This guide has been prepared by an independent third-party law firm.

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KENYA – TAX CONSIDERATIONS ON SHORT-TERM LETTINGS

The following information can help you get started in learning about some of the tax requirements that might apply to you when providing short-term accommodation in Kenya.

Tax can be tricky and it is important to ensure that you keep up to date with your tax obligations and remain tax compliant. The timely preparation, filing and payment of taxes are your responsibility.

If you are supplying short-term accommodation in Kenya, you should make sure that you understand each of the following types of taxes, and pay the ones that apply to you;

- Income Taxation via either:
  - Monthly Residential Rental Income Tax, or
  - Regular Income Tax
- Minimum Tax
- Value Added Tax

Please understand that this information is not comprehensive, and is not intended to be legal advice. If you are unsure about your local tax obligations, we encourage you to check this with official local sources, or to seek advice from qualified professionals.

Please note that this information is not updated in real time, therefore you should confirm that there have not been recent changes to the laws or procedures.

As a general comment, please note that the website of the Kenya Revenue Authority ("KRA") can be found here and the KRA's **iTax portal** where taxpayers can register for tax, file tax returns, apply for tax compliance certificates and so on, can be found here.

INCOME TAXATION

All income accrued in or derived from Kenya, whether by a resident person or non-resident person (companies or individuals), is subject to tax in Kenya. This is important to note because if you host a property in Kenya, you are regarded to be an income-generating business. The income you earn will therefore be subject to tax in Kenya. Below is a brief outline of the taxes that may arise on income earned from short-stay rentals in Kenya and some information on how this tax can be paid to the KRA.

If you are a Kenyan resident Host, your rental income generated from providing short-stay accommodation in Kenya is in principle taxed with Monthly Residential Rental Income Tax ("MRRIT") if your rental income is between KES 280,000 and KES 15 million per annum.

If you voluntarily choose not to be subject to MRRIT, or if your annual rental income is below KES 280,000 or above KES 15 million, your rental income is in principle taxed via the regular Kenya income tax laws.

- Monthly Residential Rental Income Tax ("MRRIT")

Rental income from providing short-stay rentals in Kenya is in principle taxed separately from business income and other types of incomes. Income accrued by a resident person (resident companies or individuals) from renting or letting out of residential property is subject to MRITT.

Where rental income earned is between KES 288,000 and KES 15 million per annum, it will be deemed to fall within the MRRIT regime and will be taxable at the rate of 10% on the gross rent received either monthly, quarterly or semi-annually. This regime is only applicable to Kenya residents.

MRRIT is a final tax. This means that any income that is subject to MRRIT is not liable to any other tax. Further, residents who are accounting for MRRIT are not required to declare their rental income in their regular annual income tax returns. Please note that no expense is deductible under the MRRIT regime.

If you wish to be exempted from the MRRIT regime you would need to elect not to be subject to thereto by simple notice, in writing, to the Commissioner of Domestic Taxes ("the Commissioner"). No reasons need to be given for the election. In this case, the residential income earned will be subject to the regular Kenya income tax.

Where you do not meet the MRRIT threshold, you will be required to maintain books of account and compute your profit and account for income tax.

- Regular income tax in Kenya

The Kenyan tax year for individuals runs from 1 January to 31 December (i.e. 1 January 2021 to 31 December 2021). Income tax returns for both companies and individuals are filed by the last day of the 6th month following the year end. For example, the tax return for the income earned between January and December 2020 must be filed on or before 30 June 2021. On the other hand, companies are permitted to choose any accounting period. However, tax returns must be filed not later than the last day of the 6th month following the end of the year of income. Tax returns are made on the KRA iTax portal in the prescribed form.

Individuals: income tax is chargeable on all business income from any type of trade carried out by resident persons in Kenya. The personal income tax rate in Kenya is at a graduated scale with the maximum rate at 30% of the gross income of a person. These rates can be consulted here and are - at the time of writing - as follows:

Annual Taxable Income	Tax Rate
First KES 288,000	10%
Next KES 100,000	25%
All income above 388,000	30%

Every resident individual is entitled to a personal relief amounting to KES 28,000 per annum with effect from 25 April 2020.

Companies: Ordinarily, business income for companies' resident in Kenya is subject to income tax at the rate of 30% on the adjusted taxable income. However, businesses not resident in Kenya or that do not have a permanent establishment in Kenya, are taxed at the rate of 37.5%.

The adjusted taxable income comprises of gross income earned or derived from Kenya after deducting expenses wholly and exclusively incurred in the production of that income. Certain expenses may be deductible in computing income tax. The expenses that would be deductible against taxable income may include:

- general operational expenses
- interest payable on any loans utilised for working capital requirements
- salaries and wages
- administrative costs and any other expenses incurred wholly and exclusively for purposes of production of the income

Expenses not incurred wholly and exclusively for purposes of production of the income and capital expenditure are not deductible. Capital expenses would include costs for acquisition of the property (excluding repair and maintenance costs which are allowed for deduction).

No deduction is allowed for depreciation either, however, wear and tear allowances are allowed for furniture and fittings used in the production of taxable income at the rate of 10% per year on reducing balance.

Further, where you are engaged in different types of business and earning income from both rental and business income, the expenses that are deductible against rental income are those that are directly and wholly incurred in the production of that rental income and cannot be offset against other types of income.

Sample Tax Computation		
Sarah owns an apartment which she has registered on Airbnb and rents out to Airbnb users in order to generate additional income. Sarah received KES 200,000 in rental income in 2020. She also incurred the following expenses: house insurance for KES 20,000, agent's fees for KES 10,000, repairs for KES 5,000 and electricity/water bills for KES 25,000.		
		KES
Gross Rental Income		200,000
Less allowable expenses:	House insurance	(20,000)
	Agent's fees[1]	(10,000)
	Repairs and maintenance	(5,000)
	Electricity/water bills	(25,000)
Taxable Rental Income		**140,000**

The taxable rental income will be subjected to the income tax based on the graduated individual income tax bands above.

- Reporting and payment of MRRIT or regular income taxes

Reporting tax in Kenya

Every person (resident companies or individuals), who is chargeable to tax has an obligation to furnish the Commissioner with a return of income.

Income tax returns are to be filed not later than the last day of the 6th month following the end of the year of income for both individuals and companies. Since the tax year for individuals runs from 1 January to 31 December, the tax return should be filed by 30 June of the subsequent year.

Income tax (exceeding KES 40,000 in a year of income) for companies and individuals is paid in instalments via iTax ("Instalment Tax"). Instalment Tax is due on the 20th day of each period ending on the 4th, 6th, 9th and 12th month of the year of income. Any balance of tax (which is the difference

[1] Airbnb Service fees may be considered agent's fees for purposes of this deduction and may therefore be deducted.

between the total instalment tax paid in the year and the actual tax liability computed for the year after the year-end) should be paid by 30 April of the subsequent year.

Individual income tax (for individuals whose tax liability is below KES 40,000) is paid after filing the annual return online via iTax (which should be filed before end of June of the subsequent year as highlighted above). For all tax payments, a taxpayer (company or individual) is required to generate a payment slip and present it at any of the appointed KRA banks (all commercial banks in Kenya have a KRA bank account and can be used to pay the tax due).

On the other hand, the MRRIT return is filed on iTax, on or before the 20^{th} day of the following month. For example, rental income received in January is declared and tax paid on or before 20 February. Further, any month that you do not receive any rental income, you are required to file a NIL return.

Failure to file individual income tax returns attracts a penalty at the higher of KES 2,000 or 5% of the tax due while penalties for late filing for companies is the higher of KES 20,000 or 5% of the tax due.

Reporting tax – payment deadline

Late payment of tax (individual income tax, Instalment Tax and MRRIT) is subject to 5% of the tax due and late payment interest of 1% per month on the unpaid tax until the tax is paid in full.

Where you have any doubt regarding your taxes, you should consider seeking advice from a professional tax advisor or accountant to assist in filing your tax return.

MINIMUM TAX

Minimum tax was introduced in Kenya with effect from 1 January 2021 and could potentially be applicable to your rental income if your rental income is not subject to MRRIT. However, the Kenya High Court recently temporarily suspended the levy of this minimum tax. At the time of writing of this document, it is not clear whether the minimum tax will again be levied in the future.

Due to the uncertainties in relation with the minimum tax and due to the fact that this document is not updated in real time, we strongly recommend you to reach out to your local tax advisor to keep up to date in relation to any developments in this regard.

VALUE ADDED TAX

Value Added Tax ("VAT") is a consumption tax that is chargeable whenever value is added to a supply. In Kenya, VAT is chargeable at the standard rate of 16%. VAT can be complicated, and you should take time to understand the rules as they may apply to you and your particular situation.

Most goods and services supplied in Kenya are subject to VAT. The supplier is required to charge and collect VAT and remit the VAT to KRA. The supplier will also be permitted to deduct the input

VAT incurred in providing that supply as the cost of VAT is the burden of the final consumer at the end of the supply chain.

Provision of accommodation through serviced apartments, flats, holiday villas, beach cottages and villas, bandas, safari camps for short stays of less than a month are subject to VAT at 16%. Further, a serviced flat or apartment (although for rent longer than one month) which is not under a lease or license is also subject to VAT at 16%. However, provision of residential premises under a lease or license for period longer than a month is excluded from VAT.

Should you make taxable supplies of at least KES 5 million within any period of 12 months, you are required to register and account for VAT. Only persons who are registered for VAT can charge VAT. Note that failure to register for VAT where a person has met the VAT registration threshold is an offence under the VAT Act subject to a fine not exceeding KES 200,000 or to imprisonment for a term not exceeding 2 years or to both upon conviction. The VAT charged (output VAT) can be offset against VAT incurred in providing taxable supplies (input VAT).

If you determine that you need to charge VAT on the supplies that you make to guests, please keep in mind that you have to collect this VAT from your guests and report and remit this VAT to the KRA by the 20th day of the following month.

Further, you will be required to issue tax invoices to your guests. You may find more information on your VAT obligations here.

We encourage you to consult a tax professional regarding whether VAT will be applicable to your particular circumstances.