CM ADVOCATES LLP



EXPANDED KRA TAX POWERS OVER NON-RESIDENTS UNDER FINANCE ACT, 2025

LEGISLATIVE FOUNDATION

The Finance Act, 2025, significantly amends Section 42 of the Tax Procedures Act ("the TPA") by expanding the Kenya Revenue Authority's ("the KRA") powers to issue agency notices to non-resident persons who are subject to tax in Kenya. This change strengthens the KRA's enforcement capabilities, particularly in relation to the digital economy, by allowing it to recover outstanding taxes through third parties that hold funds on behalf of non-residents.

As a result, non-residents will now be under increased pressure to comply with Kenyan tax laws and make timely payments, given the KRA's strengthened legal grounds to collect unpaid taxes via local agents managing their funds.

THIS EXPANSION TO INCLUDE NON-RESIDENTS MEANS THAT:

The KRA may, in respect of the non-resident, require a person (referred to as the "an agent")

a. who owes or may subsequently owe money to the non-resident;
b. who holds or may subsequently hold money, for or on account of, the non-resident;
c. who holds or may subsequently hold money on account of some other person for payment to the non-resident; or
d. who has authority from some other person to pay money to the non-resident, to pay to the KRA, an amount that shall not exceed the amount of the unpaid tax or the amount of tax that the KRA believes will not be paid by the non-resident by the due date.

UNDERSTANDING RESIDENCY UNDER KENYA'S INCOME TAX ACT

(a) Individual Residency

A person is deemed resident for tax purposes in Kenya if they: -

- Have a permanent home in Kenya and are present for any period during a year of income; or
- Are present in Kenya for:
  - 183+ days in that year; or
  - An average of 122+ days over the current year and two preceding years.

Those not meeting these conditions are treated as non-residents.

What Constitutes a "*Permanent Home*"?

The Finance Act, 2022 defined the term 'permanent home' to mean a place where an individual resides, or a place that is available to the individual for residential purposes in Kenya. Alternatively, it may refer to the location where, in the opinion of the Revenue Authority, the individual's personal or economic interests are most closely aligned.

Any form of home may be considered under this definition, whether it is a house, an apartment owned or rented by the individual, or even a rented furnished room. What matters is the permanence of the home, meaning that the individual has made arrangements to have the dwelling available for continuous use, rather than for occasional stays. Occasional stays, such as those for business, pleasure, educational travel, or attending a short course, would not qualify as constituting a permanent home.

Therefore, if an individual always has access to a home in Kenya when they are in the country, they will be considered a resident. Interestingly, in the case of Epix investments Limited vs. Commissioner Investigations & Enforcement the KRA considered the presence of personal belongings in a house as a key factor in determining whether the home could be deemed permanent.

(b) Corporate Residency – Foreign-Registered Companies

Under the Income Tax Act, a company is resident in Kenya if:

1. It is incorporated in Kenya, or
2. Management and control of its affairs is exercised in Kenya during a particular year of income.

The Tax Appeals Tribunal ("the Tribunal") in ***M-kopa Holdings C/o Jesse Morre, Director Vs. Commissioner of Legal Services and Board Coordination***, upheld the principle that a foreign company can be considered a tax resident under Kenyan income tax laws if the KRA proves that management and control of the Company's affairs occurred within Kenya during the relevant taxing period.

The Tribunal further held that the place of effective management test is one of substance over form. It therefore requires a determination of those persons in a company who actually "call the shots" and exercise "realistic positive management"

The Tribunal emphasized that the assumption that a company's place of effective management must be where its board meets is outdated and no longer valid in today's digital world. Instead, the PEM is determined by the location where key management and commercial decisions are made, whether by the directors or senior managers.

In this case, the Tribunal held that the total of the activities carried out in Kenya ranging from the location of the senior managers, the locus of most committees of the board and the undisputed fact that the Board of Directors held a meeting in Kenya where it approved the consolidation of audited financial statements of M-Kopa Holdings Limited which is a significant instrument in the operations of M-Kopa Holdings led it to the conclusion that the key decisions regarding M-Kopa Holdings were made in Kenya.

Who Is Affected by the Change?

- Digital platforms (SaaS, streaming, e-commerce) targeting Kenya;
- Freelancers and consultants working remotely for Kenyan clients;
- Non-resident landlords of property in Kenya;
- Foreign corporations deriving local income without incorporation;
- Overseas financial service providers and content monetizers.

HOW CM ADVOCATES LLP CAN SUPPORT YOU

Our Tax Law Advisory Unit offers end-to-end legal and tax compliance support for both non-resident entities and Kenyan agents affected by this evolving landscape.

We advise on:

a) Tax structuring for non-residents, including compliance planning for cross-border services and investments;
b) Tax registration, return preparation, and representation before the KRA;
c) Audit readiness reviews, risk assessments, and voluntary disclosure;
d) Monthly tax filing support including VAT, WHT, PAYE, Rental Income Tax, Excise Duty, and Installment Taxes;
e) Transaction-level tax opinions and DTA analysis for global businesses and digital platforms;
f) Exemption processing, estate structuring, and family office advisory for tax efficiency and compliance resilience.
g) Designing tax-efficient structures for owning or managing Kenyan-source income.
h) Dispute resolution,

For expert legal guidance on tax exposure, cross-border compliance, residency risk, or enforcement strategy whether you operate locally or globally please contact us at:

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