FOREIGN INVESTORS TAX GUIDE

KENYA REVENUE AUTHORITY

Tulipe Ushuru, Tujitegemee!

> *All investors in Kenya are required to be registered for purposes of accounting and paying tax. The registration is undertaken by Kenya Revenue Authority through issuance of a Personal Identification Number (PIN).*

PIN

A PIN is a unique identifier for tax purposes and shall be used for submission of returns or any other transaction as required under tax law.

Does an Investor need a PIN?
Yes. Investors expecting to earn an income from Kenya are required to have a PIN.

I have not commenced business, do I still need a PIN?
Yes. There are some transactions, which require a PIN. These Include:

i. Registration/acquisition of real estate property in Kenya.
ii. Approval of development plans and payment of water deposits.
iii. Registration, transfer and licensing of Motor vehicles.
iv. Registration of business names.
v. Registration of companies; local, subsidiaries and branches in Kenya.
vi. Underwriting of insurance policies.
vii. Trade licensing.
viii. Importation of goods, customs clearing, and forwarding.
ix. Payment of deposits for power connections
x. All contracts for the supply of goods and services to Government Ministries and public bodies.
xi. Opening accounts with financial institutions and investment banks.
xii. Registration and renewal of membership by professional bodies and other licensing agencies.
xiii. Registration of mobile cellular pay bill and till numbers by telecommunication operators.
xiv. Carrying out business over the internet or electronic network including through a digital marketplace.

How to register for a KRA PIN

- PIN registration is an online process done on iTax.
- Residents receive their PIN Certificate instantly after completing the online registration form.

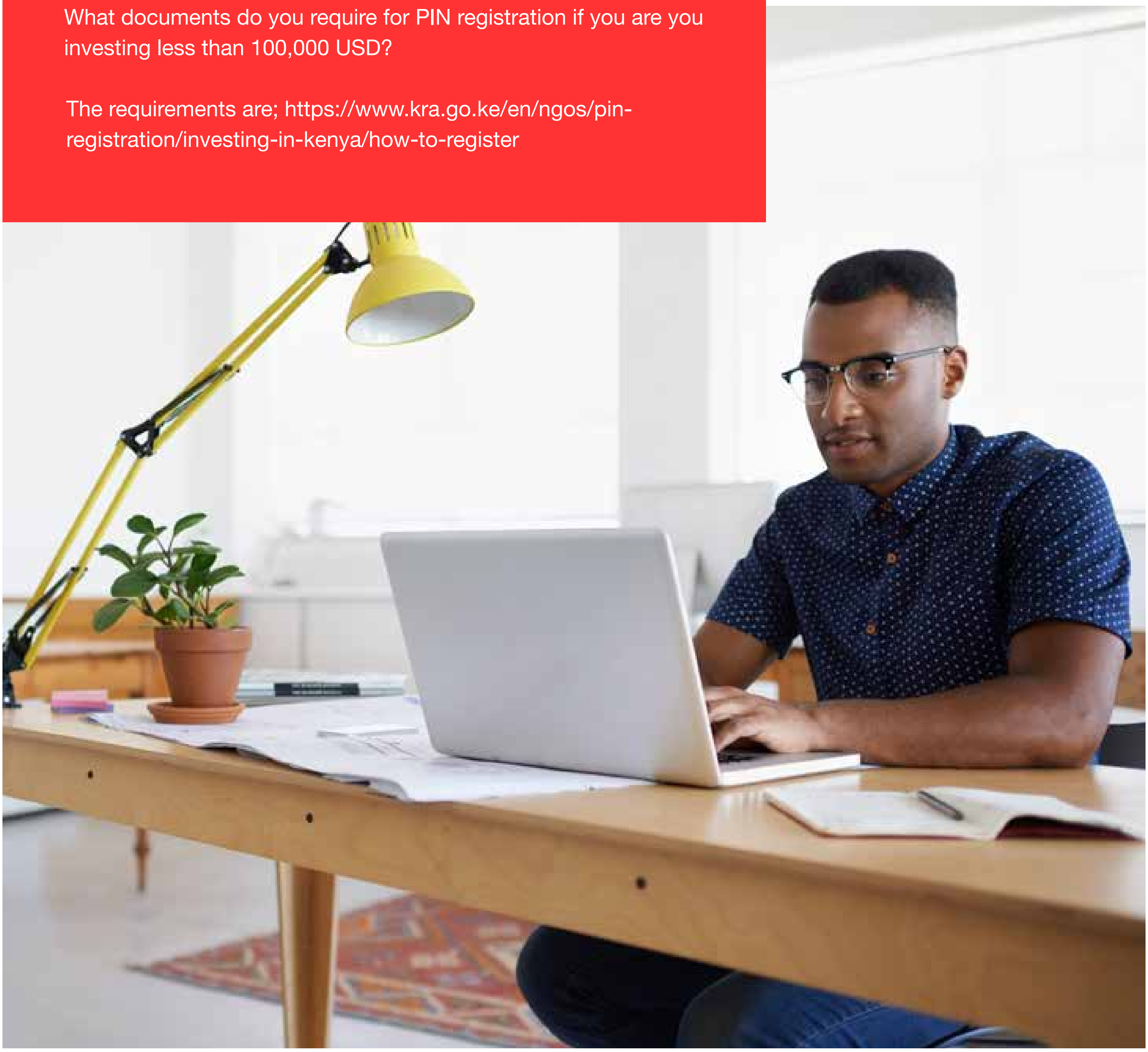
For details on PIN registration requirements, follow this link: https://www.kra.go.ke/en/individual/individual-pin-registration/learn-about-pin/requirements-for-kra-pin-registration

What documents do you require for PIN registration if you investing over 100,000 USD?

The requirements are; https://www.kra.go.ke/en/ngos/pin-registration/investing-in-kenya/how-to-register

What documents do you require for PIN registration if you are you investing less than 100,000 USD?

The requirements are; https://www.kra.go.ke/en/ngos/pin-registration/investing-in-kenya/how-to-register



What is an Investment Certificate?

Follow this link for more details: KenInvest

To register for a PIN, a Non-Kenyan, Non Resident Investor (Residing outside Kenya) will require:

- Letter of Introduction from a tax agent. A tax agent is important since they assist the taxpayer to comply by handling tax matters on behalf of a taxpayer
- PIN of a registered tax agent
- Valid Tax Compliance Certificate of the tax agent
- Original and copy of valid passport
- For Investments above 10 million, one should get a letter from Ken-invest
- For investments below 10 million, one should get a class G permit from Immigration Department
- Documentary proof of investment (Certificate of Incorporation/ Compliance, CR12*, Project proposal, Endorsement by Kenya Investment Authority (Ken Invest), etc.)

To register for a PIN, a Non-Kenyan Investor (Residing in Kenya) other than a refugee will require:

1. Letter of introduction by a tax agent.
2. PIN of tax agent.
3. Valid Tax Compliance Certificate of the tax agent
4. Letter of appointment of tax Agent by applicant.
5. Documentary proof of investment (Certificate of Incorporation/Compliance, CR12*, project proposal, Endorsement by Kenya Investment Authority (Ken Invest), etc.).
6. Ken Invest Endorsement letter is given to registered companies with an investment exceeding USD 100,000.
7. Investors permit (confirm endorsement of Investors permit on the valid passport) and the name of the company indicated on the permit should be that as of bullet no. 5* above.
8. Original valid Passport of applicant
9. A CR12* is an official confirmation by the Registrar of Companies in Kenya as to whom the directors/ shareholders of a company are.

Residency

The taxes due, reliefs and rates applicable on a person are determined by residency as follows:

Individual

- An individual qualifies as a resident for tax purposes in Kenya if they meet certain conditions as follows: -
  i. that he has a permanent home in Kenya and was present in Kenya for any period in the particular year of income under consideration; or

Permanent home is a subjective word which depends on several factors such as family, employment, bank account, assets, citizenship, voting rights etc.

  ii. that he has no permanent home in Kenya; but,

  a) Was present in Kenya for a period or periods amounting in aggregate to 183 days or more in that year of income; or
  b) Was present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year

Non-Individuals

a) For a non-individual, an entity qualifies as a resident for tax purposes in Kenya if: incorporated under Kenyan law; its management & control is exercised in Kenya; or if declared by the Minister to be resident through a Gazette Notice.

Taxes that are payable by a Foreign Investor:

Direct taxes are imposed on the income of a person, and these include income taxes such as: -

- **Digital Service Tax**
  Income from the provision of services through a business carried out over the internet or an electronic network including through a digital market place. It is only payable by non-residents. The due date for filing the returns is on or before 20th of the following month.

- **Individual Income Tax**
  Tax on individual earnings whether business, employment, hobbies or other ventures. However, the law provides for relief of tax paid abroad by Kenyan citizens with respect to employment income, income from entertainment, athletes and sportsmen subject to tax payable in Kenya. Proof of the tax paid abroad is paramount. The returns are filed annually and the due date for the individual return is 30th June every year.

- **Pay As You Earn (PAYE)**
  Tax on employment income; taxed on graduated scale and returns are filed monthly on or before 9th of the following month.

- **Rental Taxes – Tax on rental income**
  Can take the form of monthly rental income which is **10%** of gross rent (for residents only) or annual income tax regime where deductions are allowed depending on the whether the rent earned is **15M** per year of more. Withholding Income Tax on gross rental income for non-residents is **30%**. The due date for filing Monthly Rental Income (MRI) is 20th of the following month while the annual tax return is due by 30th June every year.

- **Corporate Income Tax**
  30% for resident companies & **37.5%** for non- residents. The returns are due within six months after the end of the financial year.

- **Turnover Tax**
  Tax on income of small and micro enterprises with a gross turnover of **Kshs.1M** to **Kshs. 50M** Per annum. The rate is **1%** of Gross Turnover. Turnover tax returns are due on or before 20th of the following month.

- **Capital Gains Tax** – Tax gains earned on the transfer of property are charged at 5% of the gains made.

- **Withholding Tax**- Withholding Income Tax is tax withheld at source. A person making certain payments deducts tax, at the applicable rate, and remits the tax to the Commissioner on behalf of the payer. Follow this link for more details on withholding tax; *https://kra.go.ke/en/helping-tax-payers/faqs/more-about-withholding-tax*

- Indirect taxes are imposed on consumption such as Value Added Tax (VAT) and Excise Duty (varies depending on the excisable product/service).

Double Taxation Agreements (DTA)

Double Taxation Agreements (DTA) between Kenya and foreign countries determine allocation taxing rights between the countries. Kenya has 16 DTAs in force, which can be found through https://www.treasury.go.ke/agreements/

Countries may however have in place some form of unilateral measures to relieve taxpayers from double taxation

Obligations

The law requires a person (resident or non-resident) who derives income from Kenya or in the case of a resident person, from outside Kenya but which falls within the above provisions, to declare and pay tax on that income.

Tax Compliance

- Kenya operates a source-based taxation system which in essence means that we tax income accrued in or derived from Kenya. However, there are a few exceptions to this rule e.g.
- Tax will be imposed on a person who is resident in Kenya and earns employment income from outside Kenya and on pension income relating to employment that had been carried out in Kenya.
- Also, a resident person who carries on business partly in Kenya and partly outside Kenya will be liable to tax in Kenya on the entire income of that business.

Voluntary Tax Disclosure Programme

- This is a tax amnesty programme effective from 1st January 2021 and runs until December 2023.

- Under this programme, a taxpayer is able to disclose previously undisclosed income to KRA and obtain relief of penalties and interest that would be due under the law.

- Where the Commissioner is satisfied with the facts disclosed in the application, the taxpayer shall be granted a relief of the interest and penalty due on the tax disclosed and paid as follows;
  a) **100%** remission where the disclosure is made and tax liability paid in the first year of the programme (year 2021).
  b) **50%** remission where the disclosure is made and tax liability paid in the second year of the programme - (year 2022)
  c) **25%** remission where the disclosure is made and tax liability paid in the final year of the programme. - (year 2023)

- Any person who has undisclosed income is encouraged to take advantage of this amnesty to avoid unfavourable enforcement measures being taken against them.

Customs

Taxes that are payable by a Foreign Investor (Importer)

Customs collects and accounts for the following taxes under the revenue mandate;

- **Import duty** - Import duty is premised on the Common External Tariff (CET) at the East Africa Community (EAC) level and has 3 tax bands-0%,10% and 25% and sensitive list with various rates higher than the 25% - these are contained in the EAC CET 2017

- **Import Levies and Fees** - payable on imported and exported goods namely ;

a) Import Declaration Fee (IDF), is 3.5% on customs value for all imported goods except for approved manufacturers who import their raw materials and intermediary products at 1.5%

b) Railway Development Levy (RDL) -2% on customs value while approved manufacturers pay 1.5%

c) Export Levy - (vary for the products that attract the levy at both advalorem and specific rates)

d) Anti-Adulteration levy on kerosene is KES.18 per litre

• Import Value Added Tax (VAT) at 16% on general goods and 8% on petroleum products and excise duty as per rates specified in the Excise Duty Act 2015

Taxes that are payable by a Foreign Investor (Exporter)

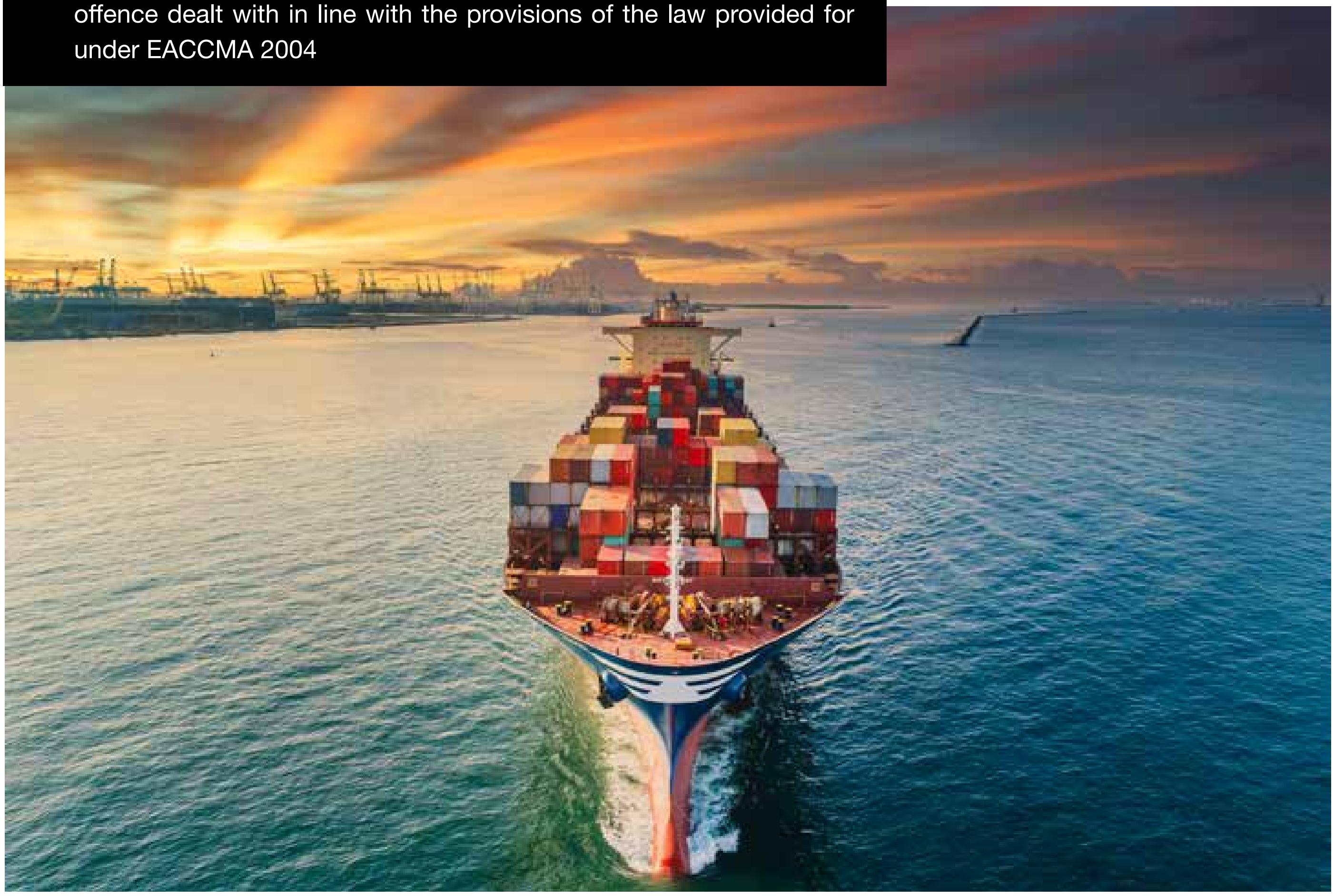
Export Levy - (vary for the products that attract the levy at both advalorem and specific rates)

Customs clearance procedure

- The principal customs law administered by the Commissioner is the East African Community Customs Management Act,2004(EACCMA,2004)
- Payment of Customs revenue is based on self-assessment by self-declaration in customs systems and payment of requisite revenues
- Importer appoints their Clearing agent
- Importers are urged to engage reputable Clearing Agents who are Authorised Economic Operators (AEO)
- The list of licenced Clearing Agents can be obtained from Kenya International Freight and Warehousing Association (KIFWA) website https://www.kifwa.co.ke/
- The agent accesses the customs systems to make declarations and pay taxes/importer may pay their taxes by themselves
- Customs declarations must be supported by relevant import/export documents that show a number of parameters including the values, quantities, country of origin, the requisite permits where applicable, tax rates and overall taxes paid among others.
- The customs officer will verify the declaration to ensure that it conforms to the customs requirements and that all duties and taxes due are paid before goods are released to the importer.

Provisions relating to entry of goods

- Goods on arrival must be entered (declared in customs systems) and processed for removal within 21 days from the date of discharge from the vessel
- Where goods are not removed by the stipulated time, they are deemed to be in Customs warehouse and rent charges shall become payable
- Warehouse rent is charged at USD 0.3/CM3
- Abandoned goods in customs warehouse may be disposed by the commissioner.
- Importers should be aware that noncompliance with laws with regard to importation and exportation (by the agent or themselves) is an offence dealt with in line with the provisions of the law provided for under EACCMA 2004



Agencies involved in clearance

Customs & Border Control Department, KEBS, Port health/PPB, KEPHIS, Police, Anti-counterfeit among others.

Customs can only release goods once all other agencies have released

Importer/agent has to ensure compliance with all importation requirements to facilitate faster clearance of goods https://www.kentrade.go.ke/

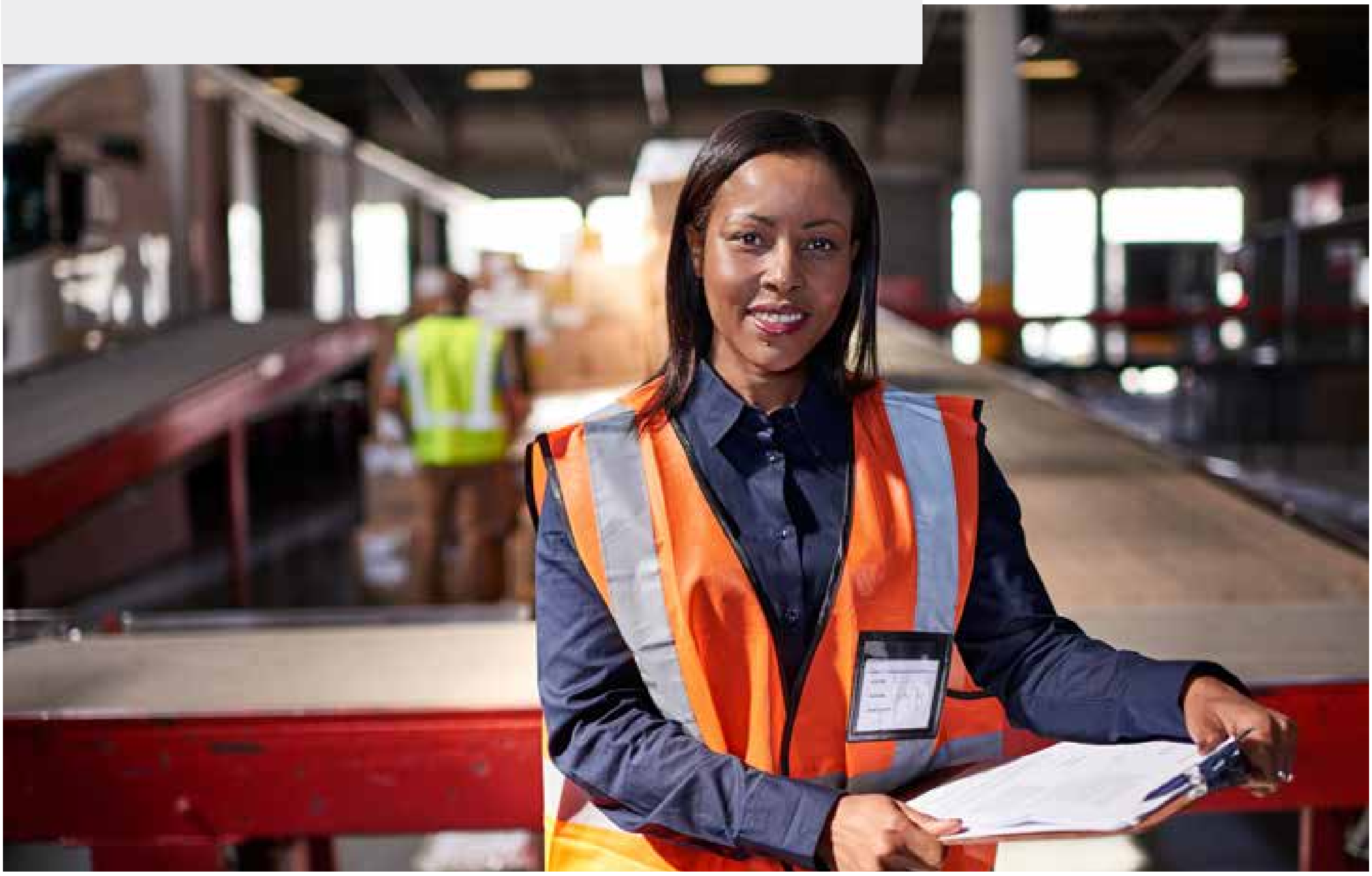
Tax Incentives under the Customs Laws

- The East African Community Customs Act (EACCMA) 2004, is the applicable customs law that provides for the exemption regime (for import duty) for goods imported into the Country.
- This law provide for certain tax exemptions(where goods are imported tax free) for specified categories of goods and persons
- Most machinery and equipment of Common External Tariff (CET) are duty free by tariff
- Lower IDF and RDL rates at 1.5% of Customs Value (CV) for approved manufacturers/affordable housing

Passenger clearance

What you need to declare upon arrival in Kenya:

- Items you purchased and are carrying with you upon return to the Kenya.
- Items you inherited while abroad.
- Items you bought in duty-free shops, on the ship, or on the plane beyond the allowed limits.
- Repairs or alterations to any items you took abroad and then brought back, even if the repairs/alterations were performed free of charge.
- Items you brought home for someone else including gifts.
- Items you intend to sell or use in your business, including business merchandise that you took out of the Kenya on your trip.
- Currency above 10,000 USD or its equivalent MUST be declared at Customs upon arrival
- The limit for taxable goods only applies to goods purchased



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