# Rwanda Income Tax Alert November 2022

# Introduction

## Publication and Commmencement

The new income tax law officially known as the Law No. 027/2022 of 20/10/2022 Establishing Taxes on Income was published in the official gazette on 28 October 2022 and came into force on the same day. This new law repeals the previous Law No. 016/2018 of 13/04/2018 Establishing Taxes on Income which had been in force since 2018 and the Law No. 29/2012 of 27/07/2012 Establishing Tax on Gambling Activities which had been in force since 2012.

## What Are The Major Changes

Several amendments have been made in the new law and in this tax alert, we have highlighted some of the changes that we opine may have a fundamental impact on the way you do business in Rwanda from an income tax perspective.

In this publication we have analysed these changes under the five main sections of the income tax law as below:



The rules for taxation of employment income have remained the same. The main change is as a result of changes to the withholding tax rate that will be used to calculate the monthly Pay As you Earn. The rate changes have been highlighted under the withholding tax section of this tax alert.

There have been no fundamental changes as relates to the taxation of investment income

## How Can PKF Facilitate You In Ensuring Compliance?

At PKF, we have a dedicated team of tax professionals who are at hand to help your business align its transactions and related tax compliance processes with the requirements of the new law.

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# General provisions

## Scope Of The New Law (Article 2)

Article 2 defines the scope of the new law. The scope covers the following taxes:

a) Personal income tax
b) Corporate income tax
c) Withholding tax
d) Capital gains tax
e) Tax on gaming activities

The scope has been expanded to include tax on gaming activities which was previously governed by the repealed Law No. 29/2012 of 27/07/2012 Establishing Tax on Gambling Activities.

## Residence (Article 4)

The tax residency rules have been amended to include an anti avoidance consideration. In addition to being in the country for a period or periods which aggregate to 183 days, a person is now also considered tax resident if he/she is present in Rwanda during the tax period and has been in Rwanda for periods averaging 122 days in each of the pre- ceding 2 years.

## Permanent Establishment (Article 5)

A permanent establishment (PE) is a fixed place of business which gives rise to a taxable presence in Rwanda. The PE threshholds have been expanded to include the following deemed PEs:

a) Agency PE – An entity is considered to have a PE if it has third-parties acting on its behalf and the third parties usually exercise the power to negotiate or enter into contracts on behalf of the non-resident entity or play the main role leading to the conclusion of such contracts in Rwanda.

b) Collection of insurance premiums or insurance risk – A non-resident entity, except in regards to re-insurance, is deemed to have a PE if it collects insurance premiums

   or insures risks in Rwanda except through an independent agent.

Under the new rules, these entities will be deemed to have a PE even though they do not have a fixed place of business in Rwanda.

## Sources Of Taxable Income (Article 6)

The provisions on the source of taxable income determine the scope of taxation for any jurisdiction. Ideally, this list is as exhaustive as possible such that all possible sources of income in Rwanda are within the scope.

The new provisions have introduced some additional sources of income which were hitherto not adequately or expressly included in the scope of taxation. These are:

a) Digital services income: Income earned or accrued from digital services has now been added as a source of taxable income.

   Digital services have been defined in the law to include: online advertising services, the supply of user data, online search engines, online intermediation platform, social media platforms, online media, digital content services, online gaming, cloud computing services or standardised online teaching services

b) Gaming activities: Income earned from gaming activities is now within the scope of withholding tax making it a source of taxable income.

Gaming activities have been defined to include any game played with cards, dices, tickets, equipment or any mechanical, electronic or electromechanical device or machine for money, property, cheque, credit or credit card or any representative of value or a game where a sum of money or representative of value is risked on an occurrence for which the outcome is uncertain.

## Tax Declaration (Article 9)

The requirments for income tax declarations have remained unchanged, however, there is a new provision noting that a taxpayer who earns an annual turnover less than Rwf 2 million is now not required to file his/her annual tax declaration.

## Obligation Of Taxpayers To Personal Income Tax (Article 10)

A resident tax payer in Rwanda is liable to personal income tax from all domestic and foreign sources.

However, in order to attract experts to work on activities related to the Kigali International Financial Center, the new income tax law provides that where a resident taxpayer who was not resident in Rwanda in the five (5) years immediately prior to becoming resident, and who works as an expert or a professional directly for an entity carrying out Kigali International Financial Centre licensed activities, will be exempted from personal income tax on foreign sourced income during the first five (5) years following the date of becoming resident.

## Rate For Personal Income Tax (Article 14)

In a bid to reduce the tax burden on low income earners, the graduated scale tax rates for personal income tax have been revised. The new rates that will apply is as follows:

First year after commencement of the law:

| Taxable annual income in Rwanda Francs (Rwf) | Rate |
|---|---|
| 0 – 720,000 | 0% |
| 720,001 – 1,200,000 | 20% |
| 1,200,001 and above | 30% |

From the second year after commencement of the law:

| Taxable annual income in Rwanda Francs (Rwf) | Rate |
|---|---|
| 0 – 720,000 | 0% |
| 720,001 – 1,200,001 | 10% |
| 1,200,001 – 2,400,000 | 20% |
| 2,400,001 and above | 30% |

## Anti-Abuse Rules On Avoidance Arrangements (Article 68)

Rwanda has for the first incorporated General Anti-Avoidance Tax Provisions (GAAR) within the income tax law. GAAR is an enforcement mechanism that gives the tax administration broad powers to deny taxpayers the tax benefit associated with some transactions or arragements.

The GAAR provisions included in the new law under its Article 68 empower the tax authority to deny taxpayers benefits of transactions or arrangements that do not have commercial substance or for which the only purpose of the arrangment is achieving tax benefit.

# Taxation Of Business Activities

## Non-Deductible Expense (Article 25)

The article on non-deductible expenses has been reworded and amended as follows:

a) **Management, technical service fee and royalties –** This provision has been reworded to note that the cap on the deductibility of management, technical service fee and royalties (currently set at 2%) relates to expenditure paid to non-resident related person. The previous law had left this open as any payments made to non-resident entities whether these entities were related to the taxpayer or not.

b) **Realised foreign exchange losses from related party loans**

The thin capitalization rules have been extended to include realized foreign exchange losses on related party loans.

Realized foreign exchange losses arising from total loans between related parties that exceed four times the amount of paid up equity will not be tax deductible.

C) **Unrealised foreign exchange losses**

unrealized foreign exchange losses have now been included as part of the non-deductible business expense.

## Trading Stock Value And Work In Progress (Article 26)

There is clarification included in the law that degraded or damaged stock is valued at the lower price between the cost price and the market price on the last day of the tax period.

## Loss Carried Forward (Article 31)

The repealed law provided that If during a tax period, the direct or indirect ownership of the share capital or the voting rights of a company, whose shares are not traded on a recognised stock exchange changes more than twenty-five per cent (25%) by value or by number then losses that were being carried forward would be forefeited.

While the condition for forefeiture of the losses remains largely unchanged in the new law, there is now a provision that allows entities to continue carrying forward losses despite a change of more than 25% in the share capital or voting rights on condition that:

a) the change is an internal business reorganization that maintains the same shareholders and;

b) those shareholders have been in the shareholding structure for a period not less than three (3) years.

This is welcomed news for investors who would previously have losses forefeited on account of business reorganizations and restructuring.

## Transfer Pricing Between Related Persons (Article 32)

The Article on transfer pricing has been amended to allow taxpayers to enter into advance pricing arrangement with the tax authorities. The law now provides that before determining the price arrangement between related persons, the taxpayer may request the tax administration to enter into an advance pricing agreement for a fixed period to determine modali- ties of setting prices and profit complying with arm's length principle.

This is a good option for Multinational Entities to have. An advance pricing arrangment provides tax certanity and reduces the risk of transfer pricing adjustments by the tax administration.

## Taxpayers Of Corporate Income Tax (Article 44)

The new law has added the following types of entities as within the scope of Corporate Income Tax (CIT):

a) Trust;

b) Foundation; and

c) Protected cell companies and/or their cells.

This article serves to bring into scope new types of legal entities that are currently being registered in Rwanda.

## Entities Exempted From Corporate Income Tax (Article 46)

Three new entities have been accorded income tax exemption these are as follows:

a) special purpose vehicle, unless the revenue received exceeds the corresponding expenses;
b) common benefit foundations; and
c) resident trustee for income earned by a foreign trust.

These entities along with all the other entities exempted from corporate income tax are still required to submit their financial statements to the RRA not later than 31 March following the tax period.

The Article has also been amended to note that entities exempted from corporate income tax can make an application to have the year end changed and in that case submission of the financial statements would be three (3) months following specific tax period granted to the taxpayer.

## Taxation Of Gaming Activities (Article 50)

Companies carrying out gaming activities are required to declare and pay corporate income tax of thirty percent (30%).

These companies will also be required to pay a monthly advance tax equivalent to thirteen percent (13%) on gaming activities. The advance tax will be calculated based on the difference between the total amount placed for betting and the winnings awarded. The amount will be deductible from the corporate income tax payable at the end of the year.

## Taxation Of Income From Partnerships (Article 52)

A key change introduced in the new law relates to the tax treatment of partnerships. Income generated from general partnership, limited partnership and limited liability partner- ship is taxable at the level of each partner.

This means that the partnership itself is not liable to tax. Instead the legislation looks at taxing the partners directly. Corporate partners are subject to corporate income tax while individual partners are subject to personal income tax.

However, the partnership and the partners are jointly liable in case of a failure to meet tax obligations

# Withholding Tax

## Withholding Tax On Employment Income (Article 50)

Similar to the personal income tax the monthly withholding tax applicable on employment income has been revised. The new monthly rates are as follows:

First year following commencement of the law

| Taxable monthly income in Rwanda Francs (Rwf) | Rate |
|---|---|
| 0 – 60,000 | 0% |
| 60,001 – 100,000 | 20% |
| 100,001 and above | 30% |

From the second year after commencement of the law:

| Taxable monthly income in Rwanda Francs (Rwf) | Rate |
|---|---|
| 0 – 60,000 | 0% |
| 60,001 – 100,000 | 10% |
| 100,001 – 200,000 | 20% |
| 200,001 and above | 30% |

Income on casual laborers will still be taxed at a rate of 15%, however, the amount zero rated for income tax purposes has been increased from Rwf 30,000 per month to Rwf 60,000.

## Withholding Tax On Payment (Article 60)

The list of payments subject to withholding tax has been amended to include the following:

a) profit after tax or retained earnings that are converted into shares;
b) profits repatriated from Rwanda; and
c) re-insurance premiums paid to a non-resident insurer.

## Withholding Tax On Winnings On Gaming Activities (Article 61)

There is introduction of withholding tax on winnings. This is to be withheld by a company carrying out gaming activities. The withholding tax is at a rate of 15% on the difference between winnings of the player and amount invested by the player.

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