



KEY HIGHLIGHTS OF THE KENYAN FINANCE ACT 2025 FOR TAXPAYERS ENGAGED IN CROSS-BORDER TRADE

Introduction

Kenyans took to the streets in 2024 to oppose the year's finance bill, as proposed changes, which included the introduction of a controversial Affordable Housing Allowance, infringed on already over-taxed pay slips. This year (2025), the budget committee, tasked with the responsibility of finding new tax bases, chose to veer off pay slips. The committee's work resulted in the Kenyan Finance Act 2025. We have provided below key highlights of the Act that should be of interest to taxpayers engaged in cross-border trade within Kenya.



Waithera Mbugua
Media Content Writer
at EOTI

Income Tax

Kenya is hoping to attract more regional and foreign direct investment through specified tax incentives. Companies investing under the Nairobi International Financial Centre Authority (NIFCA) will benefit from a reduced corporate tax rate of 15% for the first ten years of operation before moving to 20% for the next decade, subject to the conditions below. (Note that the typical corporation tax rate for resident companies in Kenya is 30% and 37.5% for non-resident companies.)

- Registration with NIFCA and certification as an investor with the organization.
- The company should not have permanent residence status in Kenya.
- The company must invest at least Kes. 3 billion in its first three years of operation.



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- If the investor is a holding company, at least 70% of its senior management should be Kenyan.
- If the investor is a company with its regional headquarters in Kenya, 60% of its senior management should be Kenyan.

The Loss Carry Forward:

Companies can now only carry forward losses up to 5 years, while in the past, they could do so in perpetuity. Any unutilized loss will be nullified after the fifth year. This is expected to have an adverse effect on businesses with hefty initial investments and long break-even periods.

SEPT:

The Digital Services Tax (DST) was first introduced in 2020 on income from non-resident persons carrying on business in the Kenyan digital marketplace. It was replaced by the Significant Economic Presence Tax (SEPT) as an amendment in the 2024 Tax Laws Act, which was further clarified in the 2025 Act. While DST focused on digital marketplaces like e-commerce platforms, SEPT extends to ‘any business carried out via the internet or an electronic network’, and it applies to resident and non-resident persons. Taxpayers are deemed to have a significant economic presence in Kenya if their targeted users are physically located in the country or use a Kenyan IP address. It covers such services as money transfer, taxi ride-hailing and food-delivery, online freelance services, search engines, social media platforms, and others as defined by the Act. The applicable rate is 3% of gross turnover.

Excise Duty

Defining Place of Supply:

In a bid to broaden the tax base and level the playing field for all stakeholders, the Act redefines ‘place of supply of services’ to include non-resident providers of services through the internet, a digital marketplace, and electronic networks. Where services are provided to consumers in Kenya through these platforms, they will be subject to excise duty. It also clarifies the definition of non-resident persons to mean persons or entities outside Kenya providing services through the internet, a digital marketplace, and electronic networks.

Reclassification of Items:

One of the areas that raised eyebrows was the deletion of these imports from the excise duty list: eggs, onions, potatoes – including crisps/chips, coal, articles of plastic, and cosmetics and beauty products. Kenyan farmers have been complaining of an influx of cheaper produce from neighboring countries, so the move to remove excise duty makes the imports more attractive and is expected to have an adverse effect on local production.

International Tax and Transfer Pricing

- **APAs:** One of the notables (overdue) in this area is the introduction of Advance Pricing Agreements (APAs) where multinational enterprises (MNEs) will now enter into five consecutive-year agreements with the Kenya Revenue Authority (KRA) about transfer pricing methodologies for intra-group transactions. The parties will work out the tax payable from group transactions during this period, but any deviation from the arms-length standard that guides transfer pricing will lead to revocation of the agreement before the period lapses. This move is expected to enhance compliance, reduce disputes that lead to tax audits, and give the KRA a deeper understanding of the dealings of most MNEs operating in Kenya.
- **MTT:** The 2024 Finance Act introduced Minimum Top-up Tax (MTT) for non-resident persons and legal entities but failed to expound on the payment date. The 2025 Act established that, effective 1 July 2025, MNEs with a permanent establishment in Kenya will be required to meet the 15% jurisdictional tax top-up for profits generated in the country if the group's consolidated turnover is at least €750 million. This applies where the combined income tax rate for all taxes paid locally by the non-resident person or entity is lower than 15%. MTT is payable by the last day of the fourth month following the closing of the company's year of income.

Closing Remarks

The Finance Act 2025 carefully left out areas that would likely catch the attention of the nation. Most people will be keen to see whether some of the areas of amendment, like the APAs touching on the activities of MNEs, seal existing loopholes and increase transparency in reporting.

Disclaimer

This commentary is not legal or tax advice to readers. Taxpayers and businesses should consult their legal and tax advisors for specific advice regarding their transactions and businesses, including compliance requirements and recourse available to them against tax authorities.

CONTACT US

- info@eotaxinitiative.org
- careers@eotaxinitiative.org
- taxacademy@eotaxinitiative.org

