low interest rate employment benefit provisions will also apply to a director and will continue to apply even after the employee or director has left employment as long as the loan remains un-paid.

EXAMPLE		Calculation of taxable benefit
Loan amount by employer	1 500 000	2% - 0% = 2%
Employer's interest rate	NIL (interest free)	1 500 000 x 2%
Prescribed rate	2%	30 000 per annum
		= 2 500 per month

The prescribed rate of interest is based on the market lending rates as the Commissioner may prescribe from time to time.

9.2 Fringe Benefits Tax – Payable by employer

Fringe benefit is taxable at corporation rate of tax of 30%

Fringe benefit tax shall be charged on the total taxable value of Fringe benefit each month and the tax is payable on or before the 10th day of the following month to the Pay-Master General in the same way as normal P.A.Y.E. remittance. Employers will therefore pool together all the Fringe benefits for the employees in each month.

The provision of loans shall include a loan from an unregistered pension or provident fund.

“Market Interest Rate” means the average 91 days Treasury Bill rate of interest for the previous quarter.

The above provisions will continue to apply even after employee leaves employment as long as the loan remains un-paid.

Fringe benefit tax is payable even where corporation tax is not due by the employer in question.

10. National Social Security Fund (NSSF)

The National Social Security Fund (NSSF) is a government retirement benefit and membership is compulsory for employees.

Following the ruling of the Court of Appeal on the NSSF Act No. 45 of 2013, the NSSF requires all employers to comply with the law effective February 2023.

The rates to be implemented are per the 1st year of the Third Schedule of the NSSF Act No. 45 of 2013 are listed below:

- Both employees and employers contribute 6% each.
- Workers earning above KSh18 000 are divided into two levels of contributions called tier I and tier II. Tier I contributions is in respect of pensionable earnings up to the lower earnings limit of KSh6 000. Tier II contributions mean contributions in respect of pensionable earnings above the lower earnings limit. The upper limits on contributions are set to rise every year.

Employers are required to remit contributions to the NSSF by the 9th of every month.

Summary:

CONTRIBUTIONS	NSSF Act (No. 45 of 2013)
Employee contribution	6%
Employer Contribution	6%
Total contribution	**12%**

LIMITS

Maximum Income	KShs18 000
Maximum Contribution	KShs2 160

TIER SPLIT

Tier 1	Max KShs720 (EE + ER)
Tier 2	Max KShs1 440 (EE + ER)

www.nssf.or.ke

11. National Hospital Insurance Fund (NHIF)

The National Hospital Insurance Fund (NHIF) is a government medical aid scheme and membership is compulsory for employees. Only the employee contributes to this fund.

Formal sector employees' contributions are deducted and remitted to the Fund by their employers. This is done by Cheque or through E-banking.

The NHIF contribution by employee is **not** tax deductible.

No pro-rata is allowed. Either full contribution or nothing.

Contribution rates

Gross Income (KShs)	Monthly Rate (KShs)
1 – 5 999	150
6 000 – 7 999	300
8 000 – 11 999	400
12 000 – 14 999	500
15 000 – 19 999	600
20 000 – 24 999	750
25 000 – 29 999	850
30 000 – 34 999	900
35 000 – 39 999	950
40 000 – 44 999	1 000
45 000 – 49 999	1 100
50 000 – 59 999	1 200
60 000 – 69 999	1 300

70 000 – 79 999	1 400
80 000 – 89 999	1 500
90 000 – 99 999	1 600
100 000 and above	1 700

Section 15 (3) of the NHIF Act provides that a contribution... shall be at such rate, depending on the person's total income, as the Board, in consultation with the Minister, may determine.

Further the NHIF Regulations, 2010 refer to gross income. However, neither total income nor Gross Income are defined.

Although total/gross income generally means the earnings plus benefits, the NHIF help desk confirmed that in practice only the cash earnings should be considered.

For more information on the NHIF visit www.nhif.or.ke

12. Training Levy (NITA)

The industrial levy is charged under Kenya's Industrial Training Levy Act. The monies go into a revolving fund that is used to reimburse approved training cost.

Industrial Training Levy deductions will be paid annually by the 9th of the subsequent month following the end of the Employer's accounting period/financial year at the rate of KShs600 per employee per annum.

If the employee does not complete the entire year, you should pro rata the contribution for the employee's periods of service.

This is an employer contribution.

Effective October 2022, the Industrial Training Levy should be processed and paid to the Kenya Revenue Authority(KRA) on a monthly basis.

For more information on the ITL visit http://www.nita.go.ke/

13. AFFORDABLE

HOUSING DEVELOPMENT LEVY

Effective 1 July 2023

Employment Act, of 2007 to introduced an affordable housing levy payable by employers and employees at an uncapped rate.

- The employer's contribution at 1.5% of the employee's gross monthly salary; and
- The employee's contribution at 1.5% of the employee's gross monthly salary.

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