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# LEGAL ALERT



**No Longer Negotiable: Record Keeping & Taxation**



# No Longer Negotiable: Record Keeping & Taxation

## Introduction

It has become abundantly clear that a taxpayer and their records relating to income and expenses are tied at the hip to support tax returns. The Kenya Revenue Authority (KRA) mandates that all taxpayers, from small informal traders to large corporations, maintain accurate and reliable financial records. The records should include sales ledgers, bank statements, purchase invoices, payroll details, and loan agreements where such transactions exist, as they form part of the primary documents required to support the returns filed.

Maintaining poor or fraudulent records may result in incorrect tax assessments and expose taxpayers to audits, severe penalties, interest on the unpaid taxes, and possible criminal prosecution.

Micro, small, and medium-sized enterprises (MSMEs) form a large part of Kenya's business landscape, and many maintain their businesses informally with limited literacy or access to affordable bookkeeping tools. Record keeping allows businesses to claim legitimate deductions, access credit, track profitability, and comply seamlessly with the Kenyan tax laws. It is now mandatory for all businesses to comply with the electronic tax management system (eTims), which will enable a taxpayer to claim business expenses.

It is imperative that a taxpayer in Kenya understands the interplay between taxation and record-keeping. It is no longer a regulatory burden but a strategic business practice that promotes transparency and minimizes legal risks.

This article explores the legal framework, practice re-

quirements, common mistakes, and benefits of proper record-keeping in the ever-evolving Kenyan tax regime.

## What is the Legal Framework for Record Keeping in Kenya?

The law in Kenya, in particular the Income Tax Act, Cap. 470 and the Tax Procedures Act, Cap. 469B, impose statutory obligations that require all taxpayers to maintain and retain records sufficient to determine their tax liability. These records must be kept for a minimum period of five (5) years from the end of the year of income to which they relate.

In cases where a company is under liquidation or where an individual has a tax dispute, records will have to be maintained for a longer period until the liquidation is finalised or the dispute is resolved. Failure to maintain proper records constitutes an offence and attracts penalties up to KES 2 million for a body corporate or imprisonment for individuals, in addition to late payment interest and default penalties.

## The Role of Technology: iTax and eTims

The tax regime in Kenya has evolved significantly through aggressive digitization of tax administration in a bid to attain compliance by taxpayers and to simplify tax administration. By introducing eTims, it is mandatory for businesses to generate and transmit all sales/transactions electronically in real time to KRA. With this enhanced requirement, inadequate record-keeping will be a thing of the past, as a taxpayer can only claim expenses generated through eTims.



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All transactions must be accompanied by underlying records to generate eTims invoices. Failure to comply will result in mismatches between declared sales and KRA's real-time data, leading to automatic audit triggers and investigations, estimated assessments, penalties and interest, objection and appeals, risk of listing with the Credit Reference Bureaus (CRBs), and bank account agency notices.

A taxpayer may think that compliance with eTims is expensive; however, KRA has provided free eTims solutions that allow a taxpayer to generate tax-compliant invoices.

## Benefits of Proper Record Keeping

There are tangible advantages for a business to maintain proper records, and this should not be treated as a mere compliance requirement. A taxpayer who maintains proper records can claim all expenses resulting in an accurate tax computation, as they have the requisite documentation to support all the expenses claimed.

There is a lower risk of audit due to consistent and verifiable documentation, which ensures that a taxpayer does not end up on the KRA radar for audit purposes. Good record keeping allows the taxpayer to have better cash flow management, as this allows tracking of income and expenditure, thereby allowing timely settlement of tax obligations when the deadline approaches.

Good record keeping assists a business in accessing credit, as they will have an audited or properly prepared financial statement, which is required before banks or microfinance institutions can approve a loan. With proper records, where a

taxpayer applies for VAT refund, supporting such an application is straightforward, as the purchases and sales records are accurate and verifiable, resulting in an increase in cash flow once approved.

## Turnover Tax and the Informal Sector

The Income Tax Act, Cap. 470 provides for a simplified tax regime of Turnover Tax (TOT) currently at a rate of one point five percent (1.5%) on gross turnover payable monthly on the 20th day of the following month. With a turnover of between 1 million and 25 million Kenya shillings, a taxpayer is eligible to opt to declare their income under this regime. This is a final tax, and there is no requirement to file an end-of-year income tax return. The taxpayer will be required to maintain records of daily sales to support the monthly returns.

With the recent pronouncements on tighter tax compliance measures by KRA, the informal sector will have to review its operations to comply to avoid tax assessments.

## Related Case Law

Courts have considered the issue of tax assessments and maintaining records in several cases. The cases discussed below underscore that good record keeping is no longer just an administrative requirement but will also assist a taxpayer in legal disputes when assessments are raised by KRA.

In *Avery Lounge Limited v Commissioner of Domestic Taxes (Income Tax Appeal E213 of 2024) [2026] KEHC 769 (KLR) (Commercial and Tax) (30 January 2026) (Judgment)*, the taxpayer was profiled by KRA as a nil filer or non-filer as they



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either declared zero income or failed to file returns despite having commercial activity. The appeal to the High Court challenged the Tax Appeals Tribunal (Tribunal) decision, which emphasised that the burden of proof lay with the taxpayer. The Tribunal further held that the taxpayer had failed to provide sufficient documentary evidence to rebut the assessment by KRA.

The High Court on appeal upheld the decision of the Tribunal and stated that the taxpayer did not provide primary evidence in accounting, which consists of the source documents: the sales receipts, the invoices, the loan agreements, and the ledger entries that classify each transaction. In the circumstances, the taxpayer did not establish a prima facie case to discharge the burden of proof. The court further determined that KRA was justified in applying the banking analysis method as the taxpayer had failed to provide the requisite documents to support expenses incurred in the production of income, as well as the loans and repayment schedules.

In the case of *Ng'ang'a v Commissioner of Legal Services and Board Coordination (Tax Appeal E029 of 2025) [2026] KETAT 11 (KLR) (16 January 2026) (Judgment)* the Tribunal considered the case of a taxpayer operating as a sole proprietorship who filed nil returns resulting in an assessment being issued on the basis that they had not provided sufficient documentation to support the business operations. The assessment was based on an analysis of the taxpayers' banking records, where the net banking was treated as expected income for purposes of determining taxable income.

The Tribunal held that the assessment by KRA enjoys a presumption of correctness until rebutted by

probative documentary evidence presented by the taxpayer. It was therefore the taxpayer's legal obligation to provide primary documents, records, reconciliations, ledgers, bank statements, source documents or other supporting records which would be sufficient to demonstrate that the Commissioner's assessment was erroneous.

This case reaffirms the position that it is not only sufficient for a taxpayer to make assertions, generalized explanations or contest principles, but rather the taxpayer must demonstrate with specificity the error, which must be supported with hard evidence. Having interrogated the documents presented before the Tribunal, it determined that the taxpayer did not provide documents to contradict, weaken or invalidate KRA's adjustment. Rather, the taxpayer had challenged the methodology and conclusions applied by KRA. In the circumstance, KRA was justified in making the best judgment assessment. The Tribunal re-emphasised that the taxpayer did not discharge the burden of proof and therefore KRA's assessment was correct.

Finally, in *Nakuru Cement Supplies Limited v Commissioner of Investigations and Reinforcement (Tax Appeal E038 of 2021) [2022] KEHC 16518 (KLR) (Commercial and Tax) (16 December 2022) (Judgment)* the High Court held that the taxpayer was the custodian of their own business affairs and possessed the specific knowledge as a result the court determined that the taxpayer was the custodian of the necessary documents required under section 58 of the Tax Procedures Act to maintain records which were to be submitted to KRA. The court further stated that if these documents were provided, they would have proven or disproved the information acquired from suppliers and relied upon by KRA in the assessment.

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## Conclusion

It is no longer business as usual, as taxation and maintaining good records are not just an administrative requirement to attain compliance but part of the normal operation of a business and cannot be overlooked. It is an express requirement of the law, and technology has been introduced to enforce it, and failure results in penalties charged together with interest. Taxpayers must therefore engage in tax education and acquire the requisite digital tools to assist in maintaining their business transactions and accounting systems. It is also prudent to engage professionals such as ourselves to undertake tax health checks and further assist when a dispute arises.

## DISCLAIMER

*This alert is for informational purposes only and should not be considered or interpreted as legal advice. If you have any questions or require clarification, please feel free to contact the author Renee Omondi, Partner ([renee@oraro.co.ke](mailto:renee@oraro.co.ke)) – or your usual contact at our firm for legal guidance.*



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