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LAWS OF KENYA



INCOME TAX ACT

CHAPTER 470

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CHAPTER 470

INCOME TAX ACT

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CHAPTER 470

INCOME TAX ACT

[Date of assent: 21st December, 1973.]

[Date of commencement: 1st January, 1974.]

An Act of Parliament to make provision for the charge, assessment and collection of income tax; for the ascertainment of the income to be charged; for the administrative and general provisions relating thereto; and for matters incidental to and connected with the foregoing

[Act No. 2 of 1975, Act No. 13 of 1975, Act No. 7 of 1976, Act No. 11 of 1976, L.N. 123/1976, L.N. 189/1977, Act No. 12 of 1977, Act No. 16 of 1977, Act No. 8 of 1978, Act No. 13 of 1978, Act No. 13 of 1979, Act No. 18 of 1979, Act No. 10 of 1980, Act No. 12 of 1980, Act No. 6 of 1981, Act No. 1 of 1982, Act No. 14 of 1982, Act No. 8 of 1983, Act No. 13 of 1984, Act No. 18 of 1984, Act No. 8 of 1985, Act No. 10 of 1986, Act No. 10 of 1987, Act No. 3 of 1988, Act No. 10 of 1988, Act No. 8 of 1989, Act No. 9 of 1989, Act No. 20 of 1989, Act No. 7 of 1990, Act No. 10 of 1990, Act No. 21 of 1990, Act No. 8 of 1991, Act No. 9 of 1992, Act No. 4 of 1993, Act No. 6 of 1994, Act No. 13 of 1995, Act No. 8 of 1996, Act No. 8 of 1997, Act No. 5 of 1998, Act No. 4 of 1999, Act No. 9 of 2000, Act No. 6 of 2001, Act No. 7 of 2002, Act No. 15 of 2003, Act No. 4 of 2004, Act No. 6 of 2005, Act No. 10 of 2006, Act No. 9 of 2007, Act No. 8 of 2008, Act No. 8 of 2009, Act No. 10 of 2010, Act No. 4 of 2012.]

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the Income Tax Act, 1973 and shall, subject to the Sixth Schedule, come into operation on 1st January, 1974, and apply to assessments for the year of income 1974 and subsequent years of income.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**accounting period**”, in relation to a person, means the period for which that person makes up the accounts of his business;

“**actuary**” means—

- (a) a Fellow of the Institute of Actuaries in England; or of the Faculty of Actuaries in Scotland; or of the Society of Actuaries in the United States of America; or of the Canadian Institute of Actuaries; or
- (b) such other person having actuarial knowledge as the Commissioner of Insurance may approve;

“**agency fees**” means payments made to a person for acting on behalf of any other person or group of persons, or on behalf of the Government and excludes any payments made by an agent on behalf of a principal when such payments are recoverable;

“**annuity contract**” means a contract providing for the payment to an individual of a life annuity, and “**registered annuity contract**” means one which has been registered with the Commissioner in such manner as may be prescribed;

“**assessment**” means an assessment, instalment assessment, self-assessment, provisional assessment or additional assessment made under this Act;

“**authorized tax agent**” means any person who prepares or advises for remuneration, or who employs one or more persons to prepare for remuneration, any return, statement or other document, with respect to a tax under this Act; and for the purposes of this Act, the preparation of a substantial portion of a return, statement or other document shall be deemed to be the preparation of the return, statement or other document;

“**bank**” means a bank or financial institution licensed under the Banking Act (Cap. 488);

“**bearer**” means the person in possession of a bearer instrument; and

“**bearer instrument**” includes a certificate of deposit, bond, note or any similar instrument payable to the bearer;

“**building society**” means a building society registered under the Building Societies Act (Cap. 489);

“**business**” includes any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade, but does not include employment;

“**child relief**” Deleted by Act No. 12 of 1977, s. 5;

“**collective investment scheme**” has the meaning assigned to it in section 2 of the Capital Markets Act;

“**commercial vehicle**” means a road vehicle which the Commissioner is satisfied is—

- (a) manufactured for the carriage of goods and so used in connection with a trade or business; or
- (b) a motor omnibus within the meaning of that term in the Traffic Act (Cap. 403); or
- (c) used for the carriage of members of the public for hire or reward;

“**Commissioner**” means—

- (a) the Commissioner-General appointed under section 11(1) of the Kenya Revenue Authority Act (Cap. 469); or
- (b) with respect to powers or functions that have been delegated under section 11(4) of the Kenya Revenue Authority Act (Cap. 469) to another Commissioner, that other Commissioner;

“**company**” means a company incorporated or registered under any law in force in Kenya or elsewhere;

“**compensating tax**” means the addition to tax imposed under section 7A;

“**consultancy fees**” means payments made to any person for acting in an advisory capacity or providing services on a consultancy basis;

“**contract of service**” means an agreement, whether oral or in writing, whether expressed or implied, to employ or to serve as an employee for any

period of time, and includes a contract of apprenticeship or indentured learnership, under which the employer has the power of selection and dismissal of the employee, pays his wages or salary and exercises general or specific control over the work done by him; and for the purpose of this definition an officer in the public service shall be deemed to be employed under a contract of service;

“contractual payments” *deleted by Act No. 6 of 2001, s. 42;*

“corporation rate” means the corporation rate of tax specified in paragraph 2 of Head B of the Third Schedule;

“Court” means the High Court;

“current year of income”, in relation to income charged to instalment tax, means the year of income for which the instalment tax is payable;

“debenture” includes any debenture stock, mortgage, mortgage stock, or any similar instrument acknowledging indebtedness, secured on the assets of the person issuing the debenture; and, for the purposes of paragraphs (d) and (e) of section 7(1) of this Act, includes any loan or loan stock, whether secured or unsecured;

“defined benefit provision”, in respect of a registered fund, means the terms of the fund under which benefits in respect of each member of the fund are determined in any way other than that described in the definition of a “defined contribution provision”;

“defined benefit registered fund” means a registered fund that contains a defined benefit provision, whether or not it also contains a defined contribution provision;

“defined contribution provision”, in respect of a registered fund, means terms of the fund—

- (a) which provide for a separate account to be maintained in respect of each member, to which are credited contributions made to the fund by, or in respect of, the member and any other amounts allocated to the member, and to which are charged payments in respect of the member; and
- (b) under which the only benefits in respect of a member are benefits determined solely with reference to, and provided by, the amount of the member’s account;

“defined contribution registered fund” means a registered fund under which the benefits of a member are determined by a defined contribution provision, and does not contain a defined benefit provision;

“director” means—

- (a) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or similar body;
- (b) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person,

(c) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate,

and includes any person in accordance with whose directions and instructions such persons are accustomed to act;

“discount” means interest measured by the difference between the amount received on the sale, final satisfaction or redemption of any debt, bond, loan, claim, obligation or other evidence of indebtedness, and the price paid on purchase or original issuance of the bond or evidence of indebtedness or the sum originally loaned upon the creation of the loan, claim or other obligation;

“dividend” means any distribution (whether in cash or property, and whether made before or during a winding up) by a company to its shareholders with respect to their equity interest in the company, other than distributions made in complete liquidation of the company of capital which was originally paid directly into the company in connection with the issuance of equity interests;

“due date” means the date on or before which any tax is due and payable under this Act or pursuant to any notice issued under this Act;

“employer” includes any resident person responsible for the payment of, or on account of, any emoluments to any employee, and any agent, manager or other representative so responsible in Kenya on behalf of any non-resident employer;

“export processing zone enterprise” has the meaning assigned to it by the Export Processing Zones Act, 1990;

“family relief” Deleted by Act No. 8 of 1996, s. 27;

“foreign tax”, in relation to income charged to tax in Kenya, means any income tax or any tax of a similar nature charged under any law in force in any place with the Government of which a special arrangement has been made by the Government of Kenya and which is the subject of that arrangement;

“incapacitated person” means a minor, and any person adjudged under any law, whether in Kenya or elsewhere, to be in a state of unsoundness of mind (however described);

“individual” means a natural person;

“individual rates” means the individual rates of income tax specified in paragraph 1 of Head B of the Third Schedule;

“individual retirement fund” means a fund held in trust by a qualified institution for a resident individual for the purpose of receiving and investing funds in qualifying assets in order to provide pension benefits for such an individual or the surviving dependants of such an individual subject to the Income Tax (Retirement Benefit) Rules and **“registered individual retirement fund” means** an individual retirement fund where the trust deed for such a fund has been registered with the Commissioner;

“information technology” means any equipment or software for use in storing, retrieving, processing or dissemination information;

“insurance relief” Deleted by Act No. 8 of 1996, s. 27;

“**interstate tax**” means any income tax or any tax of a similar nature changed under any law in force in Kenya;

“**interest**” (other than interest charged on tax) means interest payable in any manner in respect of a loan, deposit, debt, claim or other right or obligation, and includes any premium or discount by way of interest and any commitment or service fee paid in respect of any loan or credit;

“**Kenya**” includes the continental shelf and any installation thereon as defined in the Continental Shelf Act (Cap. 312);

“**local committee**” means a local committee established under section 82 of this Act;

“**loss**”, in relation to gains or profits, means a loss computed in the same manner as gains or profits;

“**Management Act**” means the East African Income Tax Management Act (E.A. Cap. 24);

“**management or professional fee**” means any payment made to any person, other than a payment made to an employee by his employer, as consideration for any managerial, technical, agency, contractual, professional or consultancy services however calculated;

“**married relief**” Deleted by Act No. 12 of 1977, s. 5;

“**National Social Security Fund**” means the National Social Security Fund established under section 3 of the National Social Security Fund Act (Cap. 258);

“**non-resident rate**” means a non-resident tax rate specified in paragraph 3 of Head B of the Third Schedule;

“**notice of objection**” means a valid notice of objection to an assessment given under section 84(1);

“**number of full-year members**”, in respect of a registered fund, means the sum of the periods of service in the year under the fund of all members of the fund, where the periods are expressed as fractions of a year;

“**officer**” means the Commissioner and any other member of staff of the Kenya Revenue Authority appointed under section 13 of the Kenya Revenue Authority Act (Cap. 469);

“**original issue discount**” means the difference between the amount received on the final satisfaction or redemption of any debt, bond, loan, claim, obligation or other evidence of indebtedness, and the price paid on original issuance of the bond or evidence of indebtedness or the sum originally loaned upon creation of the obligation, loan, claim or other obligation;

“**paid**” includes distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person and “**pay**”, “**payment**” and “**payable**” have corresponding meanings;

“**pension fund**” means any fund for the payment of pensions or other similar benefits to employees on retirement, or to the dependants of employees on the death of such employees and “**registered pension fund**” means one which has been registered with the Commissioner in such manner as may be prescribed;

“pensionable income” means—

- (a) in relation to a member of a registered pension or provident fund or of an individual eligible to contribute to a registered individual retirement fund, the employment income specified in section 3(2)(a)(ii) subjected to deduction of tax under section 37;
- (b) in the case of an individual eligible to contribute to a registered individual retirement fund, the gains or profits from business subject to tax under section 3(2)(a)(i) earned as the sole proprietor or as a partner of the business:

Provided that where a loss from business is realized the loss shall be deemed to be zero;

“permanent establishment” in relation to a person means a fixed place of business in which that person carries on business and for the purposes of this definition, a building site, or a construction or assembly project, which has existed for six months or more shall be deemed to be a fixed place of business;

“permanent or semi-permanent crops” means such crops which the Minister may, by notice in the *Gazette*, declare to be permanent or semi-permanent crops for the purposes of this Act;

“personal relief” means—

- (a) the personal relief provided for under Part V; and
- (b) the relief mentioned in section 30;

“preceding year assessment”, in relation to instalment tax, means the tax assessed for the preceding year of income as of the date the instalment tax is due without regard to subsequent additions to, amendments of, or subtractions from the assessment and in the event that as of the date the instalment tax is due no assessment for the preceding year of tax has, as yet, been made, means the amount of tax estimated by the person as assessable for the preceding year of income;

“premises” means land, any improvement thereon, and any building or, where part of a building is occupied as a separate dwelling-house, that part;

“provident fund” includes any fund or scheme for the payment of lump sums and other similar benefits, to employees when they leave employment or to the dependants of employees on the death of those employees but does not include any national provident fund or national social security fund established by the Government and **“registered provident fund”** means one which has been registered with the Commissioner in such manner as may be prescribed;

“provisional return of income” means a provisional return of income furnished by a person under section 53 of this Act, together with any documents required to be furnished therewith;

“public pension scheme” means a pension scheme that pays pension or lump sums out of the Consolidated Fund;

“qualified institution” means a bank licensed under the Banking Act (Cap. 488), or an insurer registered under the Insurance Act (Cap. 487), or such other financial institution as may be approved under the Retirement Benefits Act, 1997 (No. 3 of 1997);

“qualifying assets”, in respect of a registered individual retirement fund, means time deposits, treasury bills, treasury bonds, securities traded on any securities exchange approved under the Capital Markets Act (Cap. 485A) and such other categories of assets as may be prescribed in the investment guidelines issued under the Retirement Benefits Act, 1997 (No. 3 of 1997);

“qualifying dividend” means that part of the aggregate dividend that is chargeable to tax under section 3(2)(b) and which has not been otherwise exempted under any other provision of this Act, but shall not include a dividend paid by a designated cooperative society subject to tax under section 19A(2) or 19A(3);

“qualifying dividend rate of tax” means the resident withholding tax rate in respect of a qualifying dividend specified in the Third Schedule;

“qualifying interest” means the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income from—

- (i) a bank or financial institution licensed under the Banking Act (Cap. 488); or
- (ii) a building society registered under the Building Societies Act (Cap. 489) which in the case of housing bonds has been approved by the Minister for the purposes of this Act; or
- (iii) the Central Bank of Kenya:

Provided that—

- (a) interest earned on an account held jointly by a husband and wife shall be deemed to be qualifying interest; and
- (b) in the case of housing bonds, the aggregate amount of interest shall not exceed three hundred thousand shillings;

“qualifying interest” Deleted by Act No. 8 of 1996, s. 27;

“qualifying interest rate of tax” means the resident withholding tax rate in respect of interest specified in paragraph 5 of the Third Schedule;

“real estate investment trust” shall have the meaning assigned to it in the Capital Markets Act (Cap. 485A);

“registered fund” means a registered pension fund or a registered provident fund;

“registered home ownership savings plan” means a savings plan established by an approved institution and registered with the Commissioner for receiving and holding funds in trust for depositors for the purpose of enabling individual depositors to purchase a permanent house;

“registered trust scheme” means a trust scheme for the provision of retirement annuities which has been registered with the Commissioner in such manner as may be prescribed;

“registered unit trust” means a unit trust registered by the Commissioner in such manner as may be prescribed;

“registered venture capital company” means a venture capital company registered by the Commissioner in such manner as may be prescribed;

“resident”, when applied in relation—

- (a) to an individual, means—
 - (i) that he has a permanent home in Kenya and was present in Kenya for any period in any particular year of income under consideration; or
 - (ii) that he has no permanent home in Kenya but—
 - (A) was present in Kenya for a period or periods amounting in the 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 of income;
- (b) to a body of persons, means—
 - (i) that the body is a company incorporated under a law of Kenya; or
 - (ii) that the management and control of the affairs of the body was exercised in Kenya in a particular year of income under consideration; or
 - (iii) that the body has been declared by the Minister, by notice in the *Gazette*, to be resident in Kenya for any year of income;

“resident withholding rate” means a rate of resident withholding tax specified in paragraph 5 of Head B of the Third Schedule;

“retirement annuity” means a retirement annuity payable under a registered annuity contract;

“Retirement Benefits Authority” means the Authority by that name established under the Retirement Benefits Act, 1997 (No. 3 of 1997);

“return of income” means a return of income furnished by a person consequent upon a notice served by the Commissioner under section 52 of this Act including a return of income together with a self-assessment of tax furnished to the Commissioner in accordance with the provisions of section 52B, together with any documents required to be furnished therewith;

“royalty” means a payment made as a consideration for the use of or the right to use—

- (a) any copyright of a literary, artistic or scientific work; or
- (b) any cinematograph film, including film or tape for radio or television broadcasting; or
- (c) any patent, trade mark, design or model, plan, formula or process; or
- (d) any industrial, commercial or scientific equipment,

or for information concerning industrial, commercial or scientific equipment or experience, and any gains derived from the sale or exchange of any right or property giving rise to that royalty;

“securities exchange” has the meaning assigned to it in section 2 of the Capital Markets Authority Act (Cap. 485A);

“**single relief**” Deleted by Act No. 8 of 1996, s. 27;

“**special arrangement**” means an arrangement for relief from double taxation having effect under section 41 of this Act;

“**special single relief**” Deleted by Act No. 8 of 1991, s. 52;

“**specified mineral**” means a mineral which the Minister may, by notice in the *Gazette*, declare to be a specified mineral for the purposes of this Act;

“**tax**” means the income tax charged under this Act;

“**tax computerized system**” means any software or hardware for use in storing, retrieving, processing or disseminating information relating to tax;

“**telecommunication operator**” means any person licensed as such under the Kenya Information and Communications Act, 1998 (No. 2 of 1998);

“**total income**” means, in relation to a person, the aggregate amount of his income, other than income exempt from tax under Part III, chargeable to tax under Part II, as ascertained under Part IV;

“**trade association**” means a body of persons which is an association of persons separately engaged in any business with the main object of safeguarding or promoting the business interests of those persons;

“**training fee**” means a payment made in respect of a business or user training services designed to improve the work practices and efficiency of an organization, and includes any payment in respect of incidental costs associated with the provision of such services;

“**Tribunal**” means the tribunal established under section 83;

“**unit holder**”, in relation to a unit trust, means the owner of an interest in the moneys, investments and other property which are for the time being subject to the trusts governing the unit trust, such interest being expressed in the number of units of which he is the owner;

“**unit trust**” has the meaning assigned to it in section 2 of the Capital Markets Act (Cap. 485A);

“**venture company**” means a company incorporated in Kenya in which a venture capital company has invested and which at the time of first investment by the venture capital company has assets with a market value or annual turnover of less than five hundred million Kenya shillings;

“**whole time service director**” means a director of a company who is required to devote substantially the whole of his time to the service of such company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other means, to control more than five per cent of the share capital or voting power of such company;

“**wife’s employment income**” means gains or profits from employment arising from a contract of service which is chargeable to tax under section 3(2)(a)(ii) and pensions, lump sums and withdrawals from a registered fund, public pension scheme or registered individual retirement fund which are chargeable to tax under section 3(2)(c), of a woman living with her husband,

excepting income derived by her as a trustee or manager of a settlement created by her husband the income of which is deemed under section 25 or 26 to be the income of the settler or income derived by her as an employee of—

- (a) a partnership in which her husband is a partner;
- (b) her husband; or
- (c) a company, the voting power of which is held to the extent of twelve and one-half per cent or more at any time during the year of income by her or by her husband or by both jointly, either directly or through nominees;

“wife’s professional income” means the gains or profits of a married woman living with her husband derived from the exercise by her (but not as a partner of a partnership in which her husband is a partner) of one of the professions specified in the Fifth Schedule being also a person who has the qualifications specified in that Schedule relevant to that profession;

“wife’s professional income rate” means the wife’s professional income rate specified in paragraph 1A of Head B of the Third Schedule;

“wife’s self-employment income” means gains or profits arising from a business of a married woman living with her husband which are chargeable to tax under section 3(2)(a)(i) and any income chargeable under section 3(2)(a)(iii) or section 3(2)(b), but does not include any income derived from the provision of goods or services by her to a business, partnership or a company owned by or the voting power of which is held to the extent of twelve and one-half per cent, or more at any one time during the year of income by her or her husband either directly or through nominee;

“wife’s self-employment income rate” means the wife’s self-employment income rate specified in paragraph 1A of Head B of the Third Schedule;

“winnings” shall have the meaning assigned to it in the Betting, Lotteries and Gaming Act (Cap. 131);

“year of income” means the period of twelve months commencing on 1st January in any year and ending on 31st December in that year.

(1A) Where under the provisions of this Act, any accounts, books of accounts or other records are required to be kept, such accounts, books or other records may be kept in written form or on micro-film, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

(2) In relation to any year of income in respect of which an order relating to tax or personal reliefs has been made under the Provisional Collection of Taxes and Duties Act (Cap. 415) reference in this Act to rates of tax and personal reliefs shall, so long as the order remains in force, be construed as references to the rates or reliefs specified in that order; and if, after the order has ceased to have effect, the rates of tax and of personal reliefs in relation to that year of income as specified in this Act as amended are different from those referred to in the order, and assessments have already been made having regard to those rates in the

order, then all necessary adjustments shall be made to the assessments to give effect to the rates of tax and of personal reliefs for that year of income as specified in this Act as amended for that year of income.

[Act No. 7 of 1976, s. 2, Act No. 12 of 1977, s. 5, Act No. 8 of 1978, s. 9, Act No. 12 of 1980, s. 3, Act No. 14 of 1982, s. 16, Act No. 10 of 1987, s. 31, Act No. 10 of 1988, s. 28, Act No. 9 of 1989, Second Sch., Act No. 10 of 1990, s. 38, Act No. 8 of 1991, s. 52, Act No. 9 of 1992, s. 35, Act No. 6 of 1994, s. 33, Act No. 13 of 1995, s. 73, Act No. 8 of 1996, s. 27, Act No. 8 of 1997, s. 27, Act No. 4 of 1999, s. 32, Act No. 9 of 2000, s. 40, Act No. 6 of 2001, s. 42, Act No. 7 of 2002, s. 37, Act No. 15 of 2003, s. 29, Act No. 4 of 2004, s. 45, Act No. 6 of 2005, s. 20, Act No. 10 of 2006, s. 16, Act No. 8 of 2008, s. 23, Act No. 8 of 2009, s. 16, Act No. 4 of 2012, s. 9.]

PART II – IMPOSITION OF INCOME TAX

3. Charge of tax

(1) Subject to, and in accordance with, this Act, a tax to be known as income tax shall be charged for each year of income upon all the income of a person, whether resident or non-resident, which accrued in or was derived from Kenya.

(2) Subject to this Act, income upon which tax is chargeable under this Act is income in respect of—

- (a) gains or profits from—
 - (i) any business, for whatever period of time carried on;
 - (ii) any employment or services rendered;
 - (iii) any right granted to any other person for use or occupation of property;
- (b) dividends or interest;
- (c)
 - (i) a pension, charge or annuity; and
 - (ii) any withdrawals from, or payments out of, a registered pension fund or a registered provident fund or a registered individual retirement fund; and
 - (iii) any withdrawals from a registered home ownership savings plan;
- (d) *Deleted by Act No. 14 of 1982, s. 17;*
- (e) an amount deemed to be the income of any person under this Act or by rules made under this Act;
- (f) gains accruing in the circumstances prescribed in, and computed in accordance with, the Eighth Schedule.

(3) For the purposes of this section—

- (a) “person” does not include a partnership; and
- (b) a bonus or interest paid by a designated cooperative society, as defined under section 19A, shall be deemed to be a dividend.

[Act No. 13 of 1975, s. 2, Act No. 8 of 1978, s. 9, Act No. 14 of 1982, s. 17, Act No. 10 of 1990, s. 39, Act No. 8 of 1991, s. 53, Act No. 9 of 1992, s. 36, Act No. 4 of 1993, s. 35, Act No. 13 of 1995, s. 74.]

4. Income from businesses

For the purposes of section 3(2)(a)(i)—

- (a) where a business is carried on or exercised partly within and partly outside Kenya by a resident person, the whole of the gains or profits from such business shall be deemed to have accrued in or to have been derived from Kenya;
- (b) the gains or profits of a partner from a partnership shall be the sum of—
 - (i) any remuneration payable to him by the partnership together with any interest on capital so payable, less any interest on capital payable by him to the partnership; and
 - (ii) his share of the total income of the partnership, calculated after deducting the total of any remuneration and interest on capital payable to any partner by the partnership and after adding any interest on capital payable by any partner to the partnership,

and where the partnership makes a loss, calculated in the manner set out in subparagraph (ii), his gains or profits shall be the excess, if any, of the amount set out in subparagraph (i) over his share of that loss;

Provided that in computing the total income of a partnership, there shall be deducted the cost of medical expenses or medical insurance cover paid by the partnership for the benefit of any partner, subject to a limit of one million shillings per year.

- (c) any sum received under any insurance against loss of profits, or received by way of damages or compensation for loss of profits, shall be deemed to be gains or profits of the year of income in which it is received;
- (d) where in computing gains or profits for any year of income any expenditure or loss has been deducted, or a deduction in respect of any reserve or provision to meet any liability has been made, and in a later year of income the whole or part of such expenditure or loss is recovered, or the whole or part of that liability is released, or the retention in whole or in part of such reserve or provision has become unnecessary, then any sum so recovered or released or no longer required as a reserve or provision shall be deemed to be gains or profits of the year of income in which it is recovered or released or no longer required:

Provided that if the person so chargeable with tax in respect of any such sum requests the Commissioner in writing to exercise his power under this proviso, the Commissioner may divide the sum into so many equal portions, not exceeding six, as he may consider fit, and one such portion shall be taken into account in computing the gains or profits of such person for the year of income in respect of which such sum is so deemed to be gains or profits and for each of the previous years of income corresponding to the number of portions;

- (e) where under the Second Schedule it is provided that a balancing charge shall be made, or a sum shall be treated as a trading receipt, for any year of income, the amount thereof shall be deemed to be gains or profits of that year of income;
- (f) in computing the gains or profits of a petroleum company or of a petroleum service subcontractor, as those expressions are defined in the Ninth Schedule, the provisions of that Schedule shall apply.

[Act No. 18 of 1984, s. 2, Act No. 8 of 2009, s. 17, Act No. 4 of 2012, s. 10.]

4A. Income from businesses where foreign exchange loss or gain is realized

(1) A foreign exchange gain or loss realized on or after the 1st January, 1989 in a business carried on in Kenya shall be taken into account as a trading receipt or deductible expenses in computing the gains and profits of that business for the year of income in which that gain or loss was realized:

Provided that—

- (i) no foreign exchange gain or loss shall be taken into account to the extent that taking that foreign exchange gain or loss into account would duplicate the amounts of gain or loss accrued in any prior year of income; and
- (ii) the foreign exchange loss shall be deferred (and not taken into account)—
 - (a) where the foreign exchange loss is realized by a company with respect to a loan from a person who, alone or together with four or fewer other persons, is in control of that company and the highest amount of all loans by that company outstanding at any time during the year of income is more than three times the sum of the revenue reserves (retained earnings) and the issued and paid up capital of all classes of shares of the company; or
 - (b) to the extent of any foreign exchange gain that would be realized if all foreign currency assets and liabilities of the business were disposed of or satisfied on the last day of the year of income and any foreign exchange loss so deferred shall be deemed realized in the next succeeding year of income.

(1A) For the avoidance of doubt accumulated losses shall be taken into account in computing the amount of revenue reserves.

(2) The amount of foreign exchange gain or loss shall be calculated in accordance with the difference between (a times r^1) and (a times r^2) where—

- a is the amount of foreign currency received, paid or otherwise computed with respect to a foreign currency asset or liability in the transaction in which the foreign exchange gain or loss is realized;
- r^1 is the applicable rate of exchange for that foreign currency (“a”) at the date of the transaction in which the foreign exchange gain or loss is realized;
- r^2 is the applicable rate of exchange for that foreign currency (“a”) at the date on which the foreign currency asset or liability was obtained or established or on the 30th December, 1988, whichever date is the later.

(3) For the purposes of this section, no foreign exchange loss shall be deemed to be realized where a foreign currency asset or liability is disposed of or satisfied and within a period of sixty days a substantially similar foreign currency asset or liability is obtained or established.

(4) For the purposes of this section—

“**control**” shall have the meaning ascribed to it in paragraph 32(1) of the Second Schedule;

“**company**” does not include a bank or a financial institution licensed under the Banking Act (Cap. 488);

“**all loans**” shall have the meaning assigned in section 16(3);

“**foreign currency asset or liability**” means an asset or liability denominated in, or the amount of which is otherwise determined by reference to, a currency other than the Kenya Shilling.

[Act No. 10 of 1988, s. 29, Act No. 4 of 1993, s. 36, Act No. 8 of 2008, s. 24, Act No. 8 of 2009, s. 18.]

4B. Export processing zone enterprise

Where a business is carried on by an export processing zone enterprise, the provisions of the Eleventh Schedule shall apply.

[Act No. 10 of 1990, s. 40.]

5. Income from employment, etc.

(1) For the purposes of section 3(2)(a)(ii) of this Act, an amount paid to—

- (a) a person who is, or was at the time of the employment or when the services were rendered, a resident person in respect of any employment or services rendered by him in Kenya or outside Kenya; or
- (b) a non-resident person in respect of any employment with or services rendered to an employer who is resident in Kenya or the permanent establishment in Kenya of an employer who is not so resident,

shall be deemed to have accrued in or to have been derived from Kenya.

(2) For the purposes of section 3(2)(a)(ii) “**gains or profits**” includes—

- (a) any wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, or subsistence, travelling, entertainment or other allowance received in respect of employment or services rendered, and any amount so received in respect of employment or services rendered in a year of income other than the year of income in which it is received shall be deemed to be income in respect of that other year of income:

Provided that—

- (i) where any such amount is received in respect of a year of income which expired earlier than four years prior to the year of income in which it was received, or prior to the year of income in which the employment or services ceased, if earlier, it shall be deemed to be income of the year of income which expired five years prior to the year of income in which it was received, or prior to the year of income in which the employment or services ceased as the case may be; and

- (ii) where the Commissioner is satisfied that subsistence, travelling, entertainment or other allowance represents solely the reimbursement to the recipient of an amount expended by him wholly and exclusively in the production of his income from the employment or services rendered then the calculation of the gains or profits of the recipient shall exclude that allowance or expenditure; and
 - (iii) notwithstanding the provisions of subparagraph (ii), where such amount is received by an employee as payment of subsistence, travelling, entertainment or other allowance, in respect of a period spent outside his usual place of work while on official duties, the first two thousand shillings per day expended by him for the duration of that period shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of his gains or profits;
- (b) save as otherwise expressly provided in this section, the value of a benefit, advantage, or facility of whatsoever nature the aggregate value whereof is not less than thirty six thousand shillings granted in respect of employment or services rendered;
 - (c) an amount paid by the employer as a contribution to a pension fund, or a registered provident fund or scheme:

Provided that—

- (i) where the contract is for a specified term, any amount received as compensation on the termination of the contract shall be deemed to have accrued evenly over the unexpired period of the contract;
 - (ii) where the contract is for an unspecified term and provides for compensation on the termination thereof, the compensation shall be deemed to have accrued in the period immediately following the termination at a rate equal to the rate per annum of the gains or profits from the contract received immediately prior to termination;
 - (iii) where the contract is for an unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination of the contract shall be deemed to have accrued evenly in the three years immediately following such termination;
- (d) any balancing charge under Part II of the Second Schedule;
 - (e) the value of premises provided by an employer for occupation by his employee for residential purposes;
 - (f) an amount paid by an employer as a premium for an insurance on the life of his employee and for the benefit of that employee or any of his dependants other than such an amount paid to a registered or unregistered pension scheme, pension fund, provident fund or individual retirement fund;
 - (g) *Deleted by Act No. 6 of 1994, s. 34.*

(2A) (a) Where an individual is a director or an employee or is a relative of a director or an employee and has received a loan including a loan from an unregistered pension or provident fund by virtue of his position as a director or his employment, or the person to whom he is related, he shall be deemed to have received a benefit in that year of income equal to the greater of—

- (i) the difference between the interest that would have been payable on the loan received if calculated at the prescribed rate of interest and the actual interest paid on the loan; and
- (ii) zero:

Provided that where the term of the loan extends for a period beyond the date of termination of employment, the provisions of this subsection shall continue to apply for as long as the loan remains unpaid.

(b) For the purposes of this subsection—

“market lending rates” means the average 91-day treasury bill rate of interest for the previous quarter;

“prescribed rate of interest” means the following:

- (i) in the year of income commencing on the 1st January, 1990, 6 per cent;
- (ii) in the year of income commencing on the 1st January, 1991, 8 per cent;
- (iii) in the year of income commencing on the 1st January, 1992, 10 per cent;
- (iv) in the year of income commencing on the 1st January, 1993, 12 per cent;
- (v) in the year of income commencing on the 1st January, 1994, 15 per cent; and
- (vi) in the year of income commencing on or after the 1st January, 1995, 15% or such interest rate based on the market lending rates as the Commissioner may from time to time prescribe, to cover a period of not less than six months but not more than one year, whichever is the lower.

(2B) Where an employee is provided with a motor vehicle by his employer, he shall be deemed to have received a benefit in that year of income equal to the higher of—

- (a) such value as the Commissioner may, from time to time, determine; and
- (b) the prescribed rate of benefit:

Provided that—

- (i) where such vehicle is hired or leased from a third party, the employee shall be deemed to have received a benefit in that year of income equal to the cost of hiring or leasing; or
- (ii) where an employee has restricted use of such motor vehicle, the Commissioner shall, if satisfied of that fact upon proof by the employee, determine a lower rate of benefit depending on the usage of the motor vehicle.

(2C) For the purposes of subsection (2B)—

“**prescribed rate of benefit**” means the following rates in respect of each month—

- (a) in the 1996 year of income, 1% of the initial capital expenditure on the vehicle by the employer;
- (b) in the 1997 year of income, 1.5% of the initial capital expenditure on the vehicle by the employer; and
- (c) in 1998 and subsequent years of income, 2% of the initial expenditure on the vehicle by the employer.

(3) For the purposes of subsection (2)(e), the value of premises, excluding the value of any furniture or other contents so provided, shall be deemed to be—

- (a) in the case of a director of a company, other than a whole time service director, an amount equal to the higher of fifteen per centum of his total income excluding the value of those premises and income which is chargeable under section 3(2)(f), the market rental value and the rent paid by the employer;
- (b) in the case of a whole time service director, an amount equal to the higher of fifteen per centum of the gains or profits from his employment, excluding the value of those premises, and income which is chargeable under section 3(2)(f), the market rental value and the rent paid by the employer;
- (c) in the case of an agricultural employee required by the terms of employment to reside on a plantation or farm, an amount equal to ten per centum of the gains or profits from his employment:

Provided that for the purposes of this paragraph—

- (i) “**plantation**” shall not include a forest or timber plantation; and
- (ii) “**agricultural employee**” shall not include a director other than a whole time service director;
- (d) in the case of any other employee, an amount equal to fifteen per centum of the gains or profits from his employment, excluding the value of those premises or the rent paid by the employer if paid under an agreement made at arm’s length with a third party, whichever is the higher:

Provided that—

- (i) where the premises are provided under an agreement with a third party which is not at arm’s length, the value of the premises determined under this subsection shall be the fair market rental value of the premises in that year, or the rent paid by the employer, whichever is the higher; or
- (ii) where the premises are owned by the employer, the fair market rental value of the premises in that year.

(4) Notwithstanding anything to the contrary in subsection (2) “**gains or profits**” do not include—

- (a) the expenditure on passages between Kenya and any place outside Kenya borne by the employer:

Provided that this paragraph shall not apply to expenditure other than expenditure on the provision of passages for the benefit of an

employee recruited or engaged outside Kenya and who is in Kenya solely for the purpose of serving the employer and is not a citizen of Kenya;

- (b) in the case of a full-time employee or his beneficiaries (which expression includes a whole time service director, or a director who controls more than five per cent of the share capital or voting power of a company) the value of any medical services provided by the employer or medical insurance provided by an insurance provider approved by the Commissioner of Insurance and paid for by the employer on behalf of a full-time employee or his beneficiaries:

Provided that in the case of a director other than a whole time service director, the value of the services shall be subject to such limit as the Minister may, from time to time, prescribe;

- (c) an amount paid by the employer as a contribution to a registered or unregistered pension fund, provident fund, individual retirement fund or scheme:

Provided that this paragraph shall not apply to any contributions paid by an employer who is not a person chargeable to tax—

- (i) to an unregistered pension scheme, unregistered provident fund or unregistered individual retirement fund; or
- (ii) to a registered pension scheme, a registered provident fund or a registered individual retirement fund in excess of the amount specified in section 22A or 22B;
- (d) educational fees of employee's dependants or relatives disallowed under section 16(2)(a)(iv) which have been taxed in the hands of the employer;
- (e) fringe benefits subject to tax under section 12B;
- (f) the value of meals served to low income employees in a canteen or cafeteria operated or established by the employer (whether the meals are supplied by the employer or not) within his premises, subject to such conditions as the Commissioner may specify;
- (ff) for the purposes of this subsection, "**low income employee**" means an employee whose taxable income is not subject to tax at the rate of more than twenty per cent under Head B of the Third Schedule to this Act.
- (g) an amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme:

Provided that—

- (a) this paragraph shall only apply in respect of amounts not exceeding two hundred and forty thousand shillings for each year of service;
- (b) this paragraph shall not apply to any person who is eligible for deductions under section 22A.

- (h) For the purposes of this subsection—
- (i) **“beneficiaries”** means the full time employee’s spouse and not more than four children whose age shall not exceed twenty-one years; and
 - (ii) **“low income employee”** means an employee whose taxable income is not subject to tax at the rate of more than twenty per cent under Head B of the Third Schedule to this Act.

(5) Notwithstanding any other provision of this Act, the value of the benefit (excluding the value of premises as determined under subsection (3) and the value of benefit determined under subsection (2B) for the purposes of this section, shall be the higher of the cost to the employer or the fair market value of the benefit:

Provided that—

- (a) in the case of an employee share ownership plan, the value of the benefit shall be the difference between the market value, per share, and the offer price, per share, at the date the option is granted by the employer; and
 - (b) the Commissioner may, from time to time, prescribe the value where the cost or the fair market value of a benefit cannot be determined.
- (6) For the purposes of paragraph (a) of the proviso to subsection (5)—
- (a) the benefits chargeable shall accrue where such plan is registered with the Commissioner as a collective investment scheme within the meaning of the Capital Markets Act (Cap. 485A) and shall be deemed to have accrued to the employee at the end of the vesting period;
 - (b) **“offer price”** means the price at which an employer’s shares are initially offered to an employee under an employee share ownership plan;
 - (c) **“market value”**, in relation to a share means—
 - (i) where the shares are fully listed on any securities exchange operating in Kenya, the mid-market value on the date the shares were granted by the employer; or
 - (ii) where the shares are not fully listed, the price which the shares might reasonably be expected to fetch on sale in the open market, which shall be agreed upon with the Commissioner before the grant of the options;
 - (d) **“share option”** means the offer made by an employer to an employee to purchase a fixed number of shares at a fixed price, which may be paid for at the end of the vesting period;
 - (e) **“vesting period”** means a fixed period of time between the date of offer by the employer and the date after which the option to purchase can be exercised by the employee.

[Act No. 8 of 1978, s. 9, Act No. 13 of 1979, s. 5, Act No. 10 of 1987, s. 32, Act No. 8 of 1989, s. 17, Act No. 10 of 1990, s. 41, Act No. 8 of 1991, s. 54, Act No. 9 of 1992, s. 37, Act No. 4 of 1993, s. 37, Act No. 6 of 1994, s. 34, Act No. 13 of 1995, s. 75, Act No. 8 of 1996, s. 28, Act No. 8 of 1997, s. 28, Act No. 5 of 1998, s. 30, Act No. 6 of 2001, s. 43, Act No. 7 of 2002, s. 38, Act No. 15 of 2003, s. 30, Act No. 4 of 2004, s. 46, Act No. 6 of 2005, s. 21, Act No. 10 of 2006, s. 17, Act No. 9 of 2007, s. 18, Act No. 8 of 2008, s. 25, Act No. 10 of 2010, s. 21, Act No. 4 of 2012, s. 11.]

6. Income from the use of property

(1) For the purpose of section 3(2)(a)(iii) of this Act, “**gains or profits**” shall include any royalty, rent, premium or similar consideration received for the use or occupation of property.

(2) In the case of a lease or similar transaction, the income of a lessor shall be determined in accordance with such rules as may be prescribed under this Act.

[Act No. 8 of 1997, s. 29.]

7. Income from dividends

(1) For the purposes of section 3(2)(b)—

- (a) *Deleted by Act No. 8 of 1978, s. 9;*
- (b) a dividend paid by a resident company shall be deemed to be income of the year of income in which it was payable;
- (c) when, in relation to a company that is being wound up voluntarily, profits (including profits realised on the disposition of assets of the company) whether earned before or during the winding up are distributed (whether in cash or otherwise), the distribution shall be deemed to be payment of a dividend;
- (d) where any company issues debentures or redeemable preference shares to any of its shareholders and receives therefor no payment, the issue of such debentures or redeemable preference shares shall be deemed to be a payment of a dividend on the shares held by the shareholders of an amount equal to the nominal value or redeemable value, whichever is the greater, of such debentures or redeemable preference shares;
- (e) where any company issues debentures or redeemable preference shares to any of its shareholders for a sum less than their nominal value or redeemable value, whichever is the greater, the issue of such debentures or redeemable preference shares shall be deemed to include a payment of a dividend on the shares held by the shareholders of an amount equal to the excess:

Provided that this paragraph shall not apply if the sum paid for the debentures or redeemable preference shares is ninety-five per cent or more of their nominal value or redeemable value, whichever is the greater;
- (f) where a company issues ordinary or any other shares or rights to acquire shares to any of its shareholders in respect of their existing shares in a ratio not proportionate to their holding of the existing equity, such distribution shall be treated as a dividend to the recipient shareholders to the extent of the value of the proportionate increase in their ownership of the company.

(2) Notwithstanding section 3(2)(b), a dividend received by a resident company, other than a dividend received by a company which controls directly or indirectly less than twelve and one-half per cent of the voting power of the company paying the dividend, shall be deemed not to be income chargeable to tax.

(3) A dividend received by the financial institutions specified in the Fourth Schedule shall be deemed to be income chargeable to tax in accordance with this section.

[Act No. 2 of 1975, s. 5, Act No. 8 of 1978, s. 9, Act No. 9 of 1992, s. 38, Act No. 4 of 1993, s. 38, Act No. 6 of 1994, s. 35, Act No. 8 of 2008, s. 26.]

7A. Dividend tax account

(1) A company resident in Kenya shall establish and maintain a dividend tax account in accordance with this Act.

(2) The initial amount in the dividend tax account shall be established in accordance with subsection (6) and the balance of the dividend tax account as of the due date for filing a return of income as defined in section 52B shall be carried forward to the subsequent year of income.

(3) The dividend tax account shall be increased for accounting periods for the years of income commencing in or after 1993 as follows—

- (a) by one shilling for every shilling of income tax paid by the company, excluding any final withholding tax paid on qualifying dividends received by the company, after the commencement of the accounting period in respect of years of income commencing in or after 1988;
- (b) by one shilling for every shilling compensating tax paid by the company, as provided in subsection (5);
- (c) *Deleted by Act No. 8 of 2009, s. 19;*
- (d) in the case of dividends received by the company from another company one shilling multiplied by the fraction equal to $t/(1-t)$ times one shilling for every one shilling of such dividends received in accounting periods for years of income commencing in or after 1993 (where “t” is a percentage equal to the current corporation rate for the company).

(4) The dividend tax account shall be decreased by an amount equal to $t/(1-t)$ times one shilling for every one shilling paid by the company as dividends to its shareholders in accounting periods for years of income commencing in or after 1993 where such dividends are declared with respect to accounting periods for years of income commencing in or after 1988.

(5) If the amount of the dividend tax account would be decreased below zero in any instance as a result of the deduction required under subsection (4), the company shall pay compensating tax with respect to the accounting period in which the dividend causing the negative balance is paid in an amount sufficient to bring such a resulting negative balance up to zero.

(6) The initial balance in the dividend tax account shall, at the election of the company be made upon filing of a self-assessment return for the accounting period for the year of income 1993 and be either—

- (a) zero; or
- (b) an amount equal to the sum of all taxes paid by the company prior to the accounting period for the year of income 1993 in respect of accounting periods for the years of income commencing in or after 1988 (other than final withholding tax on qualifying dividends), and an amount equal to $t/(1-t)$ times all dividends received from another

company during accounting periods for years of income 1988 to 1992 less an amount equal to $t/(1-t)$ times the amount of all dividends actually paid by the company during the accounting periods for the years of income 1988 to 1992 (and not with respect to any prior years), where 't' is equal to the corporation rate of tax for the year of income 1993.

(7) For the purposes of this section, gains from trading in venture capital enterprise shares which are exempt from tax under the First Schedule shall be treated as dividends.

[Act No. 9 of 1992, s. 39, Act No. 4 of 1993, s. 39, Act No. 8 of 1997, s. 30, Act No. 9 of 2000, s. 41, Act No. 8 of 2008, s. 27, Act No. 8 of 2009, s. 19.]

8. Income from pensions, etc.

(1) For the purposes of section 3(2)(c) of this Act, any pension received by a resident individual from a pension fund or pension scheme established outside Kenya shall be deemed to have accrued in or to have been derived from Kenya to the extent to which it relates to employment or services rendered by the individual, or the husband or parent of the individual, in Kenya and the amount so derived shall be the proportion of the total pension which the length of the employment or services in Kenya, including periods of leave earned thereby, bears to the total length of employment or services in respect of which the pension is paid.

(2) For the purposes of this Act any pension or retirement annuity received by a non-resident individual from a pension fund or pension scheme established in Kenya or under an annuity contract made in Kenya shall be deemed to have accrued in or to have been derived from Kenya.

(3) For the purposes of this Act, any pension received in respect of employment by or services rendered to the Community or one of its corporations shall be deemed to have accrued in or to have been derived from Kenya—

- (a) if received by a resident individual; or
- (b) if received by a non-resident individual if the person making payment of the pension was resident in Kenya.

(4) Notwithstanding section 3(2)(c), the first three hundred thousand shillings of the total pensions and retirement annuities received by a resident individual from a registered fund or the National Social Security Fund in a year of income shall be deemed to be income not charged to tax.

(5) Notwithstanding section 3(2)(c), the following sums shall, subject to such rules as the Commissioner may prescribe, be deemed to be income not chargeable to tax—

- (a) in the case of a lump sum commuted from a registered pension or individual retirement fund, the first six hundred thousand shillings; or
- (b) in the case of a withdrawal from a registered pension or individual retirement fund upon termination of employment, the lesser of—
 - (i) the first sixty thousand shillings per full year of pensionable service with that employer starting on the later of the date the pensionable service began, or, where the employee had previously received a lump sum payment from that same employer, the date the employee's pensionable service recommenced after receipt of that lump sum; or

- (ii) the first six hundred thousand shillings; or
- (c) in the case of a lump sum paid out of a registered provident fund (or a defined contribution registered fund deemed by the Commissioner to be a provident fund for the purposes of assessing under this paragraph accumulations for the payment of lump sums other than out of a pension) the total of—
 - (i) the lesser of the first six hundred thousand shillings or the first sixty thousand shillings per full year of pensionable service with that employer starting on the later of the date the pensionable service began or, where the employee had previously received a lump sum payment from that same employer, the date the employee's pensionable service recommenced after receipt of that lump sum; and
 - (ii) where the registered fund receives no further contributions after 1990 year of income, or where the accumulated funds based on contributions prior to the 1st January, 1991 and contributions after the 31st December, 1990 are segregated, all lump sum payments based on the contributions made prior to 1st January, 1991, or, in any other case, all benefits based on amounts accumulated in the fund on the 31st December, 1990:

Provided that the trustees or provident fund managers shall have informed the Commissioner in writing by 31st December, 1991 of the accumulated balances and the members of the provident funds as of 31st December, 1990, the names of the registered funds, the names and addresses of their employer, and whether the registered provident fund has ceased receiving contributions as of 1st January, 1991 or whether the registered provident fund has segregated its funds;

- (d) in the case of a benefit paid out of the National Social Security Fund, the first six hundred thousand shillings; and
- (e) in the case of a lump sum paid out of a registered home ownership savings plan, the amount used for the purchase of an interest in or for the construction of a permanent house for occupation by the depositor within twelve months immediately following the year of withdrawal;
- (f) the total pensions and retirement annuities received by a resident individual from an unregistered pension or individual retirement fund or scheme—
 - (i) the contributions to which have not been allowed as a deduction under any other provisions of this Act; and
 - (ii) the income thereof has been taxed.

(5A) For the purposes of subsection 5(c)(ii), accumulated funds are segregated where—

- (a) the accumulated funds based on contributions prior to the 1st January, 1991 are accounted for separately from contributions after 31st December, 1990; and

- (b) the net accumulated funds on each account earn the average rate of return on all the assets in the fund at the accounting date for a year of income; and
- (c) the net accumulated funds based on contributions prior to 1st January, 1991, are made up of the accumulated balances as at 31st December, 1990 less any withdrawals from the fund plus any investment income earned on the fund up to the accounting date for a year of income.

(6) Upon the death of an employee who is a member or beneficiary of a registered fund—

- (a) the widow, widower or dependants shall qualify as a group for the same tax exempt amounts out of pension income and lump sums as are available under subsections (4) and (5) respectively as if such amounts had been received by the employee; and
- (b) where the registered fund provides for no payment of retirement benefits other than the payment of a lump sum to an estate, the first one million four hundred thousand shillings of such a lump sum payment shall be deemed to be income not chargeable to tax as income of the estate or its direct beneficiaries.

(7) Upon the death of the beneficiary of a registered individual retirement fund or registered home ownership savings plan the balance of funds shall be deemed to have been withdrawn immediately preceding the time of his death and shall be included in his income for that year, except—

- (a) where such funds have been bequeathed to the spouse, the ownership of the fund may be transferred to the spouse; or
- (b) where funds are bequeathed to his children under the age of eighteen years at the time of his death, such funds shall be included in the income of such children;
- (c) where the funds of a depositor under a registered home ownership savings plan are bequeathed to another depositor, the funds may be transferred to that depositor.

(8) Upon dissolution of the marriage of the beneficiary of a registered individual retirement fund, or registered home ownership savings plan, as part of a written agreement, all or part of the balance of funds of that beneficiary may be transferred to a registered individual retirement fund or registered house ownership savings plan, in the name of the former spouse of that beneficiary.

(9) Where the Commissioner determines that an individual retirement fund no longer complies with the registration rules, the fund shall be deemed to be no longer an individual retirement fund and the balance of the fund shall be included in the income of the beneficiary in the year of income in which the fund ceased to comply with the rules.

(9A) Where the Commissioner withdraws the registration of a home ownership savings plan, then the balance of the funds held in each depositor's account shall be included in that depositor's income with effect from the beginning of the year of income in which the grounds for the withdrawal arose,

except where such funds are transferred to a similar plan in an approved institution within twelve months of the withdrawal of the registration with the prior written approval of the Commissioner in which case such funds shall not be included in the depositor's income.

(10) For the purposes of this subsection—

- (a) pension and lumpsums paid from a public pension scheme, shall be deemed to be received from a registered pension fund or a registered provident fund, as the case may be;
- (b) any surplus funds in respect of a registered pension fund or a registered provident fund withdrawn by or refunded to an employer shall be deemed to be the income of that employer.

(11) In subsection (10), the expression “**surplus funds**” means surplus funds identified through an actuarial valuation carried out in accordance with this Act or any rules made thereunder.

[Act No. 2 of 1975, s. 5, Act No. 8 of 1985, s. 11, Act No. 10 of 1990, s. 42, Act No. 8 of 1991, s. 55, Act No. 9 of 1992, s. 40, Act No. 4 of 1993, s. 40, Act No. 6 of 1994, s. 36, Act No. 13 of 1995, s. 76, Act No. 8 of 1996, s. 29, Act No. 6 of 2001, s. 44, Act No. 7 of 2002, s. 39, Act No. 15 of 2003, s. 31, Act No. 4 of 2004, s. 47, Act No. 6 of 2005, s. 22, Act No. 8 of 2009, s. 20.]

9. Income of certain non-resident persons deemed derived from Kenya

(1) Where a non-resident person carries on the business of shipowner, charterer or air transport operator and any ship or aircraft owned or chartered by him calls at any port or airport in Kenya, the gains or profits from such business from the carriage of passengers who embark, or cargo or mail which is embarked, in Kenya shall be the gross amount received on account of the carriage and those gains or profits shall be deemed to be income derived from Kenya; but this subsection shall not apply to gains or profits from the carriage of passengers who embark, or cargo or mail which is embarked, in Kenya solely as a result of transshipment.

(2) Where a non-resident person carries on, in Kenya, the business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication, then the gains or profits from the business shall be the gross amount received for the transmission of messages which are transmitted by the apparatus established in or outside Kenya, whether or not those messages originate from Kenya, and such gains and profits shall be deemed to be income derived from Kenya.

[Act No. 10 of 2006, s. 18, Act No. 9 of 2007, s. 19.]

10. Income from management or professional fees, royalties, interest and rents

For the purposes of this Act, where a resident person or a person having a permanent establishment in Kenya makes a payment to any other person in respect of—

- (a) a management or professional fee or training fee;
- (b) a royalty;
- (c) interest and deemed interest;
- (d) the use of property;

- (e) an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
- (f) an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (e) of this section;
- (g) winnings from betting and gaming,

the amount thereof shall be deemed to be income which accrued in or was derived from Kenya:

Provided that—

- (i) this section shall not apply unless the payment is incurred in the production of income accrued in or derived from Kenya or in connexion with a business carried on or to be carried on, in whole or in part, in Kenya;
- (ii) this section shall not apply to any such payment made, or purported to be made, by the permanent establishment in Kenya of a non-resident person to that non-resident person.

[Act No. 13 of 1975, s. 2, Act No. 8 of 2008, s. 28, Act No. 8 of 2009, s. 21, Act No. 4 of 2012, s. 12.]

11. Trust income, etc., deemed income of trustee, beneficiary, etc.

(1) Any income chargeable to tax under this Act and received by any person in his capacity as a trustee, executor or administrator, shall be deemed to be income of that trustee, executor or administrator as the case may be.

(2) Where an amount included in the income of the trustee, executor or administrator under subsection (1) consists of qualifying dividends or qualifying interest, that amount shall be deemed to be an amount chargeable to tax under section 3(2)(b) and not section 3(2)(e).

(3) Any amount, received as income in a year of income by any person beneficially entitled thereto from any trustee in his capacity as such, or paid out of income by the trustee on behalf of such person, shall, subject to this Act, be deemed to be income of such, and to the extent that any such amount is received or so paid out of income chargeable to tax under this Act on that trustee it shall be deemed to be income—

- (a) in any case other than that of an annuity directed to be paid free of tax—
 - (i) of such gross amount as would, after deduction of tax at the rate paid or payable on such income by such trustee, be equal to the amount received or so paid; and
 - (ii) that has borne tax at such rate;
- (b) in the case of an annuity directed to be paid free of tax, of such gross amount as is equal to the amount of such annuity together with the amount of the sums paid by the trustee to the annuitant to meet the liability of the annuitant to tax on such annuity.

[Act No. 8 of 1991, s. 56.]

12. Imposition of instalment tax

(1) Notwithstanding any other provisions of this Act, a tax to be known as instalment tax shall be payable for the year of income commencing on or after the 1st January, 1990 by every person chargeable to tax or any person who has paid provisional tax in any year of income in accordance with the provisions of this section, but a taxpayer shall not be required to pay the instalment tax—

- (a) if to the best of his judgment and belief he will have no income chargeable to tax for that year of income other than emoluments; and
- (b) if he has reasonable ground to believe that the whole of the tax payable by him in respect of those emoluments will be recovered under section 37.

(2) The amount of instalment tax payable by any person for any current year of income shall be the lesser of—

- (a) the amount equal to the tax that would be payable by that person if his total income for the current year was an amount equal to his instalment income; or
- (b) the amount specified in the preceding year assessment multiplied by one hundred and ten per cent.

(3) The amount of tax determined under either subsection (2)(a) or (b) shall be reduced by the aggregate of the tax that has been or will be paid in the current year by way of deduction under section 12A, 17A, 35 or 37 except that the deductions under section 17A shall not apply to individuals.

(4) The amount of instalment tax required to be paid for any year of income shall be the annual amount calculated in accordance with subsections (2) and (3) but subject to the proportions as specified in the Twelfth Schedule.

(5) No instalment tax shall be payable by an individual in any year of income where the total tax payable for that year of income is an amount not exceeding forty thousand shillings.

[Act No. 14 of 1982, s. 18, Act No. 10 of 1988, s. 30, Act No. 10 of 1990, s. 43, Act No. 8 of 1991, s. 57, Act No. 13 of 1995, s. 77, Act No. 8 of 1997, s. 31.]

12A. Imposition of advance tax

(1) Notwithstanding any other provision of this Act, a tax to be known as advance tax shall be payable commencing on the 1st January, 1996 in respect of every commercial vehicle at the rates specified in the Third Schedule.

(2) The Commissioner may prescribe the conditions and procedures governing the payment of advance tax.

[Act No. 13 of 1995, s. 78, Act No. 8 of 1996, s. 30, Act No. 4 of 1999, s. 33, Act No. 10 of 2006, s. 19, Act No. 10 of 2010, s. 22.]

12B. Imposition of fringe benefit Tax

(1) Notwithstanding any other provision of this Act, a tax to be known as fringe benefit tax shall be payable commencing on the 12th June, 1998 by every employer in respect of a loan provided at an interest rate lower than the market interest rate, to an individual who is a director or an employee or is a relative of a director or an employee, by virtue of his position as director or his employment or the employment of the person to whom is related:

Provided that the fringe benefit tax shall not apply to loans advanced on or before 11th June, 1998.

(2) For the purpose of this section, the taxable value of a fringe benefit shall be—

in the case of a loan provided after 11th June, 1998, or a loan provided on or before 11th June, 1998 the terms or conditions of which are varied after 11th June, 1998, the greater of—

- (i) the difference between the interest that would have been payable on the loan if calculated at the market interest rate and the actual interest paid on the loan; and
- (ii) zero:

Provided that where the term of the loan extends for a period beyond the date of termination of employment, the provisions of this section shall continue to apply for as long as the loan remains unpaid.

(3) Fringe benefit tax shall be charged on the total taxable value of a fringe benefit provided by an employer in a month and shall be due and payable on or before the tenth day of the following month:

Provided that the fringe benefit tax charged prior to 1st January, 1999 shall be due and payable on or before 10th January, 1999.

(4) The Commissioner may prescribe the form and manner in which the fringe benefit tax shall be payable and any other period for which the market rate of interest may be applicable.

(5) The provisions of this Act in respect to fines, penalties, interest charges, objections and appeals shall apply *mutatis mutandis* to the fringe benefit tax imposed under this section.

(6) For the purpose of this section—

“**employee**” and “**relative of a director or employee**” shall have the meaning assigned thereto under section 5(2A) of this Act;

“**loan**” includes a loan from an unregistered pension or provident fund;

“**market interest rate**” means the average 91-day treasury bill rate of interest for the previous quarter.

[Act No. 5 of 1998, s. 31, Act No. 6 of 2001, s. 45.]

12C. Imposition of turnover tax

(1) Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable with effect from the 1st January, 2007, by any resident person whose income from business is accrued in or derived from Kenya, and does not exceed five million shillings during any year of income:

Provided that a person who would otherwise be liable to pay tax under this section may, by notice in writing addressed to the Commissioner, elect not to be subject to turnover tax, in which case the other provisions of this Act shall apply to such person.

(1A) Notwithstanding subsection (1), turnover tax shall not apply to—

- (a) rental income and management or professional or training fees;
- (b) the income of incorporated companies; or
- (c) any income which is subject to a final withholding tax under this Act.

(2) The Minister may, by notice in the *Gazette*, prescribe rules for the better carrying out of the provisions of this section.

[Act No. 10 of 2006, s. 20, Act No. 8 of 2008, s. 29.]

PART III – EXEMPTION FROM TAX

13. Certain income exempt from tax, etc.

(1) Notwithstanding anything in Part II, the income specified in Part I of the First Schedule which accrued in or was derived from Kenya shall be exempt from tax to the extent so specified.

(2) The Minister may, by notice in the *Gazette*, provide—

- (a) that any income or class of income which accrued in or was derived from Kenya shall be exempt from tax to the extent specified in such notice;
- (b) that any exemption under subsection (1) of this section shall cease to have effect either generally or to the extent specified in the notice.

(3) A notice under subsection (2) of this section shall be laid before the National Assembly without unreasonable delay, and if a resolution is passed by the Assembly within twenty days on which it next sits after the notice is so laid that the notice be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the issuing of a new notice.

[Act No. 13 of 1978, Sch.]

14. Interest on Government loans, etc., exempt from tax

(1) Notwithstanding anything in Part II, interest payable on the securities specified in Part II of the First Schedule shall be exempt from tax to the extent so specified.

(2) The Minister may, by notice in the *Gazette*, provide that the interest payable on any loan charged on the Consolidated Fund or on the revenues of any local authority, shall, insofar as such interest is income which accrued in or was derived from Kenya, be exempt from tax, either generally or only in respect of interest payable to persons who are not resident.

[Act No. 8 of 1978, s. 9.]

PART IV – ASCERTAINMENT OF TOTAL INCOME

15. Deductions allowed

(1) For the purpose of ascertaining the total income of any person for a year of income there shall, subject to section 16 of this Act, be deducted all expenditure incurred in such year of income which is expenditure wholly and exclusively incurred by him in the production of that income, and where under section 27 of this Act any income of an accounting period ending on some day other than the last day of such year of income is, for the purpose of ascertaining total income for any year of income, taken to be income for any year of income, then such expenditure incurred during such period shall be treated as having been incurred during such year of income.

(2) Without prejudice to sub-section (1) of this section, in computing for a year of income the gains or profits chargeable to tax under section 3(2)(a) of this Act, the following amounts shall be deducted:

- (a) bad debts incurred in the production of such gains or profits which the Commissioner considers to have become bad, and doubtful

debts so incurred to the extent that they are estimated to the satisfaction of the Commissioner to have become bad, during such year of income and the Commissioner may prescribe such guidelines as may be appropriate for the purposes of determining bad debts under this subparagraph;

- (b) amounts to be deducted under the Second Schedule in respect of that year of income;
- (bb) amounts to be deducted under the Ninth Schedule in respect of that year of income;
- (c) any expenditure of a capital nature incurred during that year of income by the owner or occupier of farm land for the prevention of soil erosion;
- (d) any expenditure of a capital nature incurred in that year of income by any person on legal costs and stamp duties in connexion with the acquisition of a lease, for a period not in excess of, or expressly capable of extension beyond, ninety-nine years, of premises used or to be used by him for the purposes of his business;
- (e) any expenditure, other than expenditure referred to in paragraph (f) of this section, incurred in connection with any business before the date of commencement of that business where such expenditure would have been deductible under this section if incurred after such date, so, however, that the expenditure shall be deemed to have been incurred on the date on which such business commenced;
- (f) in the case of the owner of premises, any sums expended by him during such year of income for structural alterations to the premises where such expenditure is necessary to maintain the existing rent:

Provided that no deduction shall be made for the cost of an extension to, or replacement of, such premises;

- (g) the amount considered by the Commissioner to be just and reasonable as representing the diminution in value of any implement, utensil or similar article, not being machinery or plant in respect of which a deduction may be made under the Second Schedule, employed in the production of gains or profits;
- (h) any entrance fee or annual subscription paid during that year of income to a trade association which has made an election under section 21(2) of this Act;
- (i) in the case of gains or profits of the owner of any land from the sale of, or the grant of the right to fell, standing timber which was growing on such land at the time such owner acquired such land—
 - (i) where such land was acquired for valuable consideration, so much of the consideration as the Commissioner may determine to be just and reasonable as representing the cost of such standing timber; or
 - (ii) where no valuable consideration was given for the land, so much of such amount as the Commissioner may determine to be just and reasonable as representing the value of such standing timber at the time the owner acquired such land, as is attributable to such timber sold during such year of income;

- (j) in the case of gains or profits from the sale of standing timber by a person who has purchased the right to fell such timber, so much of the price paid for such right as the Commissioner may determine to be just and reasonable as attributable to the timber sold during such year of income;
- (k) *Deleted by Act No. 8 of 1997, s. 32;*
- (l) any expenditure of a capital nature incurred in such year of income by the owner or tenant of any agricultural land, as defined in the Second Schedule, on clearing such land, or on clearing and planting thereon permanent or semi-permanent crops;
- (m) any expenditure incurred in that year of income in mining a specified mineral, and for the purposes of this paragraph “**expenditure**” shall have the meaning assigned to it by paragraph 16 of the Second Schedule as if specified minerals were not excluded from the operation of that paragraph;
- (n) any expenditure incurred by any person for the purposes of a business carried on by him being—
 - (i) expenditure of a capital nature on scientific research; or
 - (ii) expenditure not of a capital nature on scientific research; or
 - (iii) a sum paid to a scientific research association approved for the purposes of this paragraph by the Commissioner as being an association which has as its object the undertaking of scientific research related to the class of business to which such business belongs; or
 - (iv) a sum paid to any university, college, research institute or other similar institution approved for the purposes of this paragraph by such Commissioner for the scientific as is research mentioned in subparagraph (iii) of this paragraph;
- (o) any sum contributed in such year of income by an employer to a national provident fund or other retirement benefits scheme established for employees throughout Kenya by the provisions of any written law;
- (p) any expenditure on advertising in connexion with any business to the extent that the Commissioner considers just and reasonable; and for this purpose “**expenditure on advertising**” includes any expenditure intended to advertise or promote, whether directly or indirectly, the sale of the goods or services provided by that business;
- (q) *Deleted by Act No. 13 of 1984, s. 19;*
- (r) an amount equal to one-third of the total gains and profits from employment of an individual who is not a citizen of Kenya and—
 - (i) whose employer is a non-resident company or partnership trading for profit;
 - (ii) who is in Kenya solely for the performance of his duties in relation to his employer’s regional office, which office has been approved for the purposes of this paragraph by the Commissioner;

- (iii) who is absent from Kenya for the performance of those duties for a period or periods amounting in the aggregate to one hundred and twenty days or more in that year of income; and
- (iv) whose gains and profits from that employment are not deductible in ascertaining the total income chargeable to tax under this Act of his employer or of any company or partnership which controls, or is controlled by, that employer; and in this subparagraph “**control**” has the meaning assigned to it in paragraph 32 of the Second Schedule;
- (s) expenditure of a capital nature incurred in that year of income by a person on legal costs and other incidental expenses relating to the authorisation and issue of shares, debentures or similar securities offered for purchase by the general public;
- (ss) expenditure of a capital nature incurred in that year of income by a person, on legal costs and other incidental expenses, for the purposes of listing on any securities exchange operating in Kenya, without raising additional capital;
- (t) expenditure incurred by the lessee in the case of a lease or similar transaction as determined in accordance with such rules as may be prescribed under this Act;
- (u) expenditure of a capital nature incurred in that year of income by a person on rating for the purposes of listing on any securities exchange operating in Kenya;
- (v) club subscriptions paid by an employer on behalf of an employee;
- (w) any cash donation in that year of income to a charitable organization registered or exempt from registration under the Societies Act (Cap. 108) or the Non-governmental Organisations Co-ordination Act, 1990 (Act No. 19 of 1990, First Sch.), and whose income is exempt from tax under paragraph 10 of the First Schedule to this Act, or to any project approved by the Minister for finance;
- (x) expenditure of a capital nature incurred in that year of income, with the prior approval of the Minister, by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure.
- (y) expenditure of a capital nature incurred in the purchase or acquisition of an indefeasible right to use a fibre optic cable by a telecommunication operator, provided the amount of deduction shall be limited to five per cent per annum.

(3) Without prejudice to subsection (1), in ascertaining the total income of a person for a year of income the following amounts shall be deducted:

- (a) the amount of interest paid in respect of that year of income by the person upon money borrowed by him and where the Commissioner is satisfied that the money so borrowed has been wholly and exclusively employed by him in the production of investment income which is chargeable to tax under this Act:

Provided that—

- (i) the amount of interest which may be deducted under this paragraph shall not exceed the investment income chargeable to tax for that year of income, and where the amount of that

interest paid in that year exceeds the investment income of that year, the excess shall be carried forward to the next succeeding year and deducted only from investment income and, in so far as the interest has not already been so deducted, from investment income of the subsequent years of income; and

- (ii) for the purposes of this paragraph, “**investment income**” means dividends and interest but excludes qualifying dividends and qualifying interest;
- (b) the amount of interest not exceeding one hundred and fifty thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first four financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him during that year of income for residential purposes:
- Provided that—
- (i) if any person occupies any premises for residential purposes for part only of a year of income the deduction under this paragraph shall be reduced accordingly; and
 - (ii) no person may claim a deduction under this paragraph in respect of more than one residence;
- (c) *Deleted by Act No. 14 of 1982, s. 19;*
- (d) in the case of a partner, the amount of the excess, if any, of his share of any loss incurred by the partnership, calculated after deducting the total of any remuneration and interest on capital payable to any partner by the partnership and after adding any interest on capital payable by any partner to the partnership, over the sum of any remuneration and such interest so payable to him less any such interest so payable by him;
- (e) *Deleted by Act No. 8 of 1978, s. 9;*
- (f) the amount of any loss realized in computing, in accordance with paragraph 5(2), of the Eighth Schedule, gains chargeable to tax under section 3(2)(f); but the amount of any such loss incurred in a year of income shall be deducted only from gains under section 3(2)(f) in that year of income and, in so far as it has not already been deducted, from gains in subsequent years of income;
- (g) in the case of a business which is a sole proprietorship, the cost of medical expenses or medical insurance cover incurred for the benefit of the proprietor, subject to a limit of one million shillings per year.

(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the next four succeeding years of income:

Provided that—

- (i) any deficit for the year of income 1973 shall be regarded for the purposes of this subsection as having arisen entirely in that year of income;

- (ii) in any case where the income of a married woman is deemed to be the income of her husband, the amount of any deficit in her total income existing at the date of her marriage shall be an allowable deduction in ascertaining the total income of her husband for that year and, insofar as such deficit has not already been deducted, next succeeding four years of income, to the extent of the amount of her income which is assessed on her husband in such years of income;
- (iii) *Deleted by Act No. 4 of 2004, s. 48;*
- (iv) Any deficit incurred by a person as at 1st. January, 2010 shall be deemed to have been incurred in that year of income.

(4A) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond five years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.

(5) (a) A person to whom this subsection applies who has succeeded to any business, or to a share therein, either as a beneficiary under the will or on the intestacy of a deceased person who carried on, solely or in partnership, that business shall be entitled to a deduction in the year of income in which he so succeeds in respect of such part of any deficit in the total income of the deceased for his last year of income as is attributable to any losses incurred by the deceased in the business in that year of income or in earlier years of income.

(b) This subsection applies to a person who is the widow, widower or child, of the deceased person and to a person who was an employee or partner of the deceased person in that business; and, where there are two or more such persons, each such person shall be entitled to a deduction of so much of the whole amount deductible as his share in the business under the will or on the intestacy bears to the sum of the shares of all such persons.

(6) For the purposes of this section—

- (a) “**scientific research**” means any activities in the fields of natural or applied science for the extension of human knowledge, and when applied to any particular business includes—
 - (i) any scientific research which may lead to, or facilitate, an extension of that business or of businesses in that class;
 - (ii) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business, or in businesses of that class;
- (b) expenditure of a capital nature on scientific research does not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research but, subject thereto, does include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research.

(7) Notwithstanding anything contained in this Act—

- (a) the gains or profits of a person derived from any one of the six sources of income respectively specified in paragraph (e) of this subsection (and in this subsection called “specified sources”) shall be computed separately from the gains or profits of that person derived from any other of the specified sources and separately from any other income of that person;

- (b) where the computation of gains or profits of a person in a year of income derived from a specified source results in a loss, that loss may only be deducted from gains or profits of that person derived from the same specified source in the following year and, in so far as the loss has not already been so deducted, in subsequent years of income;
- (c) the subparagraphs of paragraph (e) of this section shall be construed so as to be mutually exclusive;
- (d) gains chargeable to tax under section 3(2)(f) of this Act and losses referred to in subsection (3)(f) of this section shall not be deemed income or losses derived or resulting from specified sources for the purposes of this subsection;
- (e) the specified sources of income are—
 - (i) rights granted to other persons for the use or occupation of immovable property;
 - (ii) employment (including former employment) of personal services for wages, salary, commissions or similar rewards (not under an independent contract of service), and a self-employed professional vocation;
 - (iii) employment the gains or profits from which is wife's employment income, profession the gains or profits from which is wife's professional income and wife's self-employment the gains or profits from which is wife's self-employment income;
 - (iv) agricultural, pastoral, horticultural, forestry or similar activities, not falling within subparagraphs (i) and (ii) of this paragraph;
 - (ivA) surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds which are deemed to be the income of the employer under section 8(10); and
 - (v) other sources of income chargeable to tax under section 3(2)(a), not falling within subparagraph (i), (ii), (iii) or (iv) of this paragraph.

(8) Deleted by Act No. 10 of 2006, s. 21.

[Act No. 2 of 1975, s. 5, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, Act No. 16 of 1977, Sch., Act No. 8 of 1978, s. 9, Act No. 6 of 1981, s. 5, Act No. 1 of 1982, s. 3, Act No. 14 of 1982, s. 19, Act No. 8 of 1983, s. 14, Act No. 13 of 1984, s. 19, Act No. 18 of 1984, s. 3, Act No. 8 of 1985, s. 12, Act No. 10 of 1986, s. 29, Act No. 10 of 1988, s. 31, Act No. 8 of 1989, s. 18, Act No. 10 of 1990, s. 44, Act No. 8 of 1991, s. 58, Act No. 9 of 1992, s. 41, Act No. 4 of 1993, s. 41, Act No. 13 of 1995, s. 79, Act No. 8 of 1996, s. 31, Act No. 8 of 1997, s. 32, Act No. 9 of 2000, s. 42, Act No. 6 of 2001, s. 46, Act No. 15 of 2003, s. 32, Act No. 4 of 2004, s. 48, Act No. 6 of 2005, s. 23, Act No. 10 of 2006, s. 21, Act No. 9 of 2007, s. 20, Act No. 8 of 2008, s. 30, Act No. 8 of 2009, s. 22.]

16. Deductions not allowed

(1) Save as otherwise expressly provided, for the purposes of ascertaining the total income of a person for any year of income, no deduction shall be allowed in respect of—

- (a) any expenditure or loss which is not wholly and exclusively incurred by him in the production of the income;

- (b) any capital expenditure, or any loss, diminution or exhaustion of capital.

(2) Notwithstanding any other provision of this Act, no deduction shall be allowed in respect of—

- (a) expenditure incurred by a person in the maintenance of himself, his family or establishment or for any other personal or domestic purpose including the following:
 - (i) *Deleted by Act No. 10 of 2006, s. 22;*
 - (ii) hotel, restaurant or catering expenses other than for meals or accommodation expenses incurred on business trips or during training courses or work related conventions or conferences, or meals provided to employees on the employer's premises;
 - (iii) vacation trip expenses except those customarily made on home leave as provided in the proviso to section 5(4)(a);
 - (iv) educational fees of employee's dependants or relatives; or
 - (v) club fees including entrance and subscription fees, except as provided in section 15(2)(v);
- (b) any expenditure or loss which is recoverable under any insurance, contract, or indemnity;
- (c) any income tax or tax of a similar nature paid on income:

Provided that, save in the case of foreign tax in respect of which a claim is made under section 41, a deduction shall be allowed in respect of income tax or tax of a similar nature, including compensation tax paid on income which is charged to tax in a country outside Kenya to the extent to which that tax is payable in respect of and is paid out of income deemed to have accrued in or to have been derived from Kenya;

- (d) any sums contributed to a registered or unregistered pension, saving, or provident scheme or fund, except as provided in section 15(2)(o), or any sum paid to another person as a pension;
- (e) a premium paid under an annuity contract;
- (f) any expenditure incurred in the production of income deemed under section 10 of this Act to have accrued in or to have been derived from Kenya where such expenditure was incurred by a non-resident person not having a permanent establishment within Kenya;
- (fa) any expenditure incurred in the production of dividend income deemed under paragraph (a) of subsection (1), of section 7 to have been derived from Kenya where such expenditure was incurred by a non-resident person not having a permanent establishment within Kenya;
- (g) *Deleted by Act No. 8 of 1978, s. 9;*
- (h) any loss incurred in any business which, having regard to the nature of the business, to the principal occupation of the owner, partners, shareholders or other persons having a beneficial interest therein, to the relationship between any such persons or to any other relevant factor, the Commissioner considers it reasonable to regard as not being carried on mainly with a view to the realization of profits; and, without prejudice to the generality of the foregoing, a business shall

be deemed not to be carried on for any year of income with a view to the realization of profits where more than one quarter of the amount of the revenue expenditure incurred in such business in such year relates to goods, services, amenities or benefits, or to the production of goods, services, amenities or benefits, which are of a personal or domestic nature enjoyed by the owner, partners, shareholders or other persons having a beneficial interest in the business or a member of the family or the domestic establishment of any such person;

- (i) expenditure payable by a person on or after 18th June, 1976, under a contract of hiring of a road vehicle other than a commercial vehicle;
- (j) interest payments in proportion to the extent that the highest amount of all loans held by the company at any time during the year of income exceeds the greater of—
 - (i) three times the sum of the revenue reserves and the issued and paid up capital of all classes of shares of the company; or
 - (ii) the sum of all loans acquired by the company prior to the 16th June, 1988 and still outstanding in that year,

or an amount of deemed interest where the company is in the control of a non-resident person alone or together with four or fewer other persons and where the company is not a bank or a financial institution licensed under the Banking Act (Cap. 488); and for the purposes of this paragraph “**control**” shall have the meaning ascribed to it in paragraph 32(1) of the Second Schedule:

Provided that this paragraph shall also apply to loans advanced to the company by a non-resident associate of the non-resident company controlling the resident company;

- (k) Deleted by Act No. 8 of 1997, s. 33;
- (l) Deleted by Act No. 8 of 2009, s. 23.

(3) For the purposes of subsection (2), the expressions—

“**all loans**” means loans, overdrafts, ordinary trade debts, overdrawn current accounts or any other form of indebtedness for which the company is paying a financial charge, interest, discount or premium;

“**deemed interest**” means an amount of interest equal to the average ninety-one day Treasury Bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the non-resident, where such loans have been provided free of interest.

(4) For the avoidance of doubt, the expression “revenue reserves” under subsection (2) includes accumulated losses.

(5) The Commissioner shall prescribe the form and manner in which the deemed interest shall be computed and the period for which it shall be applicable.

[Act No. 7 of 1976, s. 2, Act No. 11 of 1976, s. 7, Act No. 8 of 1978, s. 9, Act No. 14 of 1982, s. 20, Act No. 10 of 1988, s. 32, Act No. 10 of 1990, s. 45, Act No. 9 of 1992, s. 42, Act No. 6 of 1994, s. 37, Act No. 8 of 1997, s. 33, Act No. 6 of 2001, s. 47, Act No. 7 of 2002, s. 40, Act No. 15 of 2003, s. 33, Act No. 6 of 2005, s. 24, Act No. 10 of 2006, s. 22, Act No. 8 of 2008, s. 31, Act No. 8 of 2009, s. 23, Act No. 10 of 2010, s. 23, Act No. 4 of 2012, s. 13.]

17. Ascertainment of income of farmer in relation to stock

(1) The stock owned by a farmer at the beginning and end of each period for which he makes up the accounts of his farming business shall, in computing the gains or profits from such business, be taken into account at such value as the Commissioner may determine to be just and reasonable.

(2) An election duly made by a farmer under section 16 of the Management Act shall be binding upon him for all subsequent years of income in which he carries on the business of farming:

Provided that on application in writing by the farmer, the Commissioner may, subject to such adjustment that he may consider appropriate, permit any farmer who has elected not to take into account the value of stock to revoke his election with effect from the year of income prior to that in which the application is made.

(3) Subject to subsection (4) of this section, every farmer who has elected not to take into account the value of stock shall be charged for each year of income on all amounts received for stock disposed of by him in any circumstances and whether or not the proceeds thereof would, but for this section, be regarded as a capital receipt; and, if a part of the stock is disposed of otherwise than in the open market, he shall be charged on the cost or open market value of such stock, whichever is the lesser, so, however, that in no case shall he be charged on less than the amount received for such stock:

Provided that if the sale of any stock has been undertaken as part of the operations involved in changing from one type of farming to another and the whole or part of the amounts received therefrom has been expended in purchasing stock of a different kind, or on purposes essential to such change where no deduction is allowable under the Second Schedule in respect of such expenditure, the amounts so received, to the extent to which they are so expended, and the amount so expended, shall be disregarded for the purposes of ascertaining his total income for a year of income.

(4) Where a farmer who has elected not to take into account the value of stock ceases to carry on the business of farming, the Commissioner in ascertaining the farmer's total income for the year of income in which cessation takes place, may make such adjustment as he may determine to be just and reasonable in respect of the value of any stock held by that farmer on 1st January, 1936, or on the date on which he commenced the business whichever date is the later.

(5) Every farmer who has elected not to take into account the value of stock shall furnish, when the Commissioner so requires, a statement setting out to the best of his knowledge and belief the value of the stock held by him at any date relevant for the purposes of this section.

(6) Subject to any such adjustment referred to in subsection (4) of this section and to such adjustments as the Commissioner would have considered appropriate had an application been received under the proviso to subsection (2) of this section, the executors or administrators of a farmer who has elected not to take into account the value of stock and who dies while carrying on a business of farming shall be charged in respect of stock belonging to the deceased farmer at the time of his death—

- (a) if sold in the open market, on the realized price;

- (b) if transferred without payment to a beneficiary under the will or on the intestacy of the deceased farmer, on the open market value:

Provided that where such beneficiary succeeds to such business of farming and elects, by notice in writing to the Commissioner within one year after the end of the year of income in which the farmer dies, not to take into account the value of stock, the following provisions shall have effect in relation to any stock which was so transferred to him—

- (i) no amount shall be charged on the executors or administrators in respect of such stock transferred to him; and
- (ii) this section shall be applied to such beneficiary as if he had carried on the business of farming throughout the whole period from the date on which the deceased farmer commenced that business and had made the election which the deceased farmer made;
- (c) in any other case, on the open market value, as if such price or value had been income of such farmer for the year of income in which he died.

(7) In this section “**stock**” means all livestock and produce, and crops which have been harvested.

17A. *Repealed by Act No. 9 of 2000, s. 43.*

[Act No. 8 of 1989, s. 19, Act No. 10 of 1990, s. 46, Act No. 13 of 1995, s. 80.]

18. Ascertainment of gains of profits of business in relation to certain non-resident persons

(1) Where a non-resident person carries on any business in Kenya which consists of manufacturing, growing, mining, or producing, or harvesting, whether from the land or from the water, a product or produce, or whether or not the contract of sale is made within or without Kenya, and sells outside, or for delivery outside, Kenya such product or produce, utilizes that product or produce in any business carried on by him outside Kenya, then the gains or profit from such business carried on in Kenya shall be deemed to be income derived from Kenya and to be gains or profits such amount as would have accrued if such product or produce had been sold wholesale to the best advantage.

(2) Where a bank which is a permanent establishment of a non-resident person holds outside Kenya any deposits, assets or property acquired from its operations in Kenya, the gains or profits accruing from such deposits, assets or other property held outside Kenya shall be deemed to be income accrued in or derived from Kenya.

(3) Where a non-resident person carries on business with a related resident person and the course of such business is so arranged that it produces to the resident person either no profits or less than the ordinary profits which might be expected to accrue from that business if there had been no such relationship, then the gains or profits of such resident person from such business shall be deemed to be of such an amount as might have been expected to accrue if the course of that business had been conducted by independent persons dealing at arm's length.

(4) For the purpose of ascertaining the gains or profits of any business carried on in Kenya no deductions shall be allowed in respect of any expenditure incurred outside Kenya by a non-resident person other than expenditure in

respect of which the Commissioner determines that adequate consideration has been given; and, in particular, no deduction shall be allowed in respect of expenditure—

- (a) on remuneration for services rendered by the non-resident directors (other than whole-time service directors) of a non-resident company the directors whereof have a controlling interest therein, in excess of five per cent of the total income of such company, calculated before the deduction of such expenditure, or of twenty-five thousand shillings, whichever is the greater, so, however, that in no case shall a deduction in excess of one hundred and fifty thousand shillings shall be allowed;
- (b) on executive and general administrative expenses except to the extent that the Commissioner may determine that expenditure to be just and reasonable.

(5) When a non-resident person carries on a business in Kenya through a permanent establishment in Kenya the gains or profits of the permanent establishment shall be ascertained without any deduction in respect of interest, royalties or management or professional fees paid or purported to be paid by the permanent establishment to the non-resident person and by disregarding any foreign exchange loss or gain with respect to net assets or liabilities purportedly established between the permanent establishment in Kenya and the foreign head office or other offices of a non-resident person.

(6) For the purposes of subsection (3), a person is related to another if—

- (a) either person participates directly or indirectly in the management, control or capital of the business of the other;
- (b) a third person participates directly or indirectly in the management, control or capital of the business of both; or
- (c) an individual, who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to an individual who participates in the management, control or capital of the business of the other.

(7) For the purposes of ascertaining the gains or profits of a petroleum company, as defined in the Ninth Schedule, paragraph (b) of subsection (3) shall not apply; but paragraph 5(2)(f) of that Schedule shall apply instead.

(8) The Minister may, by rules published in the *Gazette*—

- (a) issue guidelines for the determination of the arm's length value of a transaction for purposes of this section; or
- (b) specify such requirements as he may consider necessary for the better carrying out of the provisions of this section.

[Act No. 8 of 1978, s. 9, Act No. 18 of 1984, s. 4, Act No. 8 of 1989, s. 20, Act No. 13 of 1995, s. 81, Act No. 4 of 2004, s. 49, Act No. 10 of 2006, s. 23, Act No. 10 of 2010, s. 24.]

19. Ascertainment of income of insurance companies

(1) Notwithstanding anything in this Act, this section shall apply for the purpose of computing the gains or profits of insurance companies from insurance business which is chargeable to tax; and for the purposes of this Act a mutual insurance company shall be deemed to carry on an insurance business the

surplus from which shall be ascertained in the manner provided for in this section for ascertaining gains or profits and which shall be deemed to be gains or profits which are charged to tax under this Act.

(2) Where an insurance company carries on life insurance business in conjunction with insurance business of any other class, the life insurance business of the company shall be treated as a separate business from any other class of insurance business carried on by the company.

(3) The gains or profits for any year of income from the insurance business, other than life insurance business, of a resident insurance company, whether mutual or proprietary, shall be the amount arrived at after—

- (a) taking, for such year of income, the sum of—
 - (i) the amount of the gross premiums from such business (less such premiums returned to the insured and such premiums paid on reinsurance as relate to such business); and
 - (ii) the amount of other income from such business, including any commission or expense allowance received or receivable from re-insurers and any income derived from investments held in connexion with that business; and

(b) deducting from the sum arrived at under paragraph (a) a reserve for unexpired risks referable to that business at the percentage adopted by the company at the end of that year of income and adding thereto the reserve deducted for unexpired risks at the end of the previous year of income:

Provided that the reserves are estimated on the basis of actuarial principles, including discounting of ultimate costs; and

- (c) deducting from the figure arrived at under paragraphs (a) and (b) of this subsection—
 - (i) the amount of the claims admitted in such year of income in connexion with such business (provided that claims incurred but not paid or not reported before the end of the accounting period are estimated on the basis of actuarial principles including the discounting of ultimate costs); less any amount recovered in respect thereof under reinsurance; and
 - (ii) the amount of agency expenses incurred in such year of income in connection with such business; and
 - (iii) the amount of any other expenses allowable as a deduction (excluding costs and expenses attributable to earning exempt income) as determined by the ratio of exempt investment income to the sum of investment and exempt investment income in that year of income in computing the gains or profits of that business under this Act.

(4) The gains or profits for any year of income from the insurance business, other than life insurance business, of a non-resident insurance company, whether mutual or proprietary, shall be the amount arrived at after—

- (a) taking, for such year of income, the sum of—
 - (i) the amount received or receivable in Kenya of the gross premiums from such business (less such premiums returned

to the insured and such premiums paid on reinsurance, other than to the head office of such company, as relates to such business); and

- (ii) the amount of other income from such business, not being income from investments, received or receivable in Kenya including any commission or expense allowance received or receivable from reinsurance, other than from the head office of such company, of risks accepted in Kenya; and
 - (iii) such amount of income from investments as the Commissioner may determine to be just and reasonable as representing income from investment of the reserves referable to such business done in Kenya; and
- (b) deducting from the sum arrived at under paragraph (a) a reserve for unexpired risks outstanding at the end of that year of income in respect of policies for which the premiums are received or receivable in Kenya at the percentage adopted by the company in relation to its insurance business as a whole, other than life insurance, but adding to that sum the reserve deducted for similar unexpired risks at the end of the previous year of income:

Provided that the reserves are estimated on the basis of actuarial principles, including discounting of ultimate costs; and

- (c) deducting from the figure arrived at under paragraphs (a) and (b)—
- (i) the amount of the claims admitted in that year of income in connection with that business (Provided that claims incurred but not paid or not reported before the end of the accounting period are estimated on the basis of actuarial principles including the discounting of ultimate costs); less any amount recovered in respect thereof under reinsurance; and
 - (ii) the amount of agency expenses incurred in such year of income in connexion with such business; and
 - (iii) an amount being such proportion as the Commissioner may determine to be just and reasonable of those expenses of the head office of that company as would have been allowable as a deduction in that year of income in computing its gains or profits if the company had been a resident company in so far as those amounts relate to policies the premiums in respect of which are received or receivable in Kenya.

(5) The gains or profits for a year of income from the long term insurance business of a resident insurance company, whether mutual or proprietary, shall be the sum of the following—

- (a) the amount of actuarial surplus, as determined under the Insurance Act and recommended by the actuary to be transferred from the life fund for the benefit of shareholders;
- (b) any other amounts transferred from the life fund for the benefit of shareholders; and
- (c) thirty per centum of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurance Act (Cap. 487).

(5A) Where the actuarial valuation of the life fund results in a deficit for a year of income and the shareholders are required to inject money into the life fund, the amount of money so transferred shall be treated as a negative transfer for the purposes of subsection (5)(a):

Provided that the amount of negative transfer shall be limited to the actuarial surplus recommended by the actuary to be transferred from the life fund for the benefit of shareholders in previous years of income.

(6) The gains or profits for a year of income from the long term insurance business of a non-resident insurance company, whether mutual or proprietary, shall be the sum of the following—

- (a) the same proportion of the amount of actuarial surplus recommended by the actuary to be transferred to the shareholders as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business; and
- (b) the same proportion of any other amounts transferred from the life fund for the benefit of shareholders as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business; and
- (c) the same proportion of thirty per cent of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurances Act (Cap. 487) as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business.

(6A) Where the actuarial valuation of the life fund results in a deficit for a year of income and the shareholders are required to inject money into the life fund, the proportionate amount of the money so transferred shall be treated as a negative transfer for the purposes of subsection (6)(a):

Provided that the amount of negative transfers shall be limited to the amount of actuarial surplus recommended by the actuary to be transferred from the life fund for the benefit of the shareholders in the previous years on income.

(7) In this section—

“annuity fund” means, where an annuity fund is not kept separately from the life insurance fund of the company such part of the life insurance fund as represents the liability of the company under its annuity contracts;

“company” includes a body of persons;

“exempt investment income” means dividends chargeable to tax under section 3(2)(a)(i) plus income from disposal of investment shares traded in any securities exchange operating in Kenya;

“investment income” does not include—

- (a) dividends chargeable to tax under section 3(2)(a)(i); and
- (b) income from the disposal of investment shares traded in any securities exchange operating in Kenya;

“**life insurance fund**” does not include the annuity fund, if any, nor such part of the life insurance fund as represents the liability of the company under any registered annuity contract, registered trust scheme, registered pension scheme or registered pension fund;

“**life insurance premiums**” means premiums referable to the life insurance business other than annuity business;

“**life insurance expenses**” means expenses referable to the life insurance business other than annuity business.

(8) The amount of the gains or profits from insurance business, both from life insurance and from *other* classes of insurance business, arrived at under this section shall be taken into account together with any other income of the company charged to tax in ascertaining the total income of that company.

(9) *Deleted by Act No. 8 of 2008, s. 32.*

[Act No. 8 of 1991, s. 59, Act No. 9 of 1992, s. 43, Act No. 4 of 1993, s. 42, Act No. 6 of 1994, s. 38, Act No. 8 of 1997, s. 34, Act No. 5 of 1998, s. 32, Act No. 8 of 2008, s. 32, Act No. 8 of 2009, s. 24.]

19A. Co-operative societies

(1) This section shall apply to designated co-operative societies other than—

- (a) a society which has been exempted from all the provisions of the Co-operative Societies Act (Cap. 490) under section 86 of that Act; or
- (b) a society in respect of which the Commissioner is of the opinion, having regard to the number of members composing it, the nature of its business, the manner in which its business is conducted, the extent of its transactions with non-members or any other relevant factors, is a body corporate carrying on business for its own profit.

(2) In the case of every designated co-operative society, other than a designated primary society, the income on which tax shall be charged shall be its total income for the year of income deducting therefrom an amount equal to the aggregate of bonuses and dividends declared for that year and distributed by it to its members in money or an order to pay money; but the deduction shall in no case exceed the total income of the society for that year of income.

(3) In the case of every designated primary society, other than a designated primary society which is registered and carries on business as a credit and savings co-operative society to which the provisions of subsection (4) apply, the income on which tax shall be charged shall be its total income for the year of income deducting therefrom an amount equal to the aggregate of bonuses and dividends declared for that year and distributed by it to its members in money or an order to pay money.

(4) In the case of a designated primary society which is registered and carries on business as a credit and savings co-operative society its total income for any year of income shall, notwithstanding any other provisions of this Act, be deemed to be the aggregate of—

- (a) fifty per centum of its gross income from interest (other than interest from its members);

- (b) its gross income from any right granted for the use or occupation of any property, not being a royalty, ascertained in accordance with the provisions of this Act;
- (c) gains chargeable to tax under section 3(2)(f);
- (d) any other income (excluding royalties) chargeable to tax under this Act not falling within paragraph (a), (b) or (c) ascertained in accordance with the provisions of this Act.

(5) Any loss incurred in respect of any year of income prior to the year of income prior to the year of income 1985 shall not be deductible.

(6) Where the written down value of any asset or class of assets cannot be readily ascertained, the Commissioner may, for the purpose of granting any wear and tear allowance in respect of the year of income 1985, determine the amount of the written down value of any asset or class of assets.

(7) In this section—

“**bonus**” and “**dividend**” shall, for the purposes of subsections (2) and (3), have the same meaning as in the Co-operative Societies Act;

“**designated co-operative society**” means a co-operative society registered under the Co-operative Societies Act;

“**primary society**” means a co-operative society registered under the Co-operative Societies Act the membership of which is restricted to individual persons.

[Act No. 13 of 1984, s. 20, Act No. 8 of 1985, s. 13, Act No. 6 of 2001, s. 48,
Act No. 15 of 2003, s. 34.]

20. Collective investment schemes

(1) Subject to such conditions as may be specified by the Minister under section 130—

- (a) a unit trust; or
- (b) a collective investment scheme set up by an employer for purposes of receiving monthly contributions from taxed emoluments of his employees and investing them primarily in shares traded on any securities exchange operating in Kenya;
- (c) a real estate investment trust,

registered by the Commissioner, shall be exempt from income tax except for the payment of withholding tax on interest income and dividends as a resident person as specified in the Third Schedule to the extent that its unit holders or shareholders are not exempt persons under the First Schedule.

(2) All distributions of income, and all payments for redemption of units of sale of shares received by unit holders or shareholders shall be deemed to have been already tax paid.

[Act No. 10 of 1990, s. 47, Act No. 7 of 2002, s. 41, Act No. 4 of 2012, s. 14.]

21. Members' clubs and trade associations

(1) A body of persons which carries on a members' club shall be deemed to be carrying on a business and the gross receipts on revenue account (including entrance fees and subscriptions) shall be deemed to be income from a business:

Provided that where not less than three-quarters of such gross receipts, other than gross investment receipts, are received from the members of such club, such body of persons shall not be deemed to be carrying on a business and no part of such gross receipts, other than gross investment receipts, shall be income.

(2) A trade association may elect, by notice in writing to the Commissioner, in respect of any year of income to be deemed to carry on a business charged to tax, whereupon its gross receipts on revenue account from transactions with its members (including entrance fees and annual subscriptions) and with other persons shall be deemed to be income from business for that and succeeding years of income.

(3) In this section—

“member” means—

- (a) in relation to a members' club, a person who, while he is a member, is entitled to an interest in all the assets of such club in the event of its liquidation;
- (b) in relation to a trade association, a person who is entitled to vote at a general meeting of such trade association;

“members' club” means a club or similar institution all the assets of which are owned by or held in trust for the members thereof;

“gross investment receipts” means gross receipts in respect of interest, dividends, royalties, rents, other payments for rights granted for use or occupation of property, or gains of a kind referred to in paragraph (f) of subsection (2) of section 3.

[Act No. 1 of 1982, s. 3.]

22. Purchased annuities other than retirement annuities, etc.

(1) Notwithstanding section 3(2)(c) of this Act, where any payment of an annuity to which this section applies is made, that portion of the payment which as represents the capital element thereof, as ascertained under subsection (2) of this section, shall not be deemed to be income.

(2) For the purpose of this section—

- (a) an annuity includes any amount payable on a periodic basis, whether payable at intervals longer or shorter than a year;
- (b) the portion of each payment of an annuity to which this section applies which represents the capital element thereof shall be that proportion of each such payment which the consideration or purchase price for the contract bears to the total payments—
 - (i) to be made under the contract, in the case of a contract for a term of years certain; or
 - (ii) expected at the date of the contract to be made under the contract, in the case of a contract under which the continuation of such payments depends in whole or in part upon the survival of an individual;

- (c) where the continuation of such payments depends in whole or in part upon the survival of an individual—
 - (i) if any table of mortality has been used as the basis for determining the consideration or purchase price for the contract, that table shall be used in computing the payments expected to be made under the contract, calculations being based upon complete expectation of life;
 - (ii) if no table of mortality has been used as the basis for determining the consideration or purchase price for the contract, such table of mortality as the Commissioner considers appropriate to the case shall be used in computing the payments expected to be made under the contract, calculations being based on complete expectation of life;
 - (iii) the age of that individual at the date of the contract shall be determined by subtracting the calendar year of his birth from the calendar year in which that date falls;
 - (d) where the continuation of payments depends upon the survival of an individual and where, in the event of the death of such individual before such payments aggregate a stated sum, the contract provides that the unpaid balance of the stated sum shall be paid either in a lump sum or by instalments, then the contract shall be deemed for the purpose of determining the expected term thereof to provide for the continuance of such payments thereunder for a minimum term certain equal to the nearest complete number of years required to complete the payment of the stated sum;
 - (e) where such payments commence on the expiry of a term of years or on the death of any individual, then the consideration or purchase price for the contract shall be taken to be—
 - (i) the lump sum, if any, which the individual entitled to those payments is entitled to receive in lieu thereof; or
 - (ii) if there is no lump sum, the sum ascertainable from the contract as the present value of the annuity at the date those payments commence; or
 - (iii) if there is no such sum, the present value of those payments computed as at the date the payments commence on the basis of a rate of interest of four per cent per annum and, where the payments depend upon the survival of an individual, the probabilities of survival of that individual shall be computed according to the table of mortality referred to in paragraph (c).
- (3) This section shall apply to annuities, whenever purchased or commencing, payable under a contract but shall not apply—
- (a) to any annuity payable under a registered annuity contract or a registered trust scheme; or
 - (b) to any annuity purchased under any direction in a will, or purchased to provide for an annuity payable under a will or settlement out of income of property disposed of by such will or settlement; or
 - (c) to any annuity purchased under any pension scheme or pension fund; or
 - (d) to any annuity purchased by any person in recognition of the services or past services of another person.

22A. Deductions in respect of contributions to registered pension or provident funds

(1) Notwithstanding section 16(2)(d) and (e), the deduction in respect of contributions of an employee in a year shall be limited to the lesser of—

- (a) the sum of the contributions made by the employee to registered funds in the year; or
- (b) thirty per cent of the employee's pensionable income in the year; or
- (c) two hundred and forty thousand shillings (or, where contributions are made to registered funds of the employer in respect of a part year of service of the member, twenty thousand five hundred shillings per month of service).

(2) Notwithstanding section 16(2)(d) and (e), the deduction in respect of the contributions made by an employer in a year under defined contribution provisions of registered funds shall be limited to the sum of the deductible contributions of the employer in the year under defined contribution provisions of registered funds on behalf of members of the funds:

Provided that, in respect of each member, the sum of the deductible contributions of an employer in a year under the defined contribution provisions of registered funds on behalf of a member of a registered fund means the amount by which the lesser of—

- (a) the sum of the contributions in the year made by the employer on behalf of the member under defined contribution provisions of registered funds including contributions made out of surplus funds as required under section 22 (6); and by the member to registered funds of the employer;
- (b) thirty per cent of the member's pensionable income from the employer; or
- (c) two hundred and forty thousand shillings (or, where contributions are made to registered funds of the employer in respect of a part year of service of the member, twenty thousand five hundred shillings per month of service),

exceeds the deductible contributions made by the member in the year to registered funds of the employer under subsection (1).

(3) Notwithstanding section 16(2)(d) and (e) the deduction in respect of the contributions made by an employer in a year under defined benefit provisions of registered funds shall be limited to the amount by which the lesser of—

- (a) the sum of the contributions made by the employer and by the employees in the year to registered funds in respect of members of the defined benefit registered funds of the employer; or
- (b) thirty per cent of the sum of the pensionable incomes from the employer in the year of members of defined benefit registered funds of the employer; or
- (c) two hundred and forty thousand shillings times the number of full-year members of defined benefit registered funds of the employer,

exceeds the sum of—

- (i) the deductible contributions made in the year to registered funds of the employer by members of registered funds of the employer under subsection (1); and
- (ii) the amounts deducted by the employer for the year for contributions made under defined contribution provisions of registered funds under subsection (2) in respect of the members of the defined benefit registered funds.

(4) In determining the deductible amounts that can be made to registered funds by employees and by employers, subsection (1) shall be applied before subsection (2) and subsection (2) shall be applied before subsection (3).

(5) Pension funds in respect of an employee may be transferred to another registered fund or registered individual retirement fund and not be treated as a withdrawal under section 3(2)(c)—

- (a) where an employee retires or terminates his employment with an employer and joins the services of another employer and requests funds to be transferred from the former employer's registered fund to the new employer's registered fund; or
- (b) where an employer establishes a new registered fund and transfers the existing pension rights of an employee to that new registered fund; or
- (c) where an employee terminates his employment with an employer and requests funds, which would otherwise be withdrawn or commuted as a lump sum, to be transferred to a registered individual retirement fund; or
- (d) where an employee and the employer agree mutually to transfer the funds relating to the existing retirement benefit rights of the employee from one registered fund of the employer to another registered fund of that employer provided that the trust deeds of both registered funds allow such a transfer; or
- (e) where an individual beneficiary directs that all funds in a registered individual retirement fund be transferred directly to another such fund:

Provided that, in all cases, the Commissioner is notified in such form as he may from time to time direct.

(6) Where a defined contribution registered fund is determined by an audit to have surplus funds, such funds shall be allocated to the accounts of members in lieu of contributions by an employer in each subsequent year until the surplus is exhausted.

(7) Where a registered fund is wound up, any surplus funds therein shall be deemed to be the funds of the employer and shall be immediately withdrawn by the employer unless the trust deed in respect of such registered fund specifies the contrary.

(8) For the purposes of this section, contributions made to the National Social Security Fund shall be deemed to be contributions made to a defined contribution registered fund.

[Act No. 10 of 1990, s. 48, Act No. 8 of 1991, s. 60, Act No. 9 of 1992, s. 44, Act No. 4 of 1993, s. 43, Act No. 6 of 1994, s. 39, Act No. 13 of 1995, s. 82, Act No. 8 of 1996, s. 32, Act No. 8 of 1997, s. 35, Act No. 5 of 1998, s. 33, Act No. 4 of 1999, s. 34, Act No. 9 of 2000, s. 44, Act No. 6 of 2005, s. 25.]

22B. Deductions in respect of registered individual retirement funds

(1) An individual who is not a member of a registered fund or a public pension scheme at any time in a year of income commencing on or after the 1st January, 1994 shall be eligible to contribute to a registered individual retirement fund up to the amount deductible under subsection (2).

(2) Notwithstanding the provisions of section 16(2)(d) and (e), the deduction in respect of contributions of an individual to a registered individual retirement fund in a year shall be limited to the lesser of—

- (a) the sum of the contributions made by the individual or by the employer of the individual on his behalf on or before the 31st of December of the year; or
- (b) thirty per cent of pensionable income of the individual in that year; or
- (c) two hundred and forty thousand shillings (or, where the contributions are made on behalf of the individual by his employer in respect of a part year of service of the individual, twenty thousand shillings per month of service) reduced by the amount of the contributions made by the individual or by an employer on behalf of the individual to the National Social Security Fund in that year.

(3) All funds maintained by an individual in a registered individual retirement fund shall be held in one account with a qualified institution.

[Act No. 9 of 1992, s. 45, Act No. 6 of 1994, s. 40, Act No. 13 of 1995, s. 83, Act No. 8 of 1996, s. 33, Act No. 8 of 1997, s. 36, Act No. 5 of 1998, s. 34, Act No. 4 of 1999, s. 35, Act No. 9 of 2000, s. 45, Act No. 4 of 2004, s. 50, Act No. 6 of 2005, s. 26.]

22C. Registered home ownership savings plan

(1) A depositor shall in any year of income commencing on or after 1st January, 1996 be eligible to deposit funds with a registered home ownership savings plan up to the amount deductible under subsection (2).

(2) Notwithstanding the provisions of section 16(2)(d), deduction shall be allowed in respect of the funds of a depositor under a registered home ownership savings plan in the qualifying year and the subsequent nine years of income, subject to a maximum of forty-eight thousand shillings per year of income or four thousand shillings in respect of each month:

Provided that for any year of income commencing on or before the 1st day of January, 2007, any interest income earned by a depositor on deposits of upto a maximum of three million shillings shall be exempt from tax.

(3) All deposits made under a registered home ownership savings plan shall be held in an account with an approved institution.

(4) Deposits in a registered home ownership savings plan shall be invested in accordance with the prudential guidelines issued by the Central Bank.

(5) A depositor may with the prior written approval of the Commissioner transfer his deposits from one approved institution to another which operates a registered home ownership savings plan.

(6) A transfer made under subsection (5) shall not be considered as a withdrawal under section 3(2)(c).

(7) A registered home ownership savings plan shall be operated in such manner as may be prescribed.

(8) For the purposes of this section and section 8—

“approved institution” means a bank or financial institution registered under the Banking Act (Cap. 488), an insurance company licensed under the Insurance Act (Cap. 487) or a building society registered under the Building Societies Act (Cap. 489);

“depositor” means an individual who has attained the age of eighteen years and does not directly or indirectly or through his spouse, child, corporation, registered business name, or any other way own an interest in a permanent house, and is not and has not previously been a depositor under a registered home ownership savings plan;

“permanent house” means a residential house that a financial institution would accept as collateral for a mortgage, and includes any part or portion of a building, used or constructed, adapted or designed to be used for human habitation as a separate tenancy for one family only, whether detached, semi-detached or separated by party walls or floors from adjoining buildings or part or portion of such building, together with such outbuildings as are reasonably required to be used or enjoyed therewith;

“qualifying assets” Deleted by Act No. 9 of 2007, s. 21;

“qualifying year” means the year in which the depositor first makes deposits under a registered home ownership savings plan.

[Act No. 13 of 1995, s. 84, Act No. 5 of 1998, s. 35, Act No. 10 of 2006, s. 24, Act No. 9 of 2007, s. 21.]

23. Transactions designed to avoid liability to tax

(1) Where the Commissioner is of the opinion that the main purpose or one of the main purposes for which a transaction was effected (whether before or after the passing of this Act) was the avoidance or reduction of liability to tax for any year of income, or that the main benefit which might have been expected to accrue from the transaction in the three years immediately following the completion thereof was the avoidance or reduction of liability to tax, he may, if he determines it to be just and reasonable, direct that such adjustments shall be made as respects liability to tax as he considers appropriate to counteract the avoidance or reduction of liability to tax which could otherwise be effected by the transaction.

(2) Without prejudice to the generality of the powers conferred by subsection (1) of this section, those powers shall extend—

- (a) to the charging to tax of persons who, but for the adjustments, would not be charged to the same extent;
- (b) to the charging of a greater amount of tax than would be charged but for the adjustments.

(3) Any direction of the Commissioner under this section shall specify the transaction or transactions giving rise to the direction and the adjustments as respects liability to tax which the Commissioner considers appropriate.

24. Avoidance of tax liability by non-distribution of dividends

(1) Where the Commissioner is of the opinion that a private company has not distributed to its shareholders as dividends within a reasonable period, not

exceeding twelve months, after the end of its accounting period such part of its income for that period which could be so distributed without prejudice to the requirements of the company's business, he may direct that that part of the income of the company shall be treated for the purposes of this Act as having been distributed as a dividend to the shareholders in accordance with their respective interests and shall be deemed to have been paid on a date twelve months after the end of that accounting period.

(2) The Commissioner may direct that a charge be made upon a company in respect of adjustments to the liability of a shareholder as a result of a direction under subsection (1):

Provided that—

- (i) if such a charge is made, such company shall be entitled to recover from the shareholder the amount of tax attributable to the adjustment made in respect of such shareholder; and
- (ii) where an adjustment is made under this section relating to the distributable profits of a company and such profits are subsequently distributed, the proportionate share therein of a shareholder shall be excluded in computing the total income of that shareholder.

(3) *Deleted by Act No. 8 of 1978, s. 9.*

(4) A private company may at any time before making a distribution of a dividend to its shareholders inquire of the Commissioner whether the distribution would be regarded by him as sufficient for the purpose of subsection (1) of this section, and the Commissioner, after calling on the company for such information that he may reasonably require, shall advise the company whether or not he proposes to take action under this section.

(5) Where under this section part of the income of a company is treated as having been distributed and divided to its shareholders and in consequence thereof, another company is treated as having received a dividend, then for the purpose of applying the provisions of subsection (1) of this section to the other company, the dividend which it is treated as having received shall be deemed to be part of such income of the other company available for distribution by such other company to its shareholders as dividends.

25. Income settled on children

(1) Where, under any settlement, income is paid during the life of the settlor to or for the benefit of a child of the settlor in a year of income, such income shall be deemed to be income of the settlor for such year of income and not income of any other person:

Provided that this subsection shall not apply to any year of income in which—

- (i) the income so paid does not exceed one hundred shillings; or
- (ii) the child attains the age of nineteen years.

(2) For the purposes of, but subject to, this section—

- (a) income which is dealt with under a settlement so that it, or assets representing it, will or may become payable or applicable to or for

the benefit of a child of the settlor in the future (whether on the fulfilment of a condition, or the happening of a contingency, or as the result of the exercise of a power of discretion, or otherwise) shall be deemed to be paid to or for the benefit of that child;

- (b) any income so dealt with which is not required by the settlement to be allocated at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable;
- (c) in relation to any settlor, only income originating from that settlor shall be taken into account as income paid under the settlement to or for the benefit of a child of the settlor.

(3) Where under subsection (1) of this section tax is charged on and is paid by the person by whom the settlement was made, that person shall be entitled to recover from any trustee or other person to whom the income is payable under the settlement the amount of the tax so paid, and for that purpose to require the Commissioner to furnish to him a certificate specifying the amount of the tax so paid, and a certificate so furnished shall be conclusive evidence of the facts appearing therein.

(4) Where the amount of the tax chargeable upon any person for any year of income is, by reason of subsection (1) of this section, affected by tax deducted from the income under Head B of Part VI, the amount by which the tax is affected shall, if the amount of tax is thereby reduced, be paid by him to the trustee or other person to whom the income is payable under the settlement or, where there are two or more such persons, shall be apportioned among those persons as the case may require; and if any question arises as to the amount of a payment or as to any apportionment to be made under this subsection, that question shall be decided by the Commissioner whose decision thereon shall be final.

(5) Any income which is deemed under this section to be the income of a person shall be deemed to be the highest part of his income.

(6) This section shall apply to every settlement, wheresoever it was made or entered into and whether it was made or entered into before or after the commencement of this Act, except a settlement made or entered into before 1st January, 1939, which immediately before that date was irrevocable, and shall (where there is more than one settlor or more than one person who made the settlement) have effect in relation to each settlor as if he were the only settlor.

(7) In this section—

- (a) “**child**” means a child under the age of nineteen years and includes a step-child, an adopted child and an illegitimate child;
- (b) “settlement” includes any disposition, trust, covenant, agreement, arrangement, or transfer of assets, but does not include any disposition, trust, covenant, agreement, arrangement, or transfer of assets, resulting from an order of a court unless that order is made in contemplation of this provision;

- (c) “settlor”, in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and any person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement;
- (d) reference to income originating from a settlor are references to—
 - (i) income from property originating from that settlor; and
 - (ii) income provided directly or indirectly by that settlor;
- (e) references to property originating from a settlor are references to—
 - (i) property which that settlor has provided directly or indirectly for the purposes of the settlement; and
 - (ii) property representing that property; and
 - (iii) so much of any property which represents both property so provided and other property as, on such apportionment as the Commissioner may determine to be just and reasonable, represents the property so provided;
- (f) references to—
 - (i) property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person;
 - (ii) property which represents other property include references to property which represents accumulated income from that other property.

(8) Where, under this section, income is deemed to be income of the settlor, it shall be deemed to be income received by him as a person beneficially entitled thereto under the settlement.

26. Income from certain settlements deemed to be income of settlor

(1) All income which in a year of income accrued to or was received by any person under a settlement from assets remaining the property of the settlor shall, unless such income is deemed under section 25 of this Act to be income of the settlor for an earlier year of income, be deemed to be income of the settlor for the year of income in which it so accrued to or was received by that person and not income of any other person whether or not such settlement is revocable and whether it was made or entered into before or after the commencement of this Act.

(2) All income which in any year of income accrued to or was received by a person under a revocable settlement shall be deemed to be income of the settlor for such year of income and not income of any other person.

(3) Where in any year of income the settlor, or a relative of the settlor, or any other person, under the direct or indirect control of the settlor or any of his relatives or the settlor and any of his relatives, by agreement with the trustees of a settlement in any way, whether by borrowing or otherwise, makes use of

income arising, or of accumulated income which has arisen, under the settlement to which he is not entitled thereunder, then the amount of such income or accumulated income so made use of shall be deemed to be income of such settlor for such year of income and not income of any other person.

(4) For the purposes of this section, a settlement shall be deemed to be revocable if under its terms the settlor—

- (a) has a right to reassume control, directly or indirectly, over the whole or any part of the income arising under the settlement or of the assets comprised therein; or
- (b) is able to have access, by borrowing or otherwise, to the whole or any part of the income arising under the settlement or of the assets comprised therein; or
- (c) has power, whether immediately or in the future and whether with or without the consent of any other person, to revoke or otherwise determine the settlement and in the event of the exercise of such power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property comprised in the settlement or to the income from the whole or any part of such property:

Provided that a settlement shall not be deemed to be revocable by reason only that under its terms the settlor has a right to reassume control, directly or indirectly, over income or assets relating to the interest of any beneficiary under the settlement in the event that the beneficiary should predecease him.

(5) In this section—

“**relative**” of a person means—

- (a) his spouse;
- (b) any ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, step-father, step-mother, step-child, adopted child, and, in the case of an adopted child, his adopter or adopters;
- (c) the spouse of any such relative referred to in paragraph (b);

“**settlement**” includes any disposition, trust, covenant, agreement, arrangement, or transfer of assets, other than—

- (a) a settlement made for valuable and sufficient consideration;
- (b) any agreement made by an employer to confer a pension upon an employee in respect of any period after the cessation of employment with such employer, or to provide an annual payment for the benefit of the widow or any relative or dependant of that employee after his death, or to provide a lump sum to an employee on the cessation of such employment.

(6) Where, under this section, tax is charged on and is paid by the settlor, the settlor shall be entitled to recover from the trustees or other person to whom the income is payable under the settlement the amount of the tax so paid, and for that purpose to require the Commissioner to furnish to him a certificate specifying the amount of the tax so paid, and any certificate so furnished shall be conclusive evidence of the facts appearing therein.

(7) Where, under this section, income is deemed to be income of the settlor, it shall be deemed to be income received by him as a person beneficially entitled thereto under the settlement.

27. Accounting periods not coinciding with year of income, etc.

(1) Where any person usually makes up the accounts of his business for a period of twelve months ending on any day other than 31st December, then, for the purpose of ascertaining his total income for any year of income, the income of any such accounting period ending on such other date shall, subject to such adjustment as the Commissioner may consider appropriate, be taken to be income of the year of income in which the accounting period ends—

- (a) in the case of a person other than an individual, as regards all income charged under section 3 of this Act; and
- (b) in the case of an individual, as regards all income charged under that section other than gains or profits from any employment or services rendered.

(1A) A person carrying on an incorporated business may subject to the prior written approval of the Commissioner alter the date to which the accounts of the business are made up.

(1B) A person seeking the approval of the Commissioner under subsection (1A) shall apply in writing to the Commissioner at least six months before the date to which the accounts are intended to be made up.

(1C) The Commissioner shall within six months from the date of receipt of the application communicate his decision in writing to the applicant.

(2) Where a person makes up the accounts of his business for a period greater or less than twelve months, the Commissioner may, subject to such adjustments as he may consider appropriate, including the assessment for a year of income which, but for any alteration in the date to which the accounts of the business are made up, would have been assessed for that year of income, treat the income of that accounting period as income of the year of income in which the accounting period ends, and tax shall be charged accordingly.

(3) The accounting period of a person carrying on any unincorporated business shall be the period of twelve months ending on 31st December in each year; and

(4) Any person to whom subsection (3) applies shall not later than 31st December, 1998 change the accounting date to comply with the provisions of that subsection.

[Act No. 7 of 1976, s. 2, Act No. 8 of 1996, s. 34.]

28. Income and expenditure after cessation of business

(1) Where a sum is received by any person after the cessation of his business which, if it had been received prior to such cessation, would have been included in the gains or profits from such business, then, to the extent to which such sum has not already been included in such gains or profits, such sum shall be income of such person for the year of income in which such sum is received.

(2) Where any sum is paid by any person after the cessation of his business which, if it had been paid prior to such cessation, would have been deductible in

computing his gains or profits from such business, then, to the extent to which such sum has not already been deducted in computing such gains or profits, it shall be deducted in ascertaining his total income for the year of income in which it is paid and to the extent that such sum or remainder of such sum, as the case may be, cannot be so deducted, it shall be deducted in ascertaining his total income for the year of income in which such business ceased.

PART V – PERSONAL RELIEF

29. General

(1) Subject to this section and to section 77, a resident individual who for a year of income is in receipt of taxable income and has furnished a return of income in respect of that year of income, shall, in respect of that year of income, be entitled to a personal relief which shall be set off against tax payable by him for that year of income at the rate and subject to the limitation specified in Head A of the Third Schedule:

Provided that—

- (i) notwithstanding that an individual has furnished no such return of income, he shall, for the purposes of section 37, be given the personal relief which he will be entitled to for that year of income; and
- (ii) nothing in this section shall prevent the Commissioner from granting to an individual in an assessment made under subsection (3) of section 73 that personal relief.

[Act No. 8 of 1997, s. 37.]

(2) On any change of relevant circumstances occurring during any year of income, an individual shall be entitled only to the proportion of the amount of the personal relief which he was entitled to at the commencement of such year of income as—

- (a) the number of full months in such year of income up to the end of the month in which he ceased to be resident; or
- (b) the number of full months in such year of income from the commencement of the month in which he become resident,

as the case may be, bears to twelve; and in this subsection “**relevant circumstances**” means the death or departure referred to in subsection (3) or the arrival referred to in subsection (4) of this section.

(3) Where an individual, having been a resident individual, dies or departs from Kenya with the intention of permanently leaving Kenya, he shall, in respect of that year of income, be deemed to have been resident for the number of months in such year of income up to and including the month in which he dies or so departs, as the case may be:

Provided that, where such individual is entitled to leave with pay following cessation of his employment in Kenya and part of such leave relates to the period after his departure from Kenya, he shall be deemed for the purposes of this section to have departed from Kenya on the date when the leave expires.

(4) When an individual arrives in Kenya with the intention of becoming resident therein at any time after the beginning of any year of income, he shall, in respect of such year of income, be deemed to have been resident for the number of months in such year of income from and including the month in which he arrived.

[Act No. 8 of 1997, s. 38.]

30. Personal relief

A resident individual in receipt of taxable income shall be entitled to a tax relief in this Act referred to as the personal relief.

[Act No. 12 of 1977, s. 5, Act No. 8 of 1996, s. 35.]

31. Insurance relief

(1) A resident individual who proves that in a year of income—

- (a) he has paid a premium for an insurance made by him on his life, or on the life of his wife or of his child and that the insurance secures a capital sum whether or not in conjunction with another benefit, and that the insurance is made with an insurance company lawfully carrying on in Kenya the business of life insurance, and that sums payable under the insurance are payable in Kenya in the lawful currency of Kenya; or
- (b) his employer has paid a premium for that insurance on the life, and for the benefit, of that individual which is charged with tax under this Act on that individual; or
- (c) he, as well as his employer, has paid a premium for the insurance referred to in paragraph (b),

shall, for that year of income, be entitled to a personal relief in this Act referred to as the insurance relief:

Provided that—

- (i) no insurance relief shall be granted in respect of that part of a premium for an insurance as secures a benefit which may, at the option of the assured, be withdrawn at any time prior to the determination of the insurance, and in that case the proportion of premiums otherwise eligible for relief, if any, shall be the amount that the Commissioner may determine to be just and reasonable;
- (ii) no relief shall be granted in respect of a premium for an insurance unless the person claiming the relief furnishes evidence as to the nature and conditions of the insurance and such other particulars as may be required by the Commissioner;
- (iii) an education policy with a maturity period of at least ten years shall qualify for relief; and
- (iv) the provisions of this section shall apply only to life or education policies whose term commences on or after 1st January, 2003;
- (v) a health policy whose term commences on or after 1st January, 2007 shall qualify for relief;
- (vi) where a policy is surrendered before its maturity, all the relief granted to the policyholder shall be recovered from the surrender value of the policy and remitted to the Commissioner by the insurer.

(2) In this section “**child**”, means any child of the resident individual and includes a step-child, an adopted child and an illegitimate child who was under the age of eighteen years on the date the premium was paid.

[Act No. 8 of 1991, s. 61, Act No. 13 of 1995, s. 85, Act No. 8 of 1996, s. 36, Act No. 7 of 2002, s. 42, Act No. 10 of 2006, s. 25.]

32. Deleted by Act No. 8 of 1991, s. 62.

[Act No. 12 of 1977, s. 5.]

33. Deleted by Act No. 8 of 1996, s. 37.

PART VI – RATES, DEDUCTIONS AND SET-OFF OF TAX AND DOUBLE
TAXATION RELIEF

A–Rates of Tax

34. Rates of tax

(1) Subject to this section—

- (a) tax upon the total income of an individual, other than that part of the total income comprising wife's employment income fringe benefits and the qualifying interest, shall be charged for a year of income at the individual rates for that year of income;
- (b) tax upon that part of the total income which consists of wife's employment income, wife's professional income rate and wife's self-employment income rate other than income arising from fringe benefits shall be charged for a year of income at the wife's employment income rate, wife's professional income rate and wife's self-employment income rate, as the case may be, for that year of income;
- (c) tax upon that part of the total income of an individual that comprises the qualifying interest shall be charged for a year of income at the qualifying interest rate of tax for that year of income;
- (d) tax upon that part of the total income of a person that comprises the qualifying dividends shall be charged for a year of income at the qualifying dividend rate of tax for that year of income;
- (e) tax upon the total income of a person other than an individual shall be charged at the corporation rate for that year of income;
- (f) tax upon that part of total income that comprises dividends other than qualifying dividends shall be charged in a year of income at the resident withholding rate in respect of a dividend specified in the Third Schedule;
- (g) tax upon the total fringe benefits provided by an employer shall be charged at the resident corporation rate for that year of income.
- (h) tax upon gross receipts of a person chargeable to tax under section 12C shall be charged at the resident rate for that year of income;

(1A) Where the total income referred to in paragraph (a) of subsection (1) includes net capital gain, and the individual rates of tax payable on a part of that income exceed thirty-five per cent (which part is in this subsection called "the relevant part")—

- (a) the tax payable on such portion of the relevant part which is net capital gain shall, notwithstanding any other provisions of this Act, be at the rate of thirty-five per cent; and
- (b) the tax payable on the balance of the relevant part shall be computed by reference to the individual rates of tax above thirty-five per cent that would apply if the income referred to in paragraph (a) of this subsection had been the top slice of income.

(1B) In subsection (1A)—

“**net capital gain**” means income chargeable to tax under section 3(2)(f) reduced in accordance with section 15(8);

“**top slice of income**” means that part of the income which attracts the highest rates of tax.

(2) Tax upon the income of a non-resident person not having permanent establishment in Kenya which consists of—

- (a) a management or professional fee;
- (b) a royalty;
- (c) a rent, premium or similar consideration for the use or occupation of property;
- (d) a dividend;
- (e) interest;
- (f) a pension or retirement annuity;
- (g) any payment in respect of any appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
- (h) any payment in respect of an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (g) of this subsection;
- (i) winnings from betting and gaming,

shall be charged at the appropriate non-resident rate in force at the date of payment of such income and shall not be charged to tax under subsection (1).

(3) *Repealed by Act No. 8 of 1978, s. 9.*

(4) In this section “person” does not include a partnership.

[Act No. 2 of 1975, s. 5, Act No. 13 of 1975, s. 2, Act No. 8 of 1978, s. 9, Act No. 12 of 1980, s. 3, Act No. 6 of 1981, s. 5, Act No. 10 of 1987, s. 33, Act No. 10 of 1988, s. 33, Act No. 10 of 1990, s. 49, Act No. 9 of 1992, s. 46, Act No. 6 of 1994, s. 41, Act No. 5 of 1998, s. 36, Act No. 9 of 2007, s. 22, Act No. 4 of 2012, s. 15.]

34A. *Deleted by Act No. 8 of 1978, s. 9.*

[Act No. 7 of 1976, s. 2.]

B—Deduction of Tax

35. Deduction of tax from certain income

(1) Every person shall, upon payment of any amount to any non-resident person not having a permanent establishment in Kenya in respect of—

- (a) a management or professional fee or training fee except—
 - (i) a commission paid to a non-resident agent in respect of flowers, fruits or vegetables exported from Kenya and auctioned in any market outside Kenya and audit fees for analysis of maximum residue limits paid to a non-resident laboratory or auditor; or

- (ii) a commission paid by a resident air transport operator to a non-resident agent in order to secure tickets for international travel;
- (b) a royalty;
- (c) a rent, premium or similar consideration for the use or occupation of property, except aircraft or aircraft engines, locomotives or rolling stock:

Provided that—

- (i) where the bond, loan, claim, obligation or other evidence of indebtedness is acquired by a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule from a non-resident person, such an exempt person or financial institution shall deduct tax from the difference between the acquisition price and the original issue price; and
- (ii) where a non-resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner;
- (d) a dividend;
- (e) interest and deemed interest;
- (f) a pension or retirement annuity:

Provided that for the purposes of this paragraph, contractual fee within the meaning of “**management or professional fee**” shall mean payment for work done in respect of building, civil or engineering works;

- (g) any appearance at, or performance in, a place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
- (h) any activity by way of supporting, assisting or arranging any appearance or performance referred to in paragraph (g) of this subsection, which is chargeable to tax, deduct therefrom tax at the appropriate non-resident rate;
- (i) *Deleted by Act No. 7 of 2002, s. 43;*
- (j) winnings from betting and gaming.

(2) *Deleted by Act No. 8 of 1978, s. 9.*

(3) A person shall, upon payment of an amount to a person resident or having a permanent establishment in Kenya in respect of—

- (a) a dividend; or
- (b) interest, other than interest paid to a financial institution specified in the Fourth Schedule which is resident or which has a permanent establishment in Kenya, including interest arising from a discount

upon final satisfaction or redemption of a debt, bond, loan, claim, obligation or other evidence of indebtedness measured as the original issue discount, other than interest or discounts paid to a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule:

Provided that—

- (i) where the bond, loan, claim, obligation or other evidence of indebtedness is acquired by a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule from the resident person, such an exempt person or financial institution shall deduct tax from the difference between the acquisition price and the original issue price; and
- (ii) where the resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner;
- (c) an annuity payment excluding that portion of the payment which represents the capital element; or
- (d) a commission or fee paid or credited by an insurance company to any person for the provision, whether directly or indirectly, of an insurance cover to any person or group of persons (except a commission or fee paid or credited to another insurance company);
- (e) a pension or a lump sum commuted or withdrawn from a registered pension fund or a lump sum out of a registered provident fund in excess of the tax exempt amounts specified in section 8(4) and (5), or any amount paid out of a registered individual retirement fund, or a benefit paid out of the National Social Security Fund in excess of the tax exempt amount specified in section 8(5); or
- (ee) surplus funds withdrawn from or paid out of registered pension or provident funds;
- (f) management or professional fee or training fee, the aggregate value of which is twenty-four thousand shillings or more in a month:

Provided that for the purposes of this paragraph, contractual fee within the meaning of “**management or Professional fee**” shall mean payment for work done in respect of building, civil or engineering works;

- (g) a royalty;
- (h) *Deleted by Act No. 10 of 2012, s. 25.*
- (i) winnings from betting and gaming;

(3A) Every person shall upon payment—

- (a) to an individual or a non-resident body of persons in respect of the gross amount or aggregate consideration of a transaction the income or proceeds from which is subject to tax pursuant to section 3(2)(f); or
- (b) to any resident body of persons in respect of the gross amount or aggregate consideration of any land transaction the income or proceeds from which is subject to tax pursuant to section 3(2)(f),

deduct tax therefrom at the appropriate rate.

(3B) The provisions of subsection (3A) of this section shall not apply where a person entitled to chargeable property by way of security or to the benefit of a charge or encumbrance on that property deals with the property for the purpose of enforcing or giving effect to the security, charge or encumbrance.

(3C) *Deleted by Act No. 9 of 2007, s. 23.*

(4) No deduction shall be made under subsection (1) or (3) from a payment which is income exempt from tax under this Act, or to which an order made under this Act, or to which an order made under subsection (7) or (8) applies.

(5) Where a person deducts tax under this section he shall, on or before the twentieth day of the month following the month in which the deduction was made—

- (a) remit the amount so deducted to the Commissioner together with a return in writing of the amount of the payment the amount of tax deducted, and such other information as the Commissioner may specify; and
- (b) furnish the person to whom the payment is made with a certificate stating the amount of the payment and the amount of the tax deducted.

(6) Where a person who is required under this section and in accordance with the rules made under section 130, to deduct tax—

- (a) fails to make the deduction or fails to deduct the whole amount of the tax which he should have deducted; or
- (b) fails to remit the amount of a deduction to the Commissioner on or before the twentieth day following the month in which the deduction was made or ought to have been made,

the Commissioner may impose such penalty as may, from time to time, be prescribed under the rules, and the provisions of this Act relating to the collection and recovery of tax and the payment of interest thereon, shall apply to the collection and recovery of that amount of tax and penalty as if they were tax due and payable by that person and the due date for the payment of which was the date on which the amount of tax should have been remitted to the Commissioner.

(6A) Where any person who is required under subsection (3A) to deduct tax—

- (a) fails to make the deduction or fails to deduct the whole amount of the tax which he should have deducted; or
- (b) fails to remit the amount of any deduction to the Commissioner on or before the twentieth day of the month following the month in which such deduction was made or ought to have been made,

any Collector of Stamp Duties appointed under section 4 of the Stamp Duty Act (Cap. 480) shall stamp the instrument of which the property is the subject matter under the Stamp Duty Act, and Registrars of Title or Land Registrars appointed under any written law shall not register the property under any written law, until such tax has been duly accounted for:

Provided that the transferee of chargeable property may pay such tax and be entitled to recover the amount of the tax from any consideration for the transfer in his possession, by action in a court or by any other lawful means at his disposal.

(6B) A person aggrieved by the imposition by the Commissioner of a penalty under this section may appeal against such imposition to the local committee within thirty days after the date of service of the notice of imposition:

Provided that—

- (i) the person shall, prior to making the appeal, pay all the tax due and the penalty imposed under this section; and
- (ii) the appeal shall be limited to the determination of the question as to whether the person has complied with the provisions of this Act and any regulations made thereunder relating to the deduction or remitting of tax under this section.

(6C) Subject to subsection (6B), the provisions of this Act relating to appeals to local committees against assessment shall apply *mutatis mutandis* to appeals under this section.

(6D) A person aggrieved by the imposition, by the Commissioner, of a penalty under this section may, by notice in writing to the Commissioner, object to the imposition within thirty days of the date of service of the notice of the imposition.

(6E) The provisions of this Act in respect of objections shall, *mutatis mutandis*, apply to objections under this section.

(7) The Minister may, by notice in the *Gazette*, exempt from the provisions of subsection (3) of this section any payment or class of payments made by any person or class of persons resident or having a permanent establishment in Kenya.

(8) The Minister may, by notice in the *Gazette*, amend or add to the Fourth Schedule in respect of financial institutions resident or having a permanent establishment in Kenya.

[Act No. 2 of 1975, s. 5, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, Act No. 8 of 1978, s. 9, Act No. 13 of 1979, s. 5, Act No. 18 of 1979, Sch., Act No. 10 of 1987, s. 34, Act No. 10 of 1990, s. 50, Act No. 9 of 1992, s. 47, Act No. 4 of 1993, s. 44, Act No. 6 of 1994, s. 42, Act No. 8 of 1996, s. 38, Act No. 4 of 1999, s. 36, Act No. 9 of 2000, s. 46, Act No. 6 of 2001, s. 49, Act No. 7 of 2002, s. 43, Act No. 15 of 2003, s. 35, s. 36, Act No. 4 of 2004, s. 51, Act No. 6 of 2005, s. 27, Act No. 10 of 2006, s. 26, Act No. 9 of 2007, s. 23, Act No. 8 of 2008, s. 33, Act No. 8 of 2009, s. 25, Act No. 10 of 2010, s. 25, Act No. 4 of 2012, s. 16.]

36. Deduction of tax from annuities, etc., paid under a will, etc.

(1) The trustees of a will or settlement shall, upon payment of any annuity under such will or settlement, deduct therefrom tax at the rate paid or payable on the income out of which such annuity is payable:

Provided that—

- (i) no deduction of tax shall be made from such part of an annuity as such is paid out of income in respect of which no tax is paid or payable;
- (ii) any annuity directed to be paid free of tax shall be paid without deduction of tax, and any sums paid by the trustees to the annuitant to meet his liability to tax on the annuity shall also be paid without deduction of tax and the trustees shall be entitled to repayment of the tax paid by deduction or otherwise on such an amount of the income of the trust as is equal to the total of the annuity and the sums so paid;

- (iii) the Commissioner may authorize the trustees on payment of any annuity other than an annuity directed to be paid free of tax to deduct, from the amount of such annuity, tax at a rate lower than the rate paid or payable on the income, or no tax, and thereupon the trustees shall deduct from the amount of any such annuity so paid tax at the lower rate, or no tax, as the case may be.

(2) For the purposes of this section, where an annuity is not payable out of income of specified assets, it shall be deemed to be payable out of income liable to tax under this Act to the extent to which such income is available for the payment thereof.

(3) Where section 11(2)(a) applies the trustee shall furnish each person to whom or on whose behalf amounts are paid in a year of income with a certificate setting out the gross amount of the payments, the amount of tax appropriate thereto, and the net amount so paid in such year of income.

37. Deductions of tax from emoluments

(1) An employer paying emoluments to an employee shall deduct therefrom, and account for tax thereon, to such extent and in such manner as may be prescribed.

(2) If an employer paying emoluments to an employee fails—

- (a) to deduct tax thereon;
- (b) to account for tax deducted thereon; or
- (c) to supply the Commissioner with a certificate provided by rules prescribing the certificate,

the Commissioner may impose a penalty equal to twenty-five per cent of the amount of tax involved or ten thousand shillings whichever is greater, and the provisions of this Act relating to the collection and recovery of that tax shall also apply to the collection and recovery of the penalty as if it were tax due from the employer:

Provided that, instead of the Commissioner imposing a penalty under this subsection, a prosecution may be instituted for an offence under section 109 (1)(j).

(3) The Commissioner may remit the whole or part of any penalty imposed under this section up to a maximum of five hundred thousand shillings per employer per annum:

Provided that—

- (a) the Commissioner may remit any amount of penalty in excess of one hundred thousand shillings per employer per annum with the prior written approval of the Minister; and
- (b) the Commissioner shall make a quarterly report to the Minister of all penalties remitted during that quarter.

(4) Any tax deducted under this section from the emoluments of an employee shall be deemed to have been paid by that employee and shall be set-off for the purposes of collection against tax charged on that employee in respect of those emoluments in any assessment for the year of income in which such emoluments are received.

(5) Where a person who is required under this section to deduct tax fails to remit the amount of any deduction to such person as the Commissioner may direct within the time limit specified in rules made under section 130, the provisions of this Act relating to the collection and recovery of tax, and the payment of interest thereon, shall apply to the collection and recovery of that amount as if it were tax due and payable by that person, the due date for the payment of which is the date specified in rules made under section 130 by which that amount should have been remitted to the payee.

(5A) An employer aggrieved by the imposition of a penalty by the Commissioner or any other decision taken by the Commissioner under this section may, by notice in writing to the Commissioner, within thirty days, object to such imposition or decision.

(5B) The provisions of this Act in respect of objections shall, *mutatis mutandis*, apply to objections under this section.

(6) An employer aggrieved by the imposition by the Commissioner of penalty, or by any other decision taken by the Commissioner under this section, may appeal against such imposition or decision to the local committee within thirty days after the service of the notice of the imposition or communication to him of the decision, as the case may be:

Provided that where the appeal relates to the imposition of a penalty—

- (i) the employer shall, prior to making the appeal pay all the tax due and the penalty imposed under this section; and
- (ii) the appeal shall be limited to the determination of the question as to whether the employer has complied with the provisions of this Act and any regulations made thereunder relating to the deduction of tax from the emoluments of employees.

(7) Subject to subsection (6) the provisions of this Act relating to appeals to local committees against assessments shall apply *mutatis mutandis* to appeals under this section.

[Act No. 7 of 1976, s. 2, Act No. 1 of 1982, s. 3, Act No. 8 of 1983, s. 15, Act No. 8 of 1997, s. 39, Act No. 5 of 1998, s. 37, Act No. 9 of 2000, s. 47, Act No. 8 of 2008, s. 34, Act No. 10 of 2010, s. 26.]

37A. Penalty for failure to make deductions under section 35, 36 or 37

Where a corporate body which is required to make a deduction under sections 35, 36 or 37 fails to remit the deducted amount as required or directed by the Commissioner, every director and every officer of the corporate body concerned with the management thereof, shall be guilty of an offence, unless he proves to the satisfaction of the Court that he did not know, and could not reasonably be expected to know that the deducted amount had not been remitted and that he took all reasonable steps to ensure that the offence was not committed, and shall be liable to a fine of not less than ten thousand shillings but not more than two hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

[Act No. 8 of 1991, s. 63.]

38. Application to Government

The provisions of this Part relating to deduction of tax shall bind the Government.

*C—Set-off of Tax***39. Set-off of tax**

(1) An amount of tax which—

- (a) has been deducted under section 17A (in respect of a person other than an individual), sections 35, 36 or 37; or
- (b) has been borne by a trustee, executor or administrator in his capacity as such on an amount paid as income to a beneficiary,

shall be deemed to have been paid by the person chargeable with that tax and shall be set off for the purposes of collection against the tax charged on that person for the year of income in respect of which it was deducted, and where an assessment is made by the Commissioner on a person for a year of income under section 73 the amount of tax which has already been paid under a provisional assessment on that person for that year of income shall be set off for the purposes of collection against the tax charged in the assessment made under section 73;

(c) has been paid by a person under section 12A.

(2) If any citizen of Kenya chargeable to tax in Kenya for any year of income on employment income or income in respect of any activity under section 10(e) of this Act accrued in or derived from another country proves to the satisfaction of the Commissioner that he has paid tax in such other country for such year of income in respect of the same income, he shall be entitled to set-off by way of credit of the same tax against the tax charged in Kenya on such income.

(3) The tax chargeable on the income of any person in respect of which set-off is to be allowed under this section shall be taken to be the amount by which the tax chargeable (before set-off under this section) in respect of his employment income or income specified under section 10(e) is increased by the inclusion of such income in his employment income or income specified under section 10(e).

(4) Credit under this section shall not exceed the amount of tax payable in Kenya on such employment income or income in respect of any activity under section 10(e).

[Act No. 20 of 1989, Sch., Act No. 7 of 1990, Sch., Act No. 6 of 2001, s. 50, Act No. 9 of 2007, s. 24, Act No. 8 of 2008, s. 35.]

39A. Repealed by Act No. 8 of 2009, s. 26.

[Act No. 13 of 1995, s. 86, Act No. 8 of 1996, s. 39, Act No. 8 of 1997, s. 40, Act No. 4 of 1999, s. 37, Act No. 9 of 2000, s. 48, Act No. 15 of 2003, s. 37, Act No. 9 of 2007, s. 25, Act No. 8 of 2009, s. 26.]

40. Repealed by Act No. 8 of 1978, s. 9.**41. Special arrangements for relief from double taxation**

(1) The Minister may from time to time by notice declare that arrangements, specified in the notice and being arrangements that have been made with the Government of any country outside of the Republic of Kenya with a view to affording relief from double taxation in relation to income tax and any taxes of a

similar character imposed by the laws of that country, shall, notwithstanding anything to the contrary in this Act or in any other written law, have effect in relation to income tax, and every such notice shall, subject to the provisions of this section, have effect according to its tenor.

(2) Any such arrangements in the notice may include provisions for relief from tax for periods before the commencement of this Act or before the making of the arrangements.

(3) Any notice under this section may be at any time amended or revoked by a subsequent notice and an amending or revoking notice may contain such transitional provisions or termination date as appear to the Minister to be necessary or expedient.

(4) The Minister shall cause a copy of every notice made under subsection (1) of this section and of every subsequent notice made under subsection (3) of this section to be laid, without delay, before the Parliament.

[Act No. 7 of 1976, s. 2.]

41A. Agreements for exchange of information

The Minister may, by notice in the *Gazette*, from time to time declare that arrangements specified in the notice, being arrangements made with the government of any country with the view of exchanging information relating to income tax or other taxes of a similar character imposed by the laws of that country, shall, notwithstanding anything to the contrary in this Act or any other written law, have effect in relation to income tax, and that notice shall, subject to the provisions of this section, have effect accordingly.

[Act No. 4 of 2012, s. 17.]

42. Computation of credits under special arrangements

(1) This section shall have effect where, under a special arrangement, foreign tax payable in respect of income derived by a person resident in Kenya is to be allowed as a credit against tax chargeable in respect of that income.

(2) *Deleted by Act No. 2 of 1976, s. 2.*

(3) The tax chargeable upon the income of a person in respect of which a credit is to be allowed under a special arrangement shall be the amount by which the tax chargeable (before allowance of the credit) in respect of his total income is increased by the inclusion of that income in his total income; but where foreign tax is payable at different rates on different parts of the total income of that person, the tax chargeable on that income shall be apportioned to each part in such amounts as the Commissioner may determine to be just and reasonable.

(4) A credit shall not exceed the lesser of the tax computed in accordance with subsection (3) of this section or the foreign tax chargeable upon the income in respect of which the credit is to be allowed or upon each part of that income.

(5) Where—

- (a) any special arrangement provides, in relation to dividends of some classes but not in relation to dividends of other classes, that foreign tax not charged directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so, what, credit is to be given against tax in respect of those dividends; and

- (b) a dividend is paid which is not of a class to which those arrangements so apply,

then, if such dividend is paid to a company which controls, directly or indirectly, not less than one half of the voting power in the company paying the dividend, a credit shall be allowed as if such dividend were a dividend of a class in relation to which such arrangements so provide.

(6) A credit shall not be allowed under any special arrangement against tax chargeable upon the income of any person for a year of income if he elects by notice in writing to the Commissioner that credit shall not be allowed in the case of his income for such year of income.

(7) Where the amount of a credit or exemption given under any special arrangement is rendered excessive or insufficient by reason of an adjustment of the amount of income tax, or tax of a similar nature, payable either in Kenya or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made within six years from the time when all such assessments, adjustments and other determinations have been made, whether in Kenya or elsewhere, that are material in determining whether any and, if so, what credit is to be given.

- (8) In this section, “**credit**” means a credit mentioned in subsection (1).

[Act No. 7 of 1976, s. 2.]

43. Time limit

Subject to section 42(7) of this Act, any claim for an allowance by way of credit under this Part shall be made to the Commissioner within six years from the end of the year of income to which it relates.

PART VII – PERSONS ASSESSABLE

44. Wife’s income, etc.

Where under this Act the income of any person is chargeable to tax, then, subject to this Act, such income shall be assessed on, and the tax thereon charged on, such person.

45. Income of a person assessed on him

(1) The income of a married woman living with her husband shall be deemed to be the income of the husband for the purpose of ascertaining his total income, and shall be assessed on, and the tax thereon charged on, the husband; but that part of the total amount of tax charged on the husband as bears the same proportion to the total amount as the amount of the income of the wife bears to the amount of the total income of the husband may, if due and not paid, be collected from the wife or, if she is dead, from her executors or administrators, notwithstanding that no assessment has been made upon her; and the provisions of this Act relating to the collection and recovery of tax shall apply to that part of the tax as if it were tax the due date for the payment of which is a date thirty days after the date of a notice served on the wife, or her executors or administrators, as the case may be, requiring payment:

Provided that the income of a married woman shall not be deemed to be the income of the husband where such married woman opts to file a separate return from that of her husband.

(2) Where a married woman is not living with her husband, then each spouse shall, for the purposes of this Act, be treated as if he or she were unmarried.

(3) For the purposes of this Act, a married woman shall be treated as living with her husband unless—

- (a) they are separated under an order of a court of competent jurisdiction or under any written agreement of separation; or
- (b) they are separated in such circumstances that the separation is likely to be permanent; or
- (c) she is a resident person and her husband is a non-resident person.

[Act No. 4 of 1999, s. 38, Act No. 6 of 2005, s. 28.]

46. Income of incapacitated person

The income of an incapacitated person shall be assessed on, and the tax thereon charged on, such person in the name of his trustee, guardian, curator, committee or receiver appointed by a court, in the same manner and to the like amount as such incapacitated person would have been assessed and charged if he were not an incapacitated person.

47. Income of non-resident person

(1) The income of a non-resident person shall be assessed on, and the tax thereon charged on, such person either in his name or in the name of his trustee, guardian, curator or committee, or of any attorney, factor, agent, receiver or manager.

(2) The master of any ship, or the captain of any aircraft, owned or chartered by a non-resident person who is chargeable to tax under section 9 of this Act shall (though not to the exclusion of any other agent) be deemed the agent of such non-resident person for the purposes of this section.

(3) Nothing in this section shall render a non-resident person assessable or chargeable in the name of a broker, general commission agent or other agent where such broker, general commission agent or other agent is not the normal agent of the non-resident person.

48. Income of deceased person, etc.

(1) The income accrued to, or received prior to, the date of the death of a deceased person which would, but for his death, have been assessed and charged to tax on him for a year of income shall, subject to section 79(1)(d) of this Act, be assessed on, and the tax charged on, his executors or administrators for such year of income.

(2) Any amount received by the executors or administrators of such deceased person which would, but for his death, have been his income for any year of income shall be deemed to be income of his executors or administrators and shall be assessed on, and the tax charged on them for such year of income.

(3) Where any executors or administrators distribute the estate of a deceased person before any change in the rate of tax at which they are liable in respect of a year of income, they shall not be liable in respect of any increased tax resultant from that change.

49. Liability of joint trustees

Where two or more persons are trustees, then any assessment made on the trustees in that capacity may be made on any one or more of them but each trustee shall be jointly and severally liable for the payment of tax charged in the assessment.

50. Liability of person in whose name income of another person assessed

Any person in whose name the income of any other person is assessable under this Act shall be responsible, in relation to the assessment of such income, for doing all such things that are under this Act required to be done by a person whose income is chargeable to tax, and shall be responsible for the payment of tax so charged on him to the extent of any assets of such other person which are in his possession on, or may come into his possession after, the date of the service of a notice of assessment on him.

51. Indemnification of representative

A person responsible under this Act for the payment of tax on behalf of another person may retain out of any money coming to his hands on behalf of such other person so much thereof as is sufficient to pay such tax, and such person is hereby indemnified against any claim whatsoever for all payments so made by him.

51A. Returns, records, etc. to be in official languages

(1) For the purposes of this Act—

- (a) any return, record or other document required to be kept or produced shall be in either of the official languages;
- (b) the unit of currency in any such return, record or other document shall be the Kenya shilling.

(2) In subsection (1)(a), the expression “**official languages**” shall have the meaning assigned to it in Article 7 of the Constitution.

[Act No. 4 of 2012, s. 18.]

PART VIII – RETURNS AND NOTICES**52. Returns of income and notice of chargeability**

(1) The Commissioner may, by notice in writing, require a person to furnish him within a reasonable time, not being less than thirty days from the date of service of the notice, with a return of income for any year of income containing a full and true statement of the income of such person, including income deemed to be his under this Act, liable to tax and of those particulars that may be required for the purposes of this Act; and such return shall include a declaration signed by such person, or by the person in whose name he is assessable, that such return is a full and true statement:

Provided that in the case of a person carrying on a business has made a provisional return of income, the return of income under this subsection may be made within a period not exceeding nine months from the date to which he makes up the accounts of such business.

(2) In the case of the executors or administrators of a deceased person, or of the liquidator of a resident company, or of a bankrupt, or of a person whom the

Commissioner has reason to believe is about to leave Kenya, the Commissioner may, by notice in writing, require him to furnish a return of income at any time whether before or after the end of the year of income to which such return relates.

(3) Every person chargeable to tax for a year of income who—

- (a) within four months after the end of such year of income; or
- (b) being a person carrying on a business the accounting period for which ends on some day other than 31st December in such year of income, has not made a provisional return of income for that year of income within four months of the end of such accounting period,

has not been required to make a return of income for such year of income under subsection (1) shall, within fourteen days after the expiration of the period of four months, give notice in writing to the Commissioner that he is so chargeable:

Provided that an employee shall not be required to give notice—

- (i) if he had no income chargeable to tax for such year of income other than from emoluments; and
- (ii) if the tax payable in respect of those emoluments has been recovered by deduction under section 37 of this Act.

(4) Where any business is carried on by two or more persons in partnership, the Commissioner may, by notice in writing, require the precedent resident partner, that is the partner who, of the resident partners—

- (a) is first named in the agreement of partnership; or
- (b) if there be no agreement, is specified by name or initials singly, or with precedence to the other partners, in the usual name of the partnership; or
- (c) is first named in any statement required for the purposes of registration of the business under any law of Kenya; or
- (d) is the precedent resident active partner if the partner named with precedence is not an active partner,

to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of income of the partnership, ascertained under this Act as if the partnership were a person liable to tax, for any year of income prior to that in which the notice is served containing a full and true statement of the income and of such particulars as may be required for the purposes of this Act, including the names and addresses of the partners together with the amount of the share of the income to which each partner was entitled for such year of income.

52A. Deleted by Act No. 8 of 1996, s. 40.

[Act No. 10 of 1990, s. 51, Act No. 4 of 1993, s. 45.]

52B. Final return with self-assessment

(1) Notwithstanding any other provision of this Act—

- (a) every individual chargeable to tax under this Act shall for any year of income commencing with the year of income 1992, furnish to the Commissioner a return of income, including a self-assessment of his tax from all sources of income, not later than the last day of the sixth month following the end of his year of income; and

- (b) every person, other than an individual chargeable to tax under the Act, shall for any accounting period commencing on or after 1st January, 1992, furnish to the Commissioner a return of income, including a self-assessment of his tax on such income, not later than the last day of the sixth month following the end of the year of income.

Provided that an employee who is employed by or renders service to one employer shall not be required to give a return under paragraph (a)—

- (i) if the employee had no income chargeable to tax for that year of income other than emoluments, and
- (ii) the tax payable in respect of those emoluments had been recovered by deduction under section 37.

(2) The return of income together with the declared self-assessment of tax on the declared income, shall be prepared on such a form or forms as shall be prescribed by the Commissioner.

(3) The declared self-assessment shall be calculated by reference to the appropriate relief and rates of tax in force for the year of income.

(4) Every company liable to tax under this Act, shall also include with the self-assessment and return of income an assessment and return of any compensating tax due with respect to such tax year and the compensating tax so calculated shall be payable at the due date for the self-assessment.

(5) The Commissioner may, where he considers appropriate, send to any person to whom this section applies in respect of any year of income a form or forms to enable that person to furnish the required return; and failure by the Commissioner to send the return form or forms shall not affect the obligation of that person to furnish the required return by the date specified in this section.

[Act No. 8 of 1991, s. 64, Act No. 9 of 1992, s. 48, Act No. 4 of 1993, s. 46, Act No. 8 of 1997, s. 41, Act No. 7 of 2002, s. 44, Act No. 4 of 2012, s. 19.]

53. Provisional returns

(1) Subject to this section, and without prejudice to his other powers under this Part, the Commissioner may, by notice in writing, require a person to furnish him for any year of income with a provisional return of income:

Provided that an employee shall not be required to furnish a return—

- (a) if to the best of his knowledge and belief he will have no income chargeable to tax for that year of income other than from emoluments; and
- (b) if he has reasonable grounds to believe that the whole of the tax payable by him in respect of those emoluments will be recovered by deduction under section 37 of this Act.

(2) A provisional return of income for any year of income—

- (a) shall be furnished—
- (i) in a case to which section 27(1) applies, not later than three months from the date to which the person making the return has made up his accounts in that year of income; and
- (ii) in any other case, not later than the 31st March following that year of income;

- (b) shall contain an estimate—
 - (i) of the income of the person making the return, including income deemed to be his under this Act, charged to tax, based on all the information available to him at the date on which the return is made and which he believes to be true; and
 - (ii) of the tax chargeable on that income, calculated by reference to the appropriate allowances and rates of tax in force at the date of return and where the person making the return has paid instalment tax for that year of income, the provisional tax payable will be reduced by the amount of that instalment tax; and
- (c) shall include a declaration by the person making the return or by the person in whose name he is assessable that the provisional return contains a full and true estimate to the best of his knowledge and belief.

(3) Any person who might be required to furnish a provisional return of income and who has not received a notice under subsection (1) within the period specified in subsection (2)(a) of this section shall, within fourteen days of the expiration of such period, notify the Commissioner in writing that he has not received a notice.

(4) Notwithstanding any other provisions of this Act, with effect from the year of income commencing on the 1st January, 1993, any person required to submit a self-assessment return shall not be required to submit a provisional return or give a notice under section 53(3).

[Act No. 2 of 1975, s. 5, Act No. 10 of 1990, s. 52, Act No. 9 of 1992, s. 49.]

54. Documents to be included in return of income

(1) Where any person who carries on any business makes a return of income for any year of income, and accounts of his business for any accounting period relating to such year of income have been prepared or examined by another person in a professional capacity, then he shall furnish with such return of income—

- (a) a copy of such accounts signed by himself and by such other person together with a certificate signed by such other person—
 - (i) where such accounts were prepared by such other person, specifying the nature of the books of accounts and documents from which the accounts were so prepared; and
 - (ii) stating whether and subject to what reservations, if any, he considers that such accounts present a true and fair view of the gains or profits from such business for that accounting period;
- (b) in the case of a company or partnership, a certificate specifying the nature and amounts of all payments of whatever kind made, and the nature of any benefit, advantage, or facility of whatever kind granted, in the case of a company to the directors thereof and to employees whose emoluments are at the rate of eighty thousand shillings a year or more, or, in the case of a partnership, to the partners; and the certificate shall be signed by a majority of the directors or partners (of whom one shall be the partner who signed

the return of income of the partnership), as the case may be, or, if there are less than three such directors or partners, by all such directors or partners:

Provided that, in the case of a company, other than a private company, or a wholly owned subsidiary of such a company, the certificate referred to in paragraph (b) of this subsection shall not be furnished unless the Commissioner in a particular case so requires.

(2) The Commissioner may, by notice in writing, require any person who has made a return of income and to whom subsection (1) of this section applies to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a certificate signed by the professional person who prepared or examined the accounts a copy of which was sent with such return—

- (a) stating whether to the best of his knowledge and belief the certificate referred to in subsection (1)(b) is true and correct;
- (b) where such accounts were prepared by such professional person, recording the extent of his verification of the books of account and documents produced to him;
- (c) where such accounts were examined by such professional person, specifying the nature of the books of account and documents produced to him and the extent of his examination thereof.

(3) Where any professional person refuses to give any certificate referred to in subsection (1) or (2) of this section he shall furnish to the person who made the return a statement in writing of his refusal and of the reasons therefor and the person who made such return shall send such statement to the Commissioner.

(4) Where any person who carries on any business makes a return of income for a year of income and accounts of his business for any accounting period relating to such year of income have not been prepared or examined by another person in a professional capacity, then he shall furnish with such return of income such accounts of his business for the accounting period relating to that year of income as are necessary to support the information contained in the return together with—

- (a) a certificate signed by himself—
 - (i) specifying the nature of the books of account and documents from which the accounts were prepared;
 - (ii) stating whether the accounts reflect all the transactions of his business and present a true and fair view of the gains or profits from such business for such period;
- (b) in the case of a company or partnership, a certificate specifying the nature and amounts of all payments of whatever kind made to, and the nature of any benefit, advantage, or facility, of whatever kind, granted, in the case of a company, to the directors thereof and to employees whose emoluments are at the rate of forty thousand shillings a year or more, or, in the case of a partnership, to the partners; and the certificate shall be signed by a majority of the directors or partners (of whom one shall be the partner who signed the return of income of the partnership), as the case may be, or, if there are less than three directors or partners, by all the directors or partners.

(4A) Notwithstanding the other provisions of this section, where under the provisions of this Act a registered person is required to perform any act, that act may be performed on his behalf by an agent authorised by him.

(4B) Without prejudice to any provision under this Act, the Minister may make regulations prescribing conditions for any person authorised to act as an agent under subsection (4A).

(5) For the purposes of this section—

“**accounts**” means a balance sheet or statement of assets and liabilities, and a trading account, profit and loss account, receipts and payments accounts, or other similar account however named;

“**professional person**”, in the case of a company, means a holder of a practicing certificate or a written authority to practice issued in accordance with the provisions of the Accountants Act (Cap. 531).

[Act No. 13 of 1979, s. 5, Act No. 18 of 1979, Sch., Act No. 4 of 1993, s. 47, Act No. 6 of 2001, s. 51, Act No. 4 of 2004, s. 52, Act No. 8 of 2008, s. 36.]

54A. Keeping of records of receipts, expenses, etc.

(1) A person carrying on a business shall keep records of all receipts and expenses, goods purchased and sold and accounts, books, deeds, contracts and vouchers which in the opinion of the Commissioner, are adequate for the purpose of computing tax.

(2) Any person who contravenes the provisions of subsection (1) shall be liable to such penalty, not exceeding twenty thousand shillings, as the Commissioner may deem fit to impose.

[Act No. 8 of 1996, s. 41.]

55. Books and accounts

(1) Where a person appearing to be chargeable with tax fails or refuses to keep the records, books or accounts which, in the opinion of the Commissioner are adequate for the purpose of computing tax, the Commissioner may, by notice in writing, require that person to keep such records, books, and accounts, and to keep them in such language, specified in the notice.

(2) Every person carrying on a business shall preserve every book of account, and every document which is essential to the explanation of any entry in any book of account, relating to the business for a period of not less than ten years after the year of income to which that book of account or document relates:

Provided that, subject to section 56, this section shall not require the preservation of a document or book of account—

- (i) in respect of which the Commissioner has notified that person in writing that its preservation is not required; or
- (ii) in the case of a company which has gone into liquidation and has been finally dissolved or in the case of the cessation of a business other than one carried on by a company, for more than three months after the date on which the person having custody of the documents or books of account relating to the company or business as the case may be, informs the Commissioner that he proposes to destroy them.

For the purposes of this section the “**record**” means records of all receipts and expenses, goods purchased and sold and accounts, books, deeds contract and vouchers.

56. Production and preservation of books, attendances, etc.

(1) For the purpose of obtaining full information in respect of the income of any person or class of persons, the Commissioner may, by notice in writing, require, in the case of the income of any person, that person or any other person, and in the case of a class of persons, any person—

- (a) to produce for examination by the Commissioner at the time and place specified in such notice, any accounts, books of account, and other documents which the Commissioner may consider necessary and the Commissioner may inspect any such accounts, books of account or other documents and may take copies of any entries therein;
- (b) to produce forthwith for retention by the Commissioner for such period as may be reasonable for their examination any accounts, books of account and other documents which the Commissioner may specify in the notice;
- (c) not to destroy, damage or deface on or after service of the notice any of the accounts, books of account and other documents so specified without permission of the Commissioner in writing:

Provided that in the case of a banker the powers of the Commissioner under this section shall be limited to the inspection of books or documents at the place at which they are kept and to the taking of copies of any relevant entries therein.

(2) The Commissioner may, by notice in writing, require a person entitled to or in receipt of income, whether on his own behalf or as representative of another person, to attend at such time and place specified in such notice for the purpose of being examined as to his income or the income of the other person or any transaction or matter appearing to be relevant thereto.

(3) The Commissioner may exercise the powers conferred on him by this section in relation to a year of income at any time prior to the expiry of seven years after such year of income:

Provided that where the Commissioner has reasonable cause to believe that fraud or gross or wilful neglect has been committed in connection with, or in relation to, tax for a year of income, the Commissioner may exercise those powers in relation to any year of income.

[Act No. 7 of 2002, s. 45.]

57. Return as to salaries, pensions, etc.

(1) The Commissioner may, by notice in writing, require any employer or any other person making the payments herein referred to, to furnish him within reasonable time, not being less than thirty days from the date of service of such notice, with a return containing—

- (a) the names and addresses of all persons to whom or in respect of whom payments and allowances were made by him in respect of their employment, and the amounts of the payments and allowances made to each of such persons;

- (b) the names and addresses of all persons to whom he paid pensions in respect of past employment with him or with any other person and the amount of the pension paid to each of such persons:

Provided that the Commissioner may by notice in writing exclude from the return any class of person or payment or allowance.

(2) For the purposes of this section, references in subsection (1) thereof—

- (a) to payments and allowances made to persons in respect of their employment include all payments, and all benefits, advantages and facilities which are referred to in section 5(2)(a), (b), (c) and (e) of this Act;
- (b) to persons employed include, in relation to a company, a director of that company.

(3) By notice published in two successive issues of the *Gazette*, the Commissioner may require all employers, or any employer or class of employer, to furnish him within a reasonable time, not being less than thirty days from the date of publication of the second notice, with a written return containing the name and address of the employer and the number of his employees from whose emoluments tax is to be deducted in accordance with section 37 and with such other information as the Commissioner may by that notice require.

58. Return as to fees, commissions, royalties, etc.

(1) The Commissioner may, by notice in writing, require a person carrying on any business to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of all payments made by such person of any kind specified in the notice, being—

- (a) payments made in the course of the business for services rendered, or in anticipation of services to be rendered, by persons not employed in such business; or
- (b) payments for services rendered, or in anticipation of services to be rendered, in connexion with the formation, acquisition, development, or disposal of the business or a part of it, by persons not employed in such business; or
- (c) periodical or lump sum payments in respect of any royalty.

(2) A return made under this section shall give the names and addresses of all persons to whom payments were made, the amounts of the payments and such other particulars as may be specified in the notice.

(3) For the purposes of this section—

- (a) references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connexion with the rendering of services; and
- (b) references to the making of payments include references to the giving of any form of valuable consideration,

and the requirement imposed by subsection (2) to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.

59. Occupier's return of rent

The Commissioner may, by notice in writing, require any person who is the occupier of premises to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing—

- (a) the name and address of the owner or lessor of such premises; and
- (b) a full and true statement of the rent or any other consideration payable for the occupation thereof.

60. Return of lodgers and inmates

The Commissioner may, by notice in writing, require a person who provides accommodation for any lodger or inmate to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing the name of every lodger or inmate who is at the date of the notice resident in his house, hotel or institution, and who has (except for temporary absences) been so resident throughout the three months prior to such date of the notice.

61. Return of income received on account of other persons

The Commissioner may, by notice in writing, at any time require any person who is in receipt of income as the representative of, or on behalf of, any other person who is chargeable to tax in respect thereof, or who would be so chargeable if he were a resident person, to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing—

- (a) a full and true statement of the income; and
- (b) the name and address of the person to whom it belongs.

62. Return as to income exempt from tax

The Commissioner may, by notice in writing, require a person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing a full and true statement—

- (a) of all the income of that person which is exempt from tax or which such person claims to be so exempt;
- (b) of all such particulars as the Commissioner may specify in such notice in relation to such income and in relation to any assets from which that income is derived.

63. Return in relation to settlements

The Commissioner may, by notice in writing, require the trustees of, or a party to, a settlement referred to in section 25 or 26 of this Act to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing such particulars as he may consider necessary for the purposes of those sections.

64. Return in relation to registered pension fund, etc.

The Commissioner may, by notice in writing, require the trustees of a registered pension fund or pension scheme and an employer who contributes to

Any such fund to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing—

- (a) the name and place of residence of every person in receipt of any payment made under the regulations of such fund or scheme;
- (b) the amount and nature of any such payment;
- (c) a copy of the accounts of any such fund or scheme up to the last date prior to such notice to which such accounts have been made up; and
- (d) such further information and particulars in connexion with any such fund or scheme or the regulations relating thereto as the Commissioner may require.

65. Return of annuity contract benefits

The Commissioner may, by notice in writing, at any time require any person by whom benefits are payable under any annuity contract to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return giving the full name and address of each person to whom any annuity has been paid and the amount of the annuity so paid during any year of income.

66. Return of resident company dividends

The Commissioner may, by notice in writing, at any time require any resident company which pays a dividend to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return giving the full name and address of each shareholder to whom such dividend was paid and, in respect of each shareholder, full particulars of his shareholding at the date of declaration of such dividend, the gross amount paid or payable to him, the tax deducted thereupon and such other particulars that the Commissioner may require, as notified generally by notice published in the *Gazette* or as specified by notice in writing to any particular resident company.

67. Return as to interest paid or credited by banks, etc.

(1) The Commissioner may, by notice in writing, require any person carrying on a business who, in the ordinary course of the operations thereof, receives or retains money in such circumstances that interest becomes payable thereon, and in particular, any person carrying on the business of banking, to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of all interest paid or credited by such person during a year specified in such notice in the course of his business, or any part of his business as may be so specified, on money received or retained in Kenya giving the names and addresses of the persons to whom the interest was paid or credited and stating, in each case, the amount of the interest:

Provided that the year specified in such notice shall not be a year ending more than three years before the date of the service of the notice.

(2) Without prejudice to the powers conferred by subsection (1) of this section, a separate notice may be served under that subsection as respects the transactions carried on at any branch of a business that may be specified in such notice, and any such separate notice shall, if served on the manager or other person in charge of such branch, be deemed to have been duly served on the person carrying on the business, and where a separate notice is so served as

respects the transactions carried on at any branch, any notice subsequently served under subsection (1) on the person carrying on the business shall not be deemed to extend to a transaction to which such separate notice extends.

(3) This section shall, with any necessary adaptation, apply in relation to any Kenya Post Office Savings Bank, and shall have effect notwithstanding anything in any written law precluding the disclosure of the name of a depositor or of information in relation to his deposit.

[Act No. 8 of 1978, s. 9.]

68. Return as to dividends paid by building societies

(1) The Commissioner may, by notice in writing, require any building society to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of dividends paid or credited during a year specified in the notice in respect of shares held—

- (a) in the case of a foreign building society, by a person who is resident in Kenya; and
- (b) in the case of a resident building society, by any person,

Provided that and any such return shall give the names and addresses of the persons to whom the dividends were paid or credited and shall state, in each case, the amount of the dividends:

the year specified in any such notice shall not be a year ending more than three years before the date of the service of the notice.

(2) For the purposes of this section—

“**foreign building society**” means a building society registered under section 75 of the Building Societies Act (Cap. 489);

“**resident building society**” means a building society registered under section 6 of the said Act.

69. Access to official information

(1) The Commissioner may, by notice in writing, require an officer in the service of the Government or of a local authority or other public body—

- (a) to permit the Commissioner or a person authorized by him to examine all registers, books, accounts, or records in the possession or control of such officer and to take such notes and extracts as may be considered necessary by the Commissioner; and
- (b) to supply such particulars as may be required for the purpose of this Act which may be in the possession of such officer shall:

Provided that no such officer shall under this section be obliged to disclose any particulars as to which he is under a statutory obligation to observe secrecy.

(2) For the purpose of obtaining full financial information from the Government or local authority or other public body, the Commissioner may, by notice in writing, at any time require an officer in the service of the Government or of a local authority or other public body, within a reasonable time, not being less than thirty days after the date of service of the notice—

- (a) to furnish him or a person authorised by him with such financial information as may be considered necessary by the Commissioner; and

- (b) to supply such further particulars as may be required in respect of such financial information; and

(3) Where a notice has been served under subsection (2), the Commissioner may, by a further notice in writing served on the officer, extend the period in which the information is to be furnished.

(4) Subject to subsection (3), where any person upon whom any notice under subsection (2) has been served fails to comply with such notice, the Commissioner may impose a penalty equal to the higher of two hundred thousand shillings or two times the amount of tax lost as a result of the failure to comply, and the provisions of this Act relating to the collection and recovery of tax shall also apply to the collection and recovery of the penalty as if it were tax due from the Government or local authority or public body in whose service the officer is engaged.

[Act No. 8 of 1997, s. 42.]

70. Further returns and extension of time

(1) The Commissioner may, by notice in writing, require any person to furnish him within a reasonable time specified in the notice, not being less than thirty days from the date of service of such notice, with further returns or particulars in relation to any matter contained in a return made under this Act, or in relation to any transactions or matters appearing to the Commissioner to be relevant to the ascertainment of the income of any person.

(2) Where any notice has been served under this Part requiring a return to be made within a specified number of days, the Commissioner may, by a further notice in writing served on the person, extend the period in which the return is to be made.

71. Return deemed to be furnished by due authority

A return, statement, or form, purporting to be furnished under this Act by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and a person signing any such return, statement, or form, shall be deemed to be cognizant of all matters contained therein.

72. Additional tax in event of failure to furnish return or fraud in relation to a return

- (1) A person who, in relation to a year of income, fails—
- (a) to furnish a return of income or to give a notice to the Commissioner as required by section 52 and section 52B shall be charged with additional tax equal to five per cent of the normal tax:
- Provided that in calculation of the additional tax for purposes of this section, the normal tax shall be reduced by the amounts already paid and withholding tax credits;
- (b) to furnish a provisional return of income or to give a notice to the Commissioner as required by section 53 of this Act shall, for each month or part thereof from the commencement of such failure up to the date on which the Commissioner makes a provisional

assessment for such year of income under section 74(3) or an assessment under section 73 of this Act, whichever is the earlier, be charged with additional tax equal to three per cent of the normal tax in such provisional assessment or assessment, as the case may be:

Provided that—

- (i) if the Commissioner is satisfied that owing to absence from Kenya, sickness or any other reasonable cause the person was prevented from furnishing the return or giving notice within the required period, the Commissioner may at any time remit the whole or any part of the additional tax up to a maximum of five hundred thousand shillings per person per annum; and
 - (ii) the Commissioner may remit any additional tax in excess of five hundred thousand shillings per person per annum with the prior written approval of the Minister; and
 - (iii) the Commissioner shall make a quarterly report to the Minister of all additional tax remitted during that quarter;
- (c) to furnish a return of compensating tax owed as required under section 52B(4) shall, for each month or part thereof during which the failure continues, be charged with additional tax equal to five per cent of the compensating tax which should have been shown on such return.

(2) Any person who, in relation to any year of income, omits from his return of income any amount which should have been included therein, or claims any personal relief to which he is not entitled or at any time makes an incorrect statement in relation to any matter affecting his liability to tax shall, where such omission, claim or statement was due to fraud or to any gross neglect, be charged for that year of income with an amount of tax not exceeding two times the difference between the normal tax chargeable on the basis of the return made by him, the personal reliefs claimed by him or the statement affecting his liability to tax, as the case may be, and the normal tax properly chargeable in respect of his total income under this Act; and any person who, in his return of income for a year of income, deducts or sets off any amount the deduction or set-off whereof is not allowed under this Act, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this subsection to have omitted such amount from his return of income.

(3) Where any such failure, omission, claim, statement, deduction or set-off as is referred to in subsections (1) and (2) of this section has been made in connexion with a return of income required under this Act to be furnished by a person on behalf of another person, such other person shall be liable for additional tax charged under this section.

(4) The additional tax charged under this section—

- (a) shall be charged in an assessment or provisional assessment made under this Act whether or not any proceedings are commenced for any offence against this Act arising out of the same facts; and
- (b) shall be payable in addition to the normal tax and shall be levied and collected as if it were normal tax:

Provided that such additional tax shall be deemed not to be tax paid or payable for the purposes of section 11, 36, 39, 41 or 42 of this Act, or of calculating a fine under section 111(1) of this Act.

(5) Notwithstanding anything in Part X, where in any appeal against an assessment which includes additional tax one of the grounds of appeal relates to the charge of such additional tax, the decision of the local committee or Court, as the case may be, in relation to that ground of appeal shall be confined to the question—

- (a) where additional tax has been charged under subsection (1) of this section, as to whether or not there was a failure within the meaning of that subsection; or
- (b) where additional tax has been charged under subsection (2) of this section, as to whether or not the omission, claim, statement, deduction or set-off which gave rise to the charge was due to fraud or gross neglect,

and where any such question is decided in favour of the person concerned no additional tax shall be payable.

(6) *Deleted by Act No. 4 of 2004, s. 53.*

(7) In this section “**normal tax**” means tax charged under this Act apart from this section and “**additional tax**” means tax charged under this section in addition to the normal tax.

[Act No. 13 of 1979, s. 5, Act No. 9 of 1992, s. 50, Act No. 4 of 1993, s. 48, Act No. 8 of 1997, s. 43, Act No. 4 of 1999, s. 39, Act No. 9 of 2000, s. 49, Act No. 6 of 2001, s. 52, Act No. 7 of 2002, s. 46, Act No. 4 of 2004, s. 53, Act No. 6 of 2005, s. 29, Act No. 8 of 2009, s. 27.]

72A. Offences in respect of failure to furnish return or fraud in relation to a return

(1) Any person who in relation to any year of income, knowingly omits from his return of income any amount which should have been included or claims any relief to which he is not entitled, or makes any incorrect statement which affects his liability to tax, including compensation tax shall be guilty of an offence and liable to additional tax equal to double the difference between the tax chargeable according to the return made by him, and the normal tax properly chargeable in respect of the total income assessable under this Act.

[Act No. 10 of 1990, s. 53, Act No. 9 of 1992, s. 51, Act No. 4 of 1993, s. 49, Act No. 6 of 2001, s. 52.]

72B. Penalty for the negligence of authorized tax agent

(1) Where the additional tax charged under sections 72 and 72A results from the failure, omission, claim, statement or deduction which arises due to the negligence or disregard of law by a person who is an authorised tax agent, such a person shall be liable to a penalty equal to one half of such additional tax but in any case not less than one thousand shillings and not exceeding fifty thousand shillings with respect to each such return, statement or other document as shall be the subject of such additional tax.

[Act No. 8 of 1991, s. 65, Act No. 4 of 1993, s. 50.]

72C. Penalty on underpayment of instalment tax

(1) Subject to the Twelfth Schedule, a penalty of twenty per cent of the difference between the amount of instalment tax payable in respect of a year of income as specified in section 12, and the instalment tax actually paid multiplied by one hundred and ten per cent shall be payable.

(2) Where the Commissioner is satisfied that the difference referred to in subsection (1) was due to reasonable cause, he may remit the whole or part of the penalty payable under this section, and where for a year of income the difference arises wholly or partly from an estimate of tax to be charged made before any change in any allowance, relief or rate of tax, the Commissioner may remit the interest charged thereon to the extent to which it is attributable to such a change:

Provided that—

- (a) the Commissioner may remit up to a maximum of one million five hundred thousand shillings per person per annum of the penalty or interest; and
- (b) the Commissioner may remit any amount of penalty or interest in excess of one million five hundred thousand shillings with the prior written approval of the Minister; and
- (c) the Commissioner shall make a quarterly report to the Minister of all penalties and interest remitted during that quarter.

[Act No. 4 of 1993, s. 51, Act No. 8 of 1997, s. 44, Act No. 9 of 2000, s. 50, Act No. 4 of 2012, s. 20.]

72D. Penalty on unpaid tax

Where any amount of tax remains unpaid after the due date a penalty of twenty per cent shall immediately become due and payable:

Provided that—

- (a) in the case where the instalment penalty under section 72C applies, the penalty under this section shall not apply except to the extent that any such instalment penalty has not been paid by the due date for self-assessment of tax under section 52B;
- (b) this section shall not apply in the case of penalties imposed for breach of any other provision of this Act.

[Act No. 4 of 1993, s. 51, Act No. 8 of 1997, s. 45, Act No. 10 of 2010, s. 27.]

PART IX – ASSESSMENTS**73. Assessments**

(1) Save as otherwise provided, the Commissioner shall assess every person who has income chargeable to tax as expeditiously as possible after the expiry of the time allowed to such person under this Act for the delivery of a return of income.

(2) Where a person has delivered a return of income, the Commissioner may—

- (a) (i) accept the return and deem the amount that person has declared as his self assessment in which case no further notification need be given; or

- (ii) where the return is in respect of a year of income prior to 1992, accept that return and assess him on the basis thereof;
- (b) if he has reasonable cause to believe that such return is not true and correct, determine, according to the best of his judgment, the amount of the income of that person and assess him accordingly.

(3) Where a person has not delivered a return of income for any year of income, whether or not he has been required by the Commissioner so to do, and the Commissioner considers that the person has income chargeable to tax for that year, he may, according to the best of his judgment, determine the amount of the income of that person and assess him accordingly; but such assessment shall not affect any liability otherwise incurred by such person under this Act in consequence of his failure to deliver the return.

[Act No. 8 of 1991, s. 66, Act No. 6 of 1994, s. 43.]

74. Provisional assessments

(1) Without prejudice to his powers under section 73 of this Act, the Commissioner shall proceed to make a provisional assessment in respect of every person as expeditiously as possible after the expiry of the time allowed to such person under this Act for the delivery of a provisional return of income.

(2) When a person has furnished a provisional return of income he shall thereupon be deemed to have been provisionally assessed under this section on the basis of the estimates contained in such return.

(3) Where a person has not submitted a provisional return of income for any year of income, whether or not he has been required by the Commissioner so to do, and the Commissioner considers such person has or will have income chargeable to tax for such year, he may, according to the best of his judgment, estimate the income of such person and make a provisional assessment upon him accordingly.

74A. Instalment assessment

(1) Without prejudice to his powers under sections 73 and 74, Commissioner may proceed to make an instalment assessment for tax under section 12 in respect of any person after the expiry of the time allowed to that person under this Act for the payment of instalment tax; and

(2) When a person has paid instalment tax under section 12 he shall thereupon be deemed to have been assessed for the purpose of instalment tax under this section on the basis of the amount of instalment tax paid; and

(3) Where a person has not paid instalment tax for a year of income and the Commissioner considers that the person has or will have income chargeable to tax for that year, he may, according to the best of his judgment, estimate the income of that person and make an instalment assessment upon him accordingly.

[Act No. 10 of 1990, s. 54, Act No. 8 of 1996, s. 42.]

74B. Minimum additional tax or penalty

Notwithstanding any other provisions of this Act, any additional tax or penalty (but excluding any interest) charged shall not be less than one thousand shilling in the case of an individual or ten thousand shillings in any other case.

[Act No. 4 of 1993, s. 52, Act No. 4 of 2004, s. 54.]

75. Assessment of person about to leave or having left Kenya

Where the Commissioner has reasonable cause to believe that any person is about to leave Kenya, or has left Kenya and his absence is unlikely to be only temporary, and that person has not been assessed to tax on income chargeable to tax for a year of income, the Commissioner may, according to the best of his judgment, determine the amount of the income of such person for that year of income and assess him accordingly, but such assessment shall not affect the liability of such person otherwise arising under this Act.

75A. Assessment in certain cases

(1) Notwithstanding any other provision of this Act, where the Commissioner has reason to believe that any tax payable by any person is at risk of non-payment—

- (a) due to the imminent departure of the person from Kenya; or
- (b) where the person, being a company, is about to be liquidated or otherwise wound up or cease business;

the Commissioner may, whether or not the due date for the payment of that tax has arrived, by notice in writing served on that person require that person to pay the tax within the time specified in the notice.

(2) Any person who fails to pay tax when required to do so under subsection (1) shall be guilty of an offence.

[Act No. 8 of 2009, s. 28.]

76. Assessment not to be made on certain employees

The Commissioner shall not assess an employee for any year of income—

- (a) if such employee had no income chargeable to tax for such year of income other than income consisting of emoluments; and
- (b) if on the basis of such emoluments and the personal reliefs to which such employee is entitled the tax payable by that employee in respect of those emoluments has been recovered by deduction under section 37 of this Act,

unless, prior to the expiry of seven years after that year of income, such employee applies to the Commissioner to be assessed, whether in connexion with a claim for repayment of tax or otherwise, or the Commissioner considers an assessment to be necessary or expedient so as to arrive at the correct amount of the tax to be charged upon or to be payable by such employee for such year of income.

76A. Assessment not to be made on certain incomes

The Commissioner shall not assess any person for any year of income on that portion of income which has been subject to withholding tax which is also a final tax.

[Act No. 8 of 1991, s. 67.]

77. Additional assessments

Where the Commissioner considers that any person has been assessed at a less amount, either in relation to the income assessed or to the amount of tax payable than that at which he ought to be assessed, the Commissioner may, by

an additional assessment, assess such person at such additional amount as, according to the best of his judgment, such person ought to be assessed.

78. Service of notice of assessment, etc.

The Commissioner shall cause a notice of an assessment or provisional assessment, instalment assessment to be served on each person assessed, and such notice shall state the amount of income assessed and the amount of tax payable and shall inform the person assessed of his rights under section 84 of this Act:

Provided that no notice need be served in the case of a person deemed to have been assessed under section 74(2) or 74A(2).

[Act No. 6 of 1994, s. 44.]

79. Time limit for making assessment, etc.

(1) An assessment may be made under this Act at any time prior to the expiry of seven years after the year of income to which the assessment relates:

Provided that—

- (a) where any fraud or any gross or wilful neglect has been committed by or on behalf of any person in connexion with or in relation to tax for any year of income, an assessment in relation to such year of income may be made at any time;
- (b) in the case of income consisting of gains or profits from employment or services rendered, an assessment in relation thereto may be made at any time prior to the expiry of seven years after the year of income in which the gain or profits are received;
- (c) in any case to which—
 - (i) the proviso to paragraph (d) of section 4 of this Act; or
 - (ii) the proviso to paragraph 21 of the Second Schedule,applies, an assessment in relation thereto may be made at any time prior to the expiry of seven years after the year of income in which the circumstances which gave rise to the assessment occurred;
- (d) in the case of an assessment made upon the executors or administrators of a deceased person in respect of the income of such person, the assessment shall be made prior to the expiry of three years after the year of income in which such deceased person died.

(2) The question whether an assessment has been made after the time set in this section for the making thereof shall be raised only on an objection made under section 84 of this Act and on any appeal consequent thereon.

80. Assessment list

(1) As soon as is reasonably practicable after the expiry of the time allowed under this Act for the delivery of returns of income in respect of each year of income, the Commissioner shall cause to be prepared a list of persons assessed to tax in respect of that year, and each list shall contain in relation to each person so assessed—

- (a) his name and address;
- (b) the amount of income upon which assessment has been made; and
- (c) the amount of tax payable.

(2) In any proceedings, whether civil or criminal, under this Act, a document purporting to be an extract from an assessment list and certified by the Commissioner to be a true copy of the relevant entry in the list, shall be *prima facie* evidence of the matters stated therein.

81. Errors, etc., in assessments or notices

(1) No assessment, warrant or other document purporting to be made, issued or executed under this Act shall be quashed, or deemed to be void or voidable, for want of form or be affected by reason of a mistake, defect or omission therein, if it is in substance and effect in conformity with or according to the intent and meaning of this Act and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected by reason of a—

(a) mistake therein as to—

- (i) the name of the person assessed; or
- (ii) the description of any income;

(b) variance between the assessment and the duly served notice thereof,

which is not likely to deceive or mislead any person affected by the assessment.

PART X – OBJECTIONS, APPEALS AND RELIEF FOR MISTAKES

82. Local committees

(1) The Minister may, by notice in the *Gazette*, establish a local committee for any area specified in the notice.

(2) A local committee shall consist of a chairman and not more than eight other members appointed by the Minister.

(3) A member of a local committee shall hold office for such period, not exceeding two years, specified in his appointment unless, prior to the expiration of such period—

- (a) he resigns his office by written notification under his hand addressed to the Minister; or
- (b) the Minister, being satisfied that the member is unfit by reason of mental or physical infirmity to perform the duties of his office, or that the member has failed to attend at least three consecutive meetings of the committee, revokes his appointment.

(4) The quorum for a meeting of a local committee shall be the chairman and two other members.

(5) The members of a local committee shall be entitled to receive such subsistence and travelling allowances as the Minister may determine.

(6) The members of a local committee shall not be personally liable for any act or default of the committee done or committed in good faith in the course of exercising the powers conferred by this Act.

(7) The Minister may make rules—

- (a) prescribing the manner in which an appeal under this Act may be made to a local committee and the fees to be paid in respect of any appeal;
- (b) prescribing the procedure to be adopted by a local committee in hearing such appeal and the records to be kept by such committee;
- (c) prescribing the manner in which a local committee shall be convened and the places where and the time at which it shall hold sittings;
- (d) prescribing a scale of costs which may be awarded by a local committee; and
- (e) generally for the better carrying out of the provisions of this Act relating to local committees and appeals thereto.

83. The Tribunal

(1) The Minister may, by notice in the *Gazette*, establish a Tribunal to exercise the functions conferred upon it by this Act.

(2) The Tribunal shall consist of a chairman and not less than two and not more than four other members appointed by the Minister.

(3) A member of the Tribunal shall hold office for such period, not exceeding two years, specified in his appointment unless, prior to the expiration of such period—

- (a) he resigns his office by written notification under his hand addressed to the Minister; or
- (b) the Minister, being satisfied that the member is unfit by reason of mental or physical infirmity to perform the duties of his office, or that the member has failed to attend at least three consecutive meetings of the Tribunal, revokes his appointment.

(4) The quorum for a meeting of the Tribunal shall be the chairman and two other members.

(5) The members of the Tribunal shall be entitled to receive such subsistence and travelling allowances as the Minister may determine.

(6) The members of the Tribunal shall not be personally liable for any act or default of the Tribunal done or committed in good faith in the course of exercising the powers conferred by this Act.

(7) The Minister may make rules—

- (a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of an appeal;
- (b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal;
- (c) prescribing the manner in which the Tribunal shall be convened and the places where and the time at which sittings shall be held;
- (d) prescribing a scale of costs which may be awarded by the Tribunal; and

- (e) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals thereto.

84. Notice of objection to assessment

(1) Any person who disputes an assessment made upon him under this Act may, by notice in writing to the Commissioner, object to the assessment.

(2) A notice given under subsection (1) of this section shall not be a valid notice of objection unless it states precisely the grounds of objection to the assessment and is received by the Commissioner within thirty days after the date of service of the notice of assessment; but if the Commissioner is satisfied that owing to absence from Kenya, sickness or other reasonable cause, the person objecting to the assessment was prevented from giving the notice within that period and there has been no unreasonable delay on his part, the Commissioner may, upon application by the person objecting, and after deposit by him with the Commissioner of so much of the tax as is due under the assessment under section 92, or such part thereof as the Commissioner may require, and the payment of any interest due under section 94 of this Act, admit the notice after the expiry of that period and the admitted notice shall be a valid notice of objection:

Provided that the objection made within the thirty days shall not be valid unless it is accompanied by a return of income together with all the supporting documents, where applicable.

(3) A person aggrieved by the refusal of the Commissioner to admit a notice of objection under subsection (2) of this section may, on depositing with the Commissioner if he so requires, the whole or such part as the Commissioner may require of the amount of tax assessed under the assessment to which objection is made and on paying any interest due under section 94, appeal against the refusal to a local committee, whose decision shall be final.

(4) All the provisions of this Act relating to appeals against assessments shall, so far as they are applicable and subject to the finality of the decision of the local committee, have effect with respect to an appeal under subsection (3) of this section, and the local committee hearing the appeal may confirm the decision of the Commissioner or may direct that the notice concerned shall be a valid notice of objection.

[Act No. 8 of 1991, s. 68, Act No. 9 of 1992, s. 52, Act No. 6 of 2005, s. 30.]

85. Powers of Commissioner on receipt of objection

- (1) Where a notice of objection has been received, the Commissioner may—
- (a) amend the assessment in accordance with the objection; or
 - (b) amend the assessment in the light of the objection according to the best of his judgment; or
 - (c) refuse to amend the assessment.
- (2) Where the Commissioner either—
- (a) agrees to amend the assessment in accordance with the objection; or
 - (b) proposes to amend the assessment in the light of the objection and the person objecting agrees with the Commissioner as to the proposed amendment,

the assessment shall be amended accordingly and the Commissioner shall cause a notice setting out the amendment and the amount of the tax payable to be served on that person.

(3) Where the Commissioner—

- (a) proposes to amend the assessment in the light of the objection and the person objecting does not agree with the Commissioner as to the proposed amendment, the assessment shall be amended as proposed by the Commissioner and he shall cause a notice setting out such amendment and the amount of the tax payable to be served on such person; or
- (b) refuses to amend the assessment, he shall cause a notice confirming the assessment to be served on such person.

86. Right of appeal from Commissioner's determination of objection

(1) A person who has been served with a notice under section 85(3) of this Act may—

- (a) if his assessment is based upon or consequent upon a direction issued under section 23 or 24 of this Act, appeal from the decision of the Commissioner to the Tribunal; or
- (b) in any other case, appeal from such decision to the local committee appointed for the area in which he resides or, if he is a non-resident person, to a local committee appointed for the Nairobi Area,

upon giving notice of appeal in writing to the Commissioner within thirty days after the date of service upon him of the notice under the said subsection.

(2) Any party to an appeal under subsection (1) of this section or under section 89(1) of this Act who is dissatisfied with the decision thereon may appeal to the Court against that decision upon giving notice of appeal to the other party or parties to the original appeal within fifteen days after the date on which a notice of such decision has been served upon him:

Provided that an appeal to the Court under this subsection may be made only on a question of law or of mixed law and fact.

(3) Where a person other than the Commissioner has failed to give notice of appeal within a period specified in subsection (1) he may, after depositing with the Commissioner so much of the tax as is payable under section 92(6), or such part thereof as the Commissioner may require, and paying any interest due under section 94, apply to the local committee or the Tribunal, as the case may be, for an extension of the time in which to give the notice of appeal, and the local committee or the Tribunal may grant an extension on being satisfied that, owing to absence from Kenya, sickness or other reasonable cause, he was prevented from giving notice of appeal within the relevant period and that there has been no unreasonable delay on his part.

(4) Where a person other than the Commissioner has failed to give notice of appeal within the period specified in subsection (2) he may apply to the Court for an extension of the time in which to give notice of appeal and the Court may grant an extension on being satisfied—

- (a) that he has paid the tax payable or required under section 92(6) (together with any interest charged under section 94); and
- (b) that he has paid the tax due under section 93(1)(c); and

- (c) that owing to absence from Kenya, sickness or other reasonable cause, he was prevented from giving notice of appeal within the relevant period; and
- (d) that there has been no unreasonable delay on his part.
[Act No. 10 of 1986, s. 30, Act No. 4 of 2004, s. 55.]

87. Procedure on appeals

(1) In this section, “**appellate body**” means the Court, the Tribunal or a local committee.

(2) In an appeal under section 86 of this Act —

- (a) the appellant shall appear before the appellate body either in person or by an advocate on the day and at the time fixed for the hearing of the appeal:

Provided that—

- (i) if it be proved to the satisfaction of the appellate body that, owing to absence of the appellant from Kenya, sickness, or other reasonable cause, he is prevented from attending at the hearing of the appeal on the day and at the time fixed for that purpose, the appellate body may postpone the hearing of the appeal for such reasonable time as it thinks necessary;
- (ii) in the case of an appeal to a local committee, the appellant may be represented by an agent authorized by him in writing;
- (b) the onus of proving that the assessment or decision appealed against is excessive or erroneous shall be on the appellant;
- (c) the appellate body may confirm, reduce, increase or annul the assessment concerned or make such other order thereon as it may think fit;
- (d) the costs of the appeal shall be in the discretion of the appellate body;
- (e) the appellate body shall, within seven days of its decision, cause a notice of such decision and of the date thereof to be issued and such notice shall be served on the parties to the appeal;
- (f) where the decision of the appellate body results in an amendment to an assessment, the assessment shall be amended accordingly and the Commissioner shall cause a notice setting out the amendment and the amount of tax payable to be served on the person assessed.

(3) An order made by the Court on an appeal shall have effect, in relation to the amount of tax payable under the assessment as determined by the Judge, as a decree for the payment of that amount, whether or not the amount of tax is specified in the decree.

88. Finality of assessment

(1) Where, in relation to an assessment—

- (a) no notice of objection has been given; or
- (b) a notice of objection has been given and—
 - (i) the assessment has been amended under section 85(2) of this section; or

- (ii) a notice has been served under section 85(3) of this section but no appeal has been brought against it; or
- (iii) the assessment has been finally determined on appeal,

the assessment as made, or so amended, or determined on appeal, as the case may be, shall be final and conclusive for the purposes of this Act.

(2) Nothing in this section shall prevent the Commissioner from making an additional assessment for a year of income which does not involve reopening a matter which has been determined on appeal for that year of income; but where fraud or gross or wilful neglect has been committed by or on behalf of a person in connection with or in relation to tax for a year of income, the Commissioner may make an additional assessment on that person for that year of income notwithstanding that it involves reopening a matter which has been determined on appeal.

89. Application of appeal procedure to other decisions, etc., of Commissioner

(1) A person aggrieved by—

- (a) a notice given by the Commissioner under section 55(1) of this Act; or
- (b) a refusal by the Commissioner to make a refund or repayment under section 105 or 106; or
- (c) an apportionment of an amount or sum by the Commissioner under the Second Schedule which affects, or may affect, the liability to tax of two or more persons; or
- (d) a determination by the Commissioner under paragraph 32(4) of the Second Schedule; or
- (e) a determination by the Commissioner under paragraph 12 of the Eighth Schedule,

may appeal therefrom to a local committee.

(2) The provisions of this Act relating to appeals to a local committee against assessments shall have effect with respect to an appeal under this section as if it were an appeal against an assessment.

(3) Where an appeal is brought under subsection (1) of this section against a decision or act of the Commissioner which affects, or is likely to affect, the income of more than one person—

- (a) where the same local committee has jurisdiction with respect to all the persons concerned, the appeal shall be heard by that local committee;
- (b) where different local committees have jurisdiction with respect to the persons concerned, the appeal shall be heard by such one of those local committees as may be agreed upon by those persons or, in default of agreement, by the local committee having jurisdiction in relation to the person who first lodges an appeal;
- (c) a person lodging an appeal shall serve a copy of all the appeal documents on all other affected persons who shall be entitled to appear on the appeal as if they were parties thereto;

- (d) if the local committee before which an appeal is heard considers that any other person should be joined, it may order that a copy of all the appeal documents shall be served on that other person who shall be entitled to appear on the appeal as if he were party thereto.

(4) Where any appeal under subsection (1) of this section against a decision or act of the Commissioner is determined, then, subject to any right of appeal therefrom to the Court, that act or decision shall not subsequently be the ground of any other appeal, whether by the same or any other person, and the determination of that appeal shall be treated as finally determining the rights of all parties arising out of or consequent upon the act or decision of the Commissioner so appealed against whether or not that other person was heard at the appeal.

[Act No. 8 of 1978, s. 9.]

90. Relief in respect of error or mistake

(1) Where for any year of income, a person who, having made a return of income, has been assessed to tax under section 73(2)(a) or having submitted a self-assessment return of income under section 52B and alleges that the assessment was excessive by reason of some error or mistake of fact in the return, then he may, not later than seven years after the expiry of that year of income, make an application to the Commissioner for relief.

(2) On receiving an application under subsection (1) the Commissioner shall inquire into the matter and, after taking into account all relevant circumstances, shall give such relief by way of repayment as is reasonable and just; but no relief shall be given in respect of an error or mistake as to the basis on which the liability of an applicant should have been computed where the return of income was in fact made on the basis or in accordance with the practice generally prevailing at the time the return of income was made.

[Act No. 4 of 1993, s. 53.]

91. Rules for appeals to the Court

The Chief Justice may make rules governing appeals to the Court under this Part.

91A. Appeals to Court of Appeal

A party to an appeal lodged under section 86(2) who is dissatisfied with the decision of the Court thereon may, upon giving notice of appeal to the other party or parties to that appeal within fifteen days after the date on which a notice of that decision has been served upon him, appeal to the Court of Appeal from the order made by the court, on any of the following grounds, namely—

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Act and rules made thereunder which may possibly have produced error or defect in the decision of the case upon the merits.

[Act No. 10 of 1986, s. 31.]

PART XI – COLLECTION, RECOVERY AND REPAYMENT OF TAX

92. Time within which payment is to be made

(1) Save as otherwise provided by this Act and any rules made thereunder, tax charged in any assessment shall be due and payable in accordance with this section.

(2) The tax charged in an assessment other than a provisional assessment shall be due and payable—

- (a) in the case of an individual—
 - (i) where the date of service of an assessment made under section 73 (2)(a) is before 31st August in the year following the year of income in respect of which the tax is charged, on or before 30th September in that following year; and
 - (ii) in all other cases within thirty days from the date of the service of the notice of such assessment;
- (b) in the case of a person, other than an individual—
 - (i) where the date of service of an assessment made under section 73 (2)(a) is before 31st May in the year following the year of income in respect of which the tax is charged, on or before 30th June in that following year; and
 - (ii) in all other cases, within thirty days from the date of service of the notice of the assessment.

(2A) Where an instalment assessment is made for any year of income on any person under section 74A, the tax charged thereunder shall be due and payable on or before the twentieth day of the months in the current year of income as specified in the Twelfth Schedule:

Provided that where the instalment assessment is made under section 74A(3), the tax shall be due and payable within thirty days of service of the notice of that assessment.

(2B) Where the Commissioner makes an instalment assessment under section 74A(3), the amount payable in that assessment for the purpose of section 94 shall be deemed to be tax remaining unpaid after the date on which interest under the section may be charged.

(3) Where a provisional assessment is made for any year of income on a person under section 74, the tax charged thereunder shall be due and payable within three months of the end of the accounting period the income of which forms the basis of the provisional assessment:

Provided that where the provisional assessment is made under section 74(3) the tax shall be due and payable within thirty days of service of the notice of that assessment.

(4) *Deleted by Act No. 8 of 1989, s. 21.*

(4A) Where a person has notified the Commissioner in writing as required by section 53(3), the provisional tax shall be due and payable within thirty days after the date of service by the Commissioner of the provisional assessment.

(5) In the case of a company which is being wound up, the due dates for payment of tax on any income charged for the year of income in which the winding-up commences and for the preceding year of income shall be deemed for the purpose of priority of debts but for that purpose only, to be the date next before the date of the winding-up order or the resolution, special resolution or extraordinary resolution, as the case may be, passed for the winding-up of the company, and whether or not assessments have been made before that date.

(6) Where a notice of objection has been given then, notwithstanding that the assessment has not been finally determined, if the tax is due and payable under subsection (2) of this section, so much of the tax as is not in dispute shall be due and payable in accordance with that subsection and the balance in accordance with section 93; but the Commissioner may permit a lesser or no amount to be paid in accordance with this subsection, in which case the balance of the amount or the whole amount, as the case may be, otherwise so due and payable shall be due and payable at the same time as the amount referred to in section 93 is to be paid.

(7) The Commissioner may extend the period within which tax is to be paid and may specify another due date for payment thereof.

(8) For the purposes of subsection (6) of this section the tax which is not in dispute shall be deemed to be the amount which would be charged if the assessment were amended in accordance with the notice of objection and, where notice of appeal has been given, as if it were amended in accordance with the memorandum of appeal.

[Act No. 2 of 1975, s. 5, Act No. 7 of 1976, s. 2, Act No. 13 of 1979, s. 5, Act No. 8 of 1989, s. 21, Act No. 10 of 1990, s. 55, Act No. 4 of 1993, s. 54, Act No. 7 of 2002, s. 47.]

92A. Due date for payment of tax under self assessment

(1) Where any person is required to furnish a return under section 52B, the tax chargeable thereunder shall be due and payable on the last day of the fourth month following the end of the year of income or accounting period.

(2) Where the Commissioner makes an additional assessment under section 73(2)(b), the tax charged thereunder shall be deemed to have been due and payable on the last day of the fourth month following the end of the year of income or accounting period.

[Act No. 8 of 1991, s. 69, Act No. 4 of 1993, s. 54, Act No. 8 of 1997, s. 46, Act No. 5 of 1998, s. 38, Act No. 4 of 2004, s. 56.]

93. Payment of tax where notice of objection etc.

(1) The balance of tax referred to in section 92(6) shall be paid—

- (a) in a case to which section 85(2) applies, before the expiry of thirty days after the date of service of the notice under that subsection;
- (b) in a case to which section 85(3) applies, but no appeal has been brought under section 86, before the expiry of thirty days after the date of service of the notice under that subsection;

- (c) in a case where the assessment has been determined on appeal by a decision of a local committee or the Tribunal, notwithstanding that an appeal has been or may be lodged against that decision—
 - (i) where the decision of the local committee or the Tribunal has not resulted in any amendment to the assessment before the expiry of thirty days after the date of service of the notice under section 87(2)(e); or
 - (ii) where the decision of the local committee or the Tribunal has resulted in an amendment to the assessment before the expiry of thirty days after the date of service of the notice under section 87(2)(f).

(2) Where the decision of the local committee or the Tribunal is appealed against and the assessment is finally determined on such subsequent appeal, if the amount of tax under that assessment is—

- (a) more than the amount of tax paid in accordance with section 92(6) and subsection (1)(c) (together with interest charged under section 94) then the amount underpaid shall be payable before the expiry of thirty days after the date of service of the notice under section 87(2)(f); or
- (b) less than the amount of the tax paid in accordance with section 92(6) and subsection (1)(c) (together with interest charged under section 94) then the amount overpaid shall be refunded under section 105 together with interest thereon at such rate as may have been ordered on appeal.

[Act No. 13 of 1978, Sch., Act No. 10 of 1986, s. 32, Act No. 8 of 1991, s. 70.]

94. Penalty and interest on unpaid tax

(1) In addition to the penalty payable under section 72D, a late payment interest of two per cent per month or part thereof shall be charged on the amount, of tax remaining unpaid for more than one month after the due date until the full amount is recovered:

Provided that—

- (a) the interest chargeable under this subsection shall not exceed one hundred per centum of the tax owing; and
- (b) the penalty referred to in this subsection or imposed under any other section of this Act shall not attract any interest.

(2) The penalty under sections 72, 72B, 72C and 72D and late payment interest charged under this section shall, for the purpose of the provisions of this Act relating to the collection and recovery of tax, be deemed to be tax.

(3) For purposes of computing interest on unpaid tax, with respect to tax due and owing for the year of income commencing on or after the 1st January, 1992, the due date for the tax charged in an assessment shall be the last date as provided in sections 52B, 92 and 92A irrespective of the fact that such an assessment may be stood over on account of an objection or an appeal.

(4) The Commissioner may upon application by a person from whom any interest is due under this section remit the whole or part of any penalty or late

payment interest or both such penalty and interest charged under section 72D up to a maximum of one million, five hundred thousand shillings each per person per annum:

Provided that—

- (a) the Commissioner may upon application by a person from whom any interest is due under this section remit any amount of penalty or late payment interest in excess of one million, five hundred thousand shillings with the prior written approval of the Minister; and
- (b) the Commissioner shall make a quarterly report to the Minister of all penalties and late payment interest remitted during that quarter.

(5) Upon receipt of an application under subsection (4), the Commissioner shall, where the applicant has paid the principal tax in full, suspend the charging of the interest pending the determination of the application.

(6) Where remission under subsection (4) is not granted, or is granted in respect of only part of the penalty or late payment interest, the balance shall become due and payable within ninety days of the determination of the application.

(7) Where the balance of a penalty or interest payable under subsection (6) remains unpaid after the expiry of the specified period, a surcharge at the rate of two per cent per month or part thereof, of the unpaid amount shall forthwith be due and payable.

[Act No. 8 of 1978, s. 9, Act No. 13 of 1979, s. 5, Act No. 8 of 1983, s. 16, Act No. 10 of 1990, s. 56, Act No. 8 of 1991, s. 71, Act No. 9 of 1992, s. 53, Act No. 4 of 1993, s. 55, Act No. 6 of 1994, s. 45, Act No. 8 of 1997, s. 47, Act No. 9 of 2000, s. 51, Act No. 8 of 2008, s. 37, Act No. 10 of 2010, s. 28.]

95. Interest on underestimated tax

(1) If, for a year of income, the difference between the amount of tax assessed on the total income of any person and the amount of the estimate of the tax chargeable contained in a provisional return of income made by that person in respect of that year is greater than ten per cent of that estimated tax, interest at the rate of two per cent per month shall be payable on the whole of the difference between the tax so assessed and the tax so estimated.

(2) Interest under subsection (1) shall be calculated from the due date as specified in section 92(2).

(3) Where the Commissioner is satisfied that a difference referred to in subsection (1) was due to some reasonable cause, he may remit the whole or part of the interest payable under this section, and where for a year of income the difference arises wholly or partly from an estimate of tax to be charged made before a change in any allowance, relief or rate of tax, the Commissioner shall remit the interest thereon to the extent to which it is attributable to that change:

Provided that—

- (a) the Commissioner may remit up to a maximum of five hundred thousand shillings per person per annum of interest; and
- (b) the Commissioner may remit any amount of interest in excess of five hundred thousand shillings with the prior written approval of the Minister; and

- (c) the Commissioner shall make a quarterly report to the Minister of all interest remitted during that quarter.

[Act No. 7 of 1976, s. 2, Act No. 10 of 1987, s. 35, Act No. 10 of 1990, s. 57, Act No. 9 of 1992, s. 54, Act No. 8 of 1997, s. 48, Act No. 9 of 2000, s. 52.]

95A. Repealed by Act No. 4 of 1993, s. 56.

[Act No. 10 of 1990, s. 58.]

96. Appointment and duties of agent

- (1) In this section—

“**agent**” means a person appointed as such under subsection (2) of this section;

“**appointment notice**” means a notice issued by the Commissioner under that subsection appointing an agent;

“**moneys**” include salary, wages and pension payments and any other remuneration whatever;

“**principal**” means the person in respect of whom an agent is appointed.

- (2) The Commissioner may by written notice addressed to any person—

- (a) appoint him to be the agent of another person for the purposes of the collection and recovery of tax due from that other person; and
- (b) specify the amount of tax to be collected and recovered.

(3) An agent shall pay the tax specified in his appointment notice out of any moneys which may, at any time during the twelve months following the date of the notice, be held by him for, or due from him to, his principal.

(4) Where an agent claims to be, or to have become, unable to comply with subsection (3) by reason of the lack of moneys held by, or due from, him he shall, within seven working days, notify the Commissioner accordingly in writing setting out fully the reasons for his inability so to comply, and the Commissioner may—

- (a) accept the notification and cancel or amend the appointment notice accordingly; or
- (b) if he is not satisfied with those reasons, reject the notification in writing.

(5) Unless and until a notification is given by an agent under subsection (4) of this section —

- (a) sufficient moneys for the payment of the tax specified in his appointment notice shall be presumed to be held by him for, or due from him to, his principal; and
- (b) in any proceedings for the collection or recovery of that tax he shall be estopped from asserting the lack of those moneys.

(6) For the purposes of this section, the Commissioner may, by notice in writing, at any time require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of the notice, with a return showing any moneys which may be held by that person for, or due by him to, another person from whom tax is due.

(7) Where an agent fails to pay an amount of tax specified in his appointment notice within thirty days—

- (a) of the date of service of the notice on him; or
- (b) of the date on which any moneys come into his hands for, or become due by him to, his principal,

whichever is later, and—

- (i) he has not given a notification under subsection (4) of this section; or
- (ii) he has given a notification which has been rejected by the Commissioner,

the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of that amount as if it were tax due and payable by the agent, the due date for the payment of which was the date upon which that amount should have been paid to the Commissioner under this subsection.

(8) An agent who has made a payment of tax under this section shall for all purposes be deemed to have acted therein with the authority of his principal and of all other persons concerned, and shall be indemnified in respect of that payment against all proceedings, civil or criminal, and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

(9) A person who, in giving a notification under subsection (4) of this section, wilfully makes any false or misleading statement, or wilfully conceals any material fact, shall be guilty of an offence.

(10) For the purposes of this section, cases where moneys are held by an agent for, or due by him to, his principal, shall include cases where the agent—

- (a) owes or is about to pay money to the principal; or
- (b) holds money for or on account of the principal; or
- (c) holds money on account of some other person for payment to the principal; or
- (d) has authority from some other person to pay money to the principal.

[Act No. 6 of 2005, s. 31.]

96A. Preservation of funds

(1) Where the Commissioner has reasonable cause to believe that a person—

- (a) has made income which has not been charged to tax; and
- (c) is likely to frustrate the recovery of tax if information on the Commissioner's suspicion under this subsection is disclosed to him,

the Commissioner may make an *ex parte* application to court and the court may issue an order, prohibiting the transfer, withdrawal or disposal of, or any other dealings involving the with funds to any person or institution holding such funds for the person having such income.

(2) An order under subsection (1) shall have effect for 30 days and may be extended by the Court on application by the Commissioner.

(3) A person whose funds are the subject of a preservation order may, within 15 days of being served with the order, apply to the court to discharge, or vary the order and the court may, after hearing the parties, discharge or vary the order or dismiss the application.

(4) Where the Court has issued an order under this section, the Commissioner shall, within a period of thirty days from the date of the order, determine the tax due and payable, issue a notice of assessment and commence recovery of such tax in accordance with the provisions of this Act.

(5) Upon issuance of a notice of assessment under subsection (4), the order shall automatically expire unless extended by the Court upon application by the Commissioner.

(6) A person served with an order under this section who, in any way, interferes with the funds to which it relates commits an offence.

(7) A person or institution which has preserved funds or any account pursuant to a Court order under this section, shall for all purposes be deemed to have acted within the authority thereof and such person and all other persons concerned shall be indemnified in respect of the actions taken in connection therewith, against all proceedings, civil or criminal and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

[Act No. 9 of 2007, s. 26.]

97. Deceased persons

Where a person dies, then to the extent to which—

- (a) tax charged in an assessment made upon him has not been paid; or
- (b) his executors are charged to tax in an assessment made under section 48 of this Act,

the amount of tax unpaid or charged, as the case may be, in the assessment as finally determined shall be a debt due and payable out of his estate.

98. Collection of tax from persons leaving or having left Kenya

(1) Notwithstanding anything to the contrary in this Act, where the Commissioner has assessed a person under section 75 of this Act e may, by notice in writing served on the person assessed, require that payment of the whole of the tax assessed or such part thereof as remains unpaid be made within such time as may be specified in the notice or that security to his satisfaction be given for the payment.

(2) Notwithstanding anything to the contrary in this Act, where the Commissioner has reason to believe that a person who has been assessed to tax otherwise than under section 75 of this Act —

- (a) is about to leave Kenya without having paid the tax; or
- (b) has left Kenya without having paid the tax and his absence is unlikely to be only temporary,

he may, whether or not the due date for the payment of that tax has arrived, by notice in writing served on the person assessed, require—

- (i) that payment of the whole, or such part as remains unpaid, of the tax assessed be made within the time specified in the notice; or
- (ii) that security to his satisfaction be given for the payment.

(3) Where a notice has been served on a person under this section the amount of the tax assessed and required to be paid, shall, notwithstanding that a notice of objection to, or appeal against, the assessment has been given or is pending, be deemed to be due and payable on the date specified in the notice, and in default of compliance with that notice the Commissioner shall, in addition to any action taken under subsection (4) of this section or under section 96 of this Act, be entitled forthwith to recover the tax by suit or distress under this Act; but if subsequent to the commencement of a suit under this section compliance is made with the notice, that suit shall be discontinued and no order for costs thereon shall be made.

(4) Where a person has failed to comply with a notice served personally on him under this section, the Commissioner may apply to a magistrate for the arrest of that person, and if the Magistrate is satisfied by affidavit or otherwise that—

- (a) an amount of tax is due and payable by that person; and
- (b) he has failed to comply with the notice; and
- (c) there is reason to believe that he is about to leave Kenya,

he may issue a warrant to arrest that person and bring him before the Court to show cause why he should not pay the tax or give security therefore to the satisfaction of the Commissioner; but that person shall not be arrested if he pays to the officer entrusted with the warrant the amount of the tax due.

(5) Where a person brought before a court under subsection (4) of this section fails to show cause as thereby required, the Magistrate may order him either forthwith to pay the amount of tax due or forthwith to give security therefore to the satisfaction of the Commissioner and, in default of compliance, to be committed to prison until the tax due is paid or security given, but—

- (a) no person shall be so detained in prison for a longer period than six months;
- (b) the detention in prison of a person shall not release him from liability to pay the tax.

(6) In proceedings under subsections (4) and (5) of this section the production of a certificate signed by the Commissioner giving the name and address of the person and the amount of tax due and payable by him shall be sufficient evidence that the amount of tax is due and payable by that person.

(7) The compliance by a person with the notice served on him under subsection (1) or (2) of this section shall not prejudice his right to give notice of objection to, or to appeal against the assessment and if, after the assessment has been finally determined, the amount of tax due and payable by that person is—

- (a) less than the amount paid, then the amount overpaid shall be refunded under section 105 together with interest thereon at such rate as the Court may order;

- (b) more than the amount paid, then the amount underpaid shall be payable under section 93 as if it were a balance of tax charged referred to in section 92 (6).

99. Repealed by Act No. 9 of 2000, s. 53.

[Act No. 8 of 1978, s. 9, Act No. 9 of 2000.]

100. Collection of tax from guarantor

(1) Where security has been given under section 98(1) or (2) of this Act and that security consists of a form of guarantee under which, in default of payment of tax in terms of such security, a person (in this section referred to as guarantor) is obliged to pay that tax, the Commissioner may, in default of payment of the tax, by notice in writing served on the guarantor require him to pay within ninety days of the notice the amount of tax (not exceeding the amount guaranteed by him) as shall be specified in the notice.

(2) The provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of the amount of tax specified in a notice issued under this section as if that amount were tax due and payable by the guarantor and as if the due date for the payment of that amount was the date upon which the amount was due for payment under the notice.

101. Collection of tax by suit

(1) Where—

- (a) payment of tax has not been made on or before the due date; or
- (b) a notice which has been served on a person under section 98 of this Act has not been complied with,

the tax due by that person may be sued for and recovered as a debt due to the Government in a court of competent jurisdiction by the Commissioner in his official name.

(2) In a suit under this section the production of a certificate signed by the Commissioner giving the name and address of the person concerned and the amount of tax due and payable by him shall be sufficient evidence that such amount of tax is due and payable by such person.

102. Collection of tax by distraint

(1) In a case in which tax is recoverable in the manner provided by section 101 of this Act the Commissioner may, instead of suing for such tax, recover it by distress, and for that purpose may by order under his hand authorize and officer to execute such distress upon the goods and chattels of the person from whom such tax is recoverable and that officer may, at the cost of the person from whom such tax is recoverable, employ such servants or agents as he may think necessary to assist him in the execution of the distress:

Provided that—

- (i) where the full amount of the tax due and payable is not recovered by distress, the Commissioner may forthwith recover the deficiency in the manner provided by section 101 of this Act;
- (ii) where the full amount of tax due and payable has been paid after the issue of an order this section and before the execution of

distress, any costs and expenses incurred by the Commissioner prior to the payment of the tax shall be deemed to be a debt due and payable to the Government by the person in respect of whom the order was issued and may be recovered by the Commissioner as tax under this Act.

(1A) For the purposes of executing any such distress the person authorized by the Commissioner under the order may, in addition to employing such servants or agents as he may consider necessary, require a police officer to be present while such distress is being levied and any police officer so required shall comply with that requirement.

(2) A distress levied under this section shall be kept for ten days, either at the premises at which distress was levied or at any other place which the authorized officer may consider appropriate, at the cost of the person from whom the tax is recoverable.

(3) If the person from whom tax is recoverable by distress does not pay the tax together with the costs of the distress within the period of ten days referred to in subsection (2) of this section, the goods and chattels distrained upon shall be sold by public auction for payment of the tax due and payable and costs, and the proceeds of the sale shall be applied first towards the cost of taking, keeping and selling the goods and chattels distrained upon and then towards the tax due and payable and any remainder of those proceeds shall be restored to the owner of the property distrained.

[Act No. 7 of 1976, s. 2.]

103. Security on property for unpaid tax

(1) Where a person being the owner of land or of buildings on land situated in Kenya, fails to make payment of tax due by him on or before the due date or fails to comply with a notice served on him under section 98 of this Act, the Commissioner may by notice in writing notify that person of his intention to apply to the Registrar of Lands for the land or buildings to be the subject of security for tax of an amount specified in the notice.

(2) If a person on whom a notice has been served under this section fails to make payment of the whole of the amount of the tax specified in the notice within thirty days of the date of the service of the notice, the Commissioner may by notice in writing direct the Registrar of Lands that the land or building, to the extent of the interest of the person therein, be the subject of security for tax of a specified amount, and the Registrar shall, without fee, register the direction as if it were an instrument of mortgage over or charge on, as the case may be, the land or buildings and thereupon that registration shall, subject to any prior mortgage or charge, operate while it subsists in all respects as a legal mortgage over or charge on the land or building to secure the amount of the tax.

(3) The Commissioner shall, upon the payment of the whole of the amount of the tax secured under subsection (2) of this section by notice in writing to the Registrar of Lands, cancel the direction made under that subsection and the Registrar shall, without fee, record the cancellation and thereupon the direction shall cease to subsist.

104. Collection of tax from ship owner, etc.

(1) In addition to any other powers of collection of tax provided in this Act, the Commissioner may, in a case where tax recoverable in the manner provided by section 101 of this Act has been charged on the income of a person who carries on the business of shipowner, charterer or air transport operator, issue to the proper officer of Customs by whom clearance may be granted a certificate containing the name of that person and the amount of the tax due and payable and on receipt of that certificate the proper officer of Customs shall refuse clearance from any port or airport in Kenya to any ship or aircraft owned by that person until the tax has been paid.

(2) No civil or criminal proceedings shall be instituted or maintained against the proper officer of Customs or any other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship or aircraft is detained under this section affect the liability of the owner, charterer or agent to pay harbour or airport dues and charges for the period of detention.

105. Refund of tax overpaid

(1) If it is proved to the satisfaction of the Commissioner that, in respect of a year of income, tax has been paid by or on behalf of a person, whether directly or by deduction or otherwise, which is in excess of the amount payable by that person as finally determined in respect of that year of income, the Commissioner shall refund the amount of the excess, together with any interest which may be payable thereon under this Act, to the person entitled to the refund.

(2) When tax is due and payable by a person in respect of an assessment, any amount refundable to that person under this section shall be applied towards the satisfaction of the tax so due and payable to the extent of that tax and the amount so applied shall not be refunded.

(3) A claim for repayment under this section shall be made within seven years after the expiry of the year of income to which the claim relates; but in a case to which section 79(1)(c) of this section applies, a claim for repayment may be made within the period in which an assessment may be made.

106. Repayment of tax in respect of income accumulated under trusts

(1) Where under a will or settlement, other than a settlement to which section 25 or 26 of this Act applies, income (in this section referred to as the trust income) arising from a fund is accumulated for the benefit of a person contingently on his attaining some specified age or marrying then, if that person proves to the satisfaction of the Commissioner that the contingency has happened, he shall, on making to him a claim for that purpose, be entitled to have repaid to him a sum equal to the amount by which the total amount of tax borne by the trust income during the period of accumulation exceeds the total amount of additional tax which would have been borne by him during that period if the trust income and the income from any other fund subject to the same trust for accumulation had been included in his total income; but in calculating that sum a deduction shall be made in respect of tax borne by the trust fund and already repaid to him.

(2) A claim for repayment under this section shall be made in writing to the Commissioner within six years after the expiry of the year of income in which the contingency happened.

PART XII – OFFENCES AND PENALTIES

107. General penalty

A person guilty of an offence under this Act for which no other penalty is specifically provided shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

[Act No. 8 of 1996, s. 43.]

108. Additional penalties

(1) Any person guilty of an offence under subsection (1) of section 72A shall, in addition to the penalties specified in that subsection, be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or to both.

(2) If the additional tax chargeable under section 72 or 72A is due to wilful or gross neglect, or fraud on the part of an authorised tax agent, the authorized tax agent shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand shillings with respect to each return, statement, or other document as shall be subject to additional tax.

(3) Nothing in this section shall affect the liability to tax of the person subject to additional tax under section 72 or 72A.

[Act No. 8 of 1978, s. 9, Act No. 4 of 1993, s. 57.]

109. Failure to comply with notice, etc.

(1) Any person shall be guilty of an offence if he, without reasonable excuse—

- (a) fails to furnish a return or give a certificate as required by section 35 (5) of this Act; or
- (b) fails to furnish a full and true return in accordance with the requirements of any notice served on him under this Act or fails to give notice to the Commissioner as required by section 52(3) of this Act; or
- (c) fails to furnish within the required time to the Commissioner or to any other person any document which under this Act, or under a notice served on him under this Act, he is required so to furnish; or
- (d) fails to keep records, books or accounts in accordance with the requirements of a notice served on him under section 55(1) of this Act, or fails to keep those records, books or accounts in the language specified in the notice; or
- (e) fails to preserve a record, document or book of account in contravention of section 55(2) of this Act; or
- (f) fails to produce a document for the examination of the Commissioner in accordance with the requirements of a notice served on him under this Act; or
- (g) destroys, damages or defaces any accounts or other documents in contravention of a notice served on him under section 56(1) of this Act; or
- (h) fails to attend at a time and place in accordance with the requirements of a notice served on him under this Act; or

- (i) fails to answer any question lawfully put to him, or to supply any information lawfully required from him, under this Act; or
- (j) fails to deduct and account, or fails to account for tax, as provided by section 37 of this Act, or fails to supply prescribed certificates as is required by that section; or
- (k) when requested by the Commissioner, fails to furnish the identifying number required under section 132, or fails to include in any return, in a statement or in other documents the identifying number when required to do so.

(2) No prosecution for an offence under this section shall be instituted at any time subsequent to two years after the date of the commission of the offence or, in the case of the contravention of paragraph (d), (e) or (g) of subsection (1) after the date on which the fact of the commission of that offence came to the knowledge of the Commissioner.

[Act No. 7 of 1976, s. 2, Act No. 8 of 1991, s. 72.]

110. Incorrect returns, etc.

(1) A person shall be guilty of an offence if he, without reasonable cause—

- (a) makes an incorrect return of income by omitting therefrom or understating therein any income which should have been stated therein; or
- (b) makes an incorrect statement in a return made in compliance with a notice served on him under this Act; or
- (c) gives incorrect information in relation to any matter or thing, including incorrect information in relation to a claim for a personal relief, affecting the liability to tax of another person.

(2) No prosecution for an offence under this section shall be brought at any time subsequent to six years after the date of the commission of the offence.

111. Fraudulent returns, etc.

(1) A person who makes a fraudulent claim for the repayment of tax or who, with intent to evade tax—

- (a) makes a false return of income by omitting therefrom or understating therein any income which should have been stated therein; or
- (b) makes a false statement in a return made in compliance with a notice served on him under this Act; or
- (c) gives false information in relation to any matter or thing, including false information in relation to a claim for a personal relief affecting his liability to tax; or
- (d) prepares or maintains, or authorizes the preparation or maintenance of, false books of account or other records, or falsifies, or authorizes the falsification of, books of account or records; or
- (e) makes use of fraud, or authorizes the use of fraud,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or double the amount of tax for which he is liable under this Act for the

year of income in respect of which the offence was committed, whichever is the greater, or to imprisonment for a term not exceeding two years or to both.

- (2) A person who, with intent to assist another person to evade tax—
- (a) omits from a return of income made by him on behalf of that other person or understates therein any income which should have been stated therein; or
 - (b) makes a false statement in a return made by him on behalf of that other person in compliance with a notice served on that other person under this Act; or
 - (c) gives false information in relation to any matter or thing, including false information in relation to a claim by that other person to a personal relief affecting the liability to tax of that other person; or
 - (d) prepares false books of account or other records relating to that other person or falsifies any such books of account or other records; or
 - (e) does any other fraudulent act,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both.

(3) Whenever in proceedings under this section it is proved that a false statement or entry is made by a person in a return of income or other return furnished under this Act by that person or on behalf of any other person or in any books of account or other records prepared or maintained by that person or on behalf of any other person, the person making the false statement or entry shall be presumed, until the contrary is proved, to have made the false statement or entry with intent to evade tax or to assist or enable that other person to evade tax.

112. Obstruction of officer

A person who in any way obstructs or attempts to obstruct an officer in the performance of his duties or in the exercise of his powers under this Act shall be guilty of an offence.

113. Evidence in cases of fraud, etc.

(1) Notwithstanding anything to the contrary in any other written law, statements made or documents produced by or on behalf of a person shall not be inadmissible in proceedings to which this section applies by reason only that it has been drawn to his attention that—

- (a) in relation to tax, the Commissioner may accept pecuniary settlement instead of sanctioning the institution of a prosecution; and
- (b) though no undertaking can be given as to whether or not the Commissioner will accept pecuniary settlement in the case of a particular person, it is the practice of the Commissioner to be influenced by the fact that a person has made a full confession of any fraud or default to which he has been a party and has given full facilities for investigation,

and that he was or may have been induced thereby to make the statement or produce the documents.

(2) This section shall apply to—

- (a) criminal proceedings against the person in question for any form of fraud, neglect or default in connection with, or in relation to, tax; or
- (b) proceedings for the recovery of a sum due under this Act.

114. Power of Commissioner to compound offences

(1) Where any person has committed any offence under this Act other than an offence under section 126, the Commissioner may with the approval of the Minister, at any time prior to the commencement of the hearing by any court of a charge in relation thereto, compound the offence and order the person to pay a sum of money, not exceeding the amount of the fine to which that person would have been liable if he had been convicted of the offence, as he may think fit:

Provided that the Commissioner shall not exercise his powers under this section unless the person concerned admits in writing that he has committed the offence and requests the Commissioner so to deal with the offence.

(2) Where the Commissioner compounds an offence under this section, then the order referred to in subsection (1) of this section —

- (a) shall be put into writing and there shall be attached to it the written admission and request referred to in subsection (1) and a copy of the order shall be given, if he so requests, to the person who committed the offence; and
- (b) shall specify the offence committed, the sum of money ordered to be paid, and the date or dates on which payment is to be made; and
- (c) shall be final and shall not be subject to appeal; and
- (d) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order.

(3) When the Commissioner compounds any offence under this section, the person concerned shall not be liable to prosecution in respect of that offence; and if any such prosecution is brought it shall be a good defence for such person to prove that such offence has been compounded under this section.

115. Place of trial

Any person charged with any offence under this Act may be proceeded against, tried and punished, in any place in Kenya in which he may be in custody for that offence as if the offence had been committed in such place, and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial or punishment thereof, be deemed to have been committed in that place:

Provided that nothing herein contained shall preclude the prosecution, trial and punishment of that person in any place in which, but for this section, that person might have been prosecuted, tried and punished.

116. Offences by corporate bodies

Where an offence under this Act has been committed by a corporate body of persons, every person who at the time of the commission of the offence was a director, general manager, secretary, or other similar officer, of the body

corporate, or was acting or purporting to act in that capacity, shall also be guilty of the offence unless he proves that the offence was committed without his consent or knowledge and that he exercised all the diligence to prevent the commission of the offence that he ought to have exercised having regard to the nature of his functions in that capacity and in all the circumstances.

117. Officer may appear on prosecution

Notwithstanding anything contained in any written law, an officer duly authorized in writing in that behalf by the Commissioner may appear in any court on behalf of the Commissioner in any proceedings to which the Commissioner is a party and, subject to the directions of the Attorney-General, any officer may conduct any prosecution for an offence under this Act and for such purpose shall have all the powers of a public prosecutor appointed under the Criminal Procedure Code (Cap. 75).

118. Tax charged to be payable notwithstanding prosecution

The amount of any tax or interest due and payable under this Act shall not be abated by reason only of the conviction or punishment of the person liable for the payment thereof for an offence under this Act or of the compounding of the offence under section 114 of this Act.

119. Power to search and seize

(1) If an officer of the rank of Principal Revenue Officer or above authorized by the Commissioner to inquire into the affairs under this Act of any person satisfies a magistrate that the person has committed, or is reasonably suspected of committing, an offence under this Act, the magistrate may by warrant authorize the officer to exercise all or any of the following powers—

- (a) to enter any premises between sunrise and sunset to search for money, documents or other articles relevant to the inquiry;
- (b) to open, or remove from the premises and open, any container, box or package in which it is suspected that money, documents or relevant articles are contained;
- (c) to seize money, documents or relevant articles which may be necessary for the inquiry or for the purpose of civil or criminal proceedings and to retain them for as long as they are so required:

Provided that—

- (i) in the case of documents held by a banker the powers of the officer under this section shall be limited to making copies or extracts therefrom;
- (ii) signed receipts of the documents and the relevant articles seized shall be provided to the suspected person.

(2) In the exercise of powers authorized by warrant under subsection (1) of this section, the officer shall require a police officer to be present during the exercise thereof and any police officer so required shall comply with such requirement.

(3) For the purposes of subsection (1) of this section, the magistrate may require the officer or any other person to give such evidence on oath as may be necessary to satisfy him that the person whose affairs are the subject of inquiry has committed, or is reasonably suspected of committing, the offence concerned.

[Act No. 15 of 2003, s. 38.]

120. Power to inspect books and documents

(1) Notwithstanding anything to the contrary in any provision or rule of law, an officer authorized by the Commissioner to inquire into the affairs of a person for any of the purposes of this Act shall at all times have full and free access to all lands, buildings, and places, and all books and documents, whether in the custody or control of a public officer, of a body corporate or of any other person whatever, for the purpose of inspecting books and documents or for any other purpose he may consider relevant to the inquiry, and may make extracts from or copies of those books or documents.

(2) An officer acting under subsection (1) of this section may require the owner or manager of any property or business, or any person employed in connexion with such property or business, or any other person, to give him all reasonable assistance and to answer all proper questions relating to such inquiry, either orally or in writing and for that purpose may require the owner or manager, or in the case of a company an officer of the company, or such other person, to attend at the premises with him.

[Act No. 15 of 2003, s. 39, Act No. 10 of 2006, s. 27.]

121. Admissibility of evidence

Notwithstanding any provision or rule of law to the contrary—

- (a) any document, or copy of or extract from a document, relating to the affairs of any person which has been seized or obtained by; or
- (b) a statement made by any person relating to his affairs is made to,

an officer in accordance with the provisions of this Act shall, if relevant, be admissible in civil or criminal proceedings under this Act to which that person is a party.

PART XIII – ADMINISTRATION**122. Responsibility for administration, etc.**

The Commissioner shall, subject to the direction of the Minister, be responsible for the control and the collection of, and accounting for, tax.

[Act No. 4 of 2004, s. 57.]

123. Commissioner's discretion to abandon or remit tax

(1) Notwithstanding the provisions of this Act, in any case where he is of the opinion that he should refrain from assessing to tax, or recovering tax from, a person by reason of—

- (a) uncertainty as to any question of law or fact; or
- (b) consideration of hardship or equity; or
- (c) impossibility, or undue difficulty or expense, of recovery of tax,

the Commissioner may with the approval of the Minister refrain from assessing or recovering the tax in question and thereupon liability to the tax shall be deemed to be extinguished or the tax shall be deemed to be abandoned or remitted, as the case may be, and the provisions of this Act other than this section shall no longer apply thereto.

(2) In any case which has been referred to him, and where he considers it appropriate, the Minister may in writing direct the Commissioner—

- (a) to take such action under this section as the Minister may deem fit; or
- (b) to obtain the direction of the Court upon the case.

(3) Deleted by Act No. 4 of 2004, s. 58.

[Act No. 4 of 2004, s. 58.]

123A. Amnesty for penalties and interest

Notwithstanding any other provisions of this Act, the Commissioner shall refrain from assessing or recovering penalties and interest in respect of any year of income ending on or before the 31st December, 2003, where—

- (a) the tax is paid; and
- (b) the returns, or amended returns, containing a full disclosure of the previously undisclosed income, are submitted,

on or before the 31st December, 2004:

Provided that this section shall not apply in respect of any tax if the person who would have paid the tax—

- (i) has been assessed in respect of the tax or any matter relating to the tax; or
- (ii) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.

[Act No. 4 of 2004, s. 59.]

123B. Commissioner to refrain from assessing tax in some cases

Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering taxes, penalties or interest in respect of any year of income ending on or before the 31st December, 2010, where—

- (a) that income has been declared for the year 2010 by a citizen of Kenya living and earning taxable income outside Kenya;
- (b) the returns and accounts for the year 2010 are submitted on or before the 30th June, 2011:

Provided that this section shall not apply in respect of any tax where the person who should have paid the tax—

- (i) has been assessed in respect of the tax or any matter relating to the tax; or
- (ii) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.

[Act No. 10 of 2010, s. 29.]

124. Exercise of powers, etc.

The Commissioner may, subject to such limitations as he may think fit, authorize an officer to exercise any of the powers conferred by this Act upon the Commissioner, other than the powers conferred by sections 114 and 123.

[Act No. 9 of 1992, s. 55, Act No. 6 of 2005, s. 32, Act No. 10 of 2006, s. 28.]

125. Official secrecy

(1) Every officer and any other person employed in carrying out the provisions of this Act shall regard and deal with all documents and information relating to the income of any person and all confidential instructions in respect of the administration of the Income Tax Department which may come into his possession or to his knowledge in the course of his duties as secret.

(1A) An officer appointed under section 13 of the Kenya Revenue Authority Act (Cap. 469) for purposes of this Act shall, on appointment, make and subscribe before a magistrate or commissioner for oaths, a declaration in the prescribed form.

(2) No officer and no other person employed in carrying out the provisions of this Act, shall be required to produce in any court any document, or to communicate to any court any information, which has come into his possession or to his knowledge in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act or in order to bring or assist in the course of a prosecution for an offence committed in relation to tax.

(3) Nothing in this section shall prevent—

- (a) any officer or person from revealing any document or information relating to the income of any person or any confidential instructions in respect of the administration of the Income Tax Department to any other officer or person so employed in the course of his duties, or to any person authorized in that behalf by the Minister in relation to any person resident in Kenya, or to a court or person for the purposes of this Act;
- (b) any officer from revealing any document or information solely for revenue or statistical purposes to any person in the service of the Government in a revenue or statistical department where that document or information is needed for the purposes of the official duties of that last-mentioned person and where that last-mentioned person has made and subscribed a declaration of secrecy in relation to information coming to his knowledge in the course of his official duties;
- (c) any officer from revealing any such document or information to the Controller and Auditor-General, or to an authorized member of his Department, where that document or information is needed for the performance of his official duties;
- (d) an officer from providing to the Board established under the Higher Education Loans Board Act (Cap. 213A), the name and address of any person granted an education loan or his employer, where such information is required from the performance of the Board's official duties in recovery of the education loans.

(4) Where under a law in force in any country, or under a special arrangement, provision is made for the allowance of relief from income tax in respect of the payment of tax in Kenya, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorized officers of the Government of the place with which that arrangement was made of such facts as

may be necessary for the obtaining of such relief or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to those taxes.

[Act No. 7 of 1976, s. 2, Act No. 6 of 2005, s. 33.]

126. Offences by or in relation to officers, etc.

(1) Any officer or other person employed in carrying out the provisions of this Act who—

- (a) directly or indirectly asks for, or takes, in connexion with any of his duties any payment or reward whatsoever, whether pecuniary or otherwise, or a promise or security for such any such payment or reward, not being a payment or reward which he is lawfully entitled to receive; or
- (b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the tax revenue is or may be defrauded, or which is contrary to the provisions of this Act or to the proper execution of his duty thereunder; or
- (c) in contravention of the provisions of section 125 of this Act, and without lawful excuse, reveals to any person any document or information which has come into his possession or to his knowledge in the course of his official duties, or permits any other person to have access to any document in the possession or custody of the Commissioner in his official capacity,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(2) A person who—

- (a) directly or indirectly offers or gives to any officer, or to any other person employed in carrying out the provisions of this Act, any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for such a payment or reward; or
- (b) proposes or enters into an agreement in order to induce him to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the tax revenue is or may be defrauded, or which is contrary to the provisions of this Act, or to the proper execution of the duty of such officer, or person so employed, under this Act,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

PART XIV – MISCELLANEOUS PROVISIONS

127. Form of notices, etc.

(1) The Commissioner may specify the form of any notice, return of income, or other form or return, required for the purposes of this Act, and where any form has been so specified then such notice, return of income, or other form or return shall be in the form so specified.

(2) Notices given by the Commissioner under this Act may be signed by any officer authorized by him in that behalf, and a notice purporting to be signed by order of the Commissioner shall, unless the contrary is proved, be presumed to have been signed by an officer so authorized.

(3) Every form, notice or other document issued, served or given by the Commissioner under this Act, shall be sufficiently authenticated if the name or title of the Commissioner or of the officer authorized in that behalf, is printed, stamped, or written thereon.

127A. Application of Information Technology

(1) Subject to such conditions as the Commissioner may prescribe, income tax formalities or procedures may be carried out by use of information technology.

(2) For the purposes of subsection (1), the Commissioner may, by notice in the *Gazette*, specify—

- (a) the income tax formalities and procedures which may be carried out by use of information technology; and
- (b) the persons authorized to carry out such formalities or procedures by use of information technology.

[Act No. 6 of 2005, s. 34, Act No. 10 of 2010, s. 30.]

127B. Users of the tax computerized system

(1) A person who wishes to be registered as a user of a tax computerized system may apply to the Commissioner who may—

- (a) grant the application subject to such conditions as he may impose; or
- (b) reject the application.

(2) A person shall not access, transmit to, or receive information from, a tax computerized system unless that person is a registered user of the system.

[Act No. 6 of 2005, s. 34, Act No. 10 of 2010, s. 31.]

127C. Cancellation of registration of registered user

Where at any time the Commissioner is satisfied that a person who is a registered user of a tax computerized system has—

- (a) failed to comply with a condition of registration imposed by the Commissioner under section 127B;
- (b) failed to comply with, or has acted in contravention of any conditions under the rules; or
- (c) been convicted of an offence under this Act relating to improper access to or interference with a tax computerized system,

the Commissioner may cancel the registration of that user.

[Act No. 6 of 2005, s. 34.]

127D. Unauthorized access to or improper use of tax computerized system

(1) A person commits an offence if he—

- (a) knowingly and without lawful authority, by any means gains access to or attempts to gain access to any tax computerized system; or

- (b) having lawful access to any tax computerized system, knowingly uses or discloses information obtained from such system for a purpose that is not authorized; or
- (c) knowing that he is not authorized to do so, receives information obtained from any tax computerized system, and uses, discloses, publishes, or otherwise disseminates such information.

(2) A person who commits an offence under subsection (1) shall be liable on conviction—

- (a) in the case of an individual, to imprisonment for a term not exceeding two years or to a fine not exceeding four hundred thousand shillings; or
- (b) in the case of a body corporate, to a fine not exceeding one million shillings.

[Act No. 6 of 2005, s. 34.]

127E. Interference with tax computerized system

A person commits an offence if he knowingly—

- (a) falsifies any record or information stored in any tax computerized system; or
- (b) damages or impairs any tax computerized system; or
- (c) damages or impairs any duplicate tape or disc or other medium on which any information obtained from a tax computerized system is held or stored, otherwise than with the permission of the Commissioner,

and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding eight hundred thousand shillings.

[Act No. 6 of 2005, s. 34.]

128. Service of notices, etc.

(1) Where under this Act any notice or other document is required or authorized to be served on or given to the Commissioner, then that notice or other document may be so served or given—

- (a) by delivering it personally to an officer; or
- (b) by leaving it at the office of an officer; or
- (c) by sending it by post addressed to an officer in his official capacity.

(2) Where under this Act any notice or other document is required or authorized to be served on or given to any person by the Commissioner, then such notice or other document may be so served or given by addressing it to that person, or, where such person is a company, to the principal officer or secretary of such company, and—

- (a) delivering it personally to him; or
- (b) leaving it at his usual or last known place of address or the address shown on the latest return of income furnished by him or on his behalf to the Commissioner; or

- (c) sending it by post addressed to his usual or last known place of address or to a post office box rented in the name of such person or of his employer or to the address shown on the latest return of income furnished by him or on his behalf to the Commissioner.

(3) Where a notice or other document is served or given by post, service shall, in the absence of proof to the contrary be deemed to have been effected—

- (a) where it is sent to any address in Kenya, ten days after the date of posting;
- (b) where it is sent to any address outside Kenya, at the time at which the notice would be delivered in the ordinary course of post,

and in proving service it shall be sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted:

Provided that where the person to whom a notice or other document has been sent by registered post is informed of the fact that there is a registered letter awaiting him at a post office, and such person refuses or neglects to take delivery of such letter, and the letter consists of a notice or other document, then service of such notice or other document shall be deemed to have been effected.

(4) Where the income of any person is assessable and chargeable in the name of any other person, then if any notice or document which is required or authorized to be served on or given to such first mentioned person is served on or given to the other person such notice or document shall be deemed also to have been served on or given to the first mentioned person.

129. Liability of manager, etc., of corporate body

Where any obligation is imposed by or under this Act on any corporate body, the general manager or other principal officer of such body shall be responsible for performing such obligation.

130. Rules

The Minister may make rules prescribing anything which is to be prescribed under, and generally for carrying out the provisions of, this Act.

131. Exemption from stamp duty

All securities of whatsoever nature over property, movable or immovable, and all transfers of such property in favour of or by the Commissioner shall be exempt from stamp duty.

132. Personal identification numbers

(1) Every person whose income is chargeable to tax under this Act shall have a personal identification number, which shall be produced when required under the rules prescribed by the Commissioner.

(2) For purpose of collection or protection of tax, any person whom the Commissioner may so require shall have a personal identification number.

(3) Any person required under this Act to make a return, statement or other document shall include the personal identification number in every document, return or statement for proper identification of that person.

(4) Any person required to make a return, statement, or other document on behalf of another person shall include the personal identification number in such a manner as may be prescribed for the purposes of proper identification of the person in whose behalf the return, statement or other document is submitted.

(5) Any person required under this Act to make a return, statement or other document in respect of another person shall request from that other person, and include in the return, statement or other document, the personal identification number, in the prescribed manner for proper identification of the person on whose behalf the return, statement or other document is submitted.

(6) Transactions prescribed by the Commissioner under subsection (1) or specified under the Thirteenth Schedule shall comply with the requirements relating to the personal identification number.

(7) Any person who, when required by the Commissioner, fails to comply with provisions of this section shall be liable to a default penalty of two thousand shillings for every omission.

(8) Without prejudice to any penalty that may be imposed under subsection (7), the Commissioner may, forthwith, register and issue a personal identification number to a person who fails to obtain such number as required by the Commissioner under subsection (2).

[Act No. 13 of 1978, Sch., Act No. 8 of 1991, s. 73, Act No. 9 of 1992, s. 56,
Act No. 4 of 2012, s. 21.]

133. Repeals and transitional

(1) This Act shall have effect notwithstanding any Act of the Community and shall not be construed as being repealed by any Act of the Community enacted hereafter.

(2) Subject to subsection (4) of this section, the East African Income Tax Management Act (E.A. Cap. 24) shall, notwithstanding anything contained in the Treaty for East African Co-operation Act (Cap. 4), cease to have the force of law in Kenya with effect from 1st January, 1974.

(3) Subject to subsection (4) of this section, the Income Tax (Allowances and Rates) (No. 2) Act, 1971 (Act No. 29 of 1971), is repealed.

(4) Notwithstanding subsections (2) and (3) of this section, the East African Income Tax Management Act and the Income Tax (Allowances and Rates) (No. 2) Act, 1971, shall remain in force for all purposes in relation to the year of income 1973 and previous years of income and the Income Tax (Allowances and Rates) (No. 2) Act, 1971, shall be read and construed as if, when enacted, the Second Schedule thereto contained the following additional paragraph—

3. The non-resident tax rates shall be the rates set out in paragraph 1 of the Third Schedule to this Act and for the purposes of this paragraph such rates shall be charged from 18th June, 1971.

(5) The transitional provisions contained in the Sixth Schedule shall have effect notwithstanding anything contained in this Act.

[Act No. 2 of 1975, s. 5.]

SCHEDULES

FIRST SCHEDULE

[Sections 13 and 14, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, Act No. 12 of 1977, s. 5, Act No. 8 of 1978, s. 9, Act No. 6 of 1981, s. 5, Act No. 8 of 1983, s. 17, Act No. 13 of 1984, s. 21, Act No. 18 of 1984, s. 5, Act No. 8 of 1985, s. 14, Act No. 10 of 1986, s. 33, Act No. 10 of 1987, s. 36, Act No. 3 of 1988, s. 43, Act No. 10 of 1988, s. 34, Act No. 10 of 1990, s. 59, Act No. 8 of 1991, s. 74, Act No. 13 of 1995, s. 87, Act No. 8 of 1996, s. 44, Act No. 8 of 1997, s. 49, Act No. 5 of 1998, s. 39, Act No. 6 of 2001, s. 53, Act No. 10 of 2006, s. 29, Act No. 9 of 2007, s. 27, Act No. 8 of 2008, s. 38, Act No. 10 of 2010, s. 32.]

EXEMPTIONS

PART I – INCOME ACCRUED IN, DERIVED FROM OR RECEIVED IN
KENYA WHICH IS EXEMPT FROM TAX

1. So much of the income of a person as is expressly exempted from income tax by or under the provisions of any Act of Parliament for the time being in force, to the extent provided by such Act.
2. The income of any person who, or organization which, is exempt from income tax by or under any Act of Parliament for the time being in force, to the extent provided by such Act.
3. That part of the income of the President of the Republic of Kenya derived from salary, duty allowance and entertainment allowance paid or payable to him from public funds in respect of or by virtue of his office as President of the Republic of Kenya.
4. The income of—
 - The Tea Board of Kenya,
 - The Pyrethrum Board of Kenya,
 - The Sisal Board of Kenya,
 - The Kenya Dairy Board,
 - The Canning Crops Board,
 - The Central Agricultural Board,
 - The Pig Industry Board,
 - The Pineapple Development Authority,
 - The Horticultural Crops Development Authority,
 - The National Irrigation Board,
 - The Mombasa Pipeline Board,
 - The Settlement Fund Trustees,
 - The Kenya Post Office Savings Bank,
 - The Cotton Board of Kenya,

5. Deleted by Act No. 13 of 1984, s. 21.
6. The income, other than income from investments, of an amateur sporting association, that is to say, an association—
- (a) whose sole or main object is to foster and control any outdoor sport; and
 - (b) whose members consist only of amateurs or affiliated associations the members of which consist only of amateurs; and
 - (c) whose memorandum of association or by-laws have provisions defining an amateur or a professional and providing that no person may be or continue to be a member of such association if such person is not an amateur.
7. Profits or gains of an agricultural society accrued in or derived from Kenya from any exhibition or show held for the purposes of the society which are applied solely to such purposes, and the interest on investments of such society.
8. The income of any local authority.
9. Interest on any tax reserve certificates which may be issued by authority of the Government.
10. Subject to section 26, the income of an institution, body of persons or irrevocable trust, of a public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion or education—
- (a) established in Kenya; or
 - (b) whose regional headquarters is situated in Kenya,
- in so far as the Commissioner is satisfied that the income is to be expended either in Kenya or in circumstances in which the expenditure of that income is for the purposes which result in the benefit of the residents of Kenya.
11. The income of any person from any management or professional fee, royalty or interest when the Minister certifies that it is required to be paid free of tax by the terms of an agreement to which the Government is a party either as principal or guarantor and that it is in the public interest that such income shall be exempt from tax.
12. The income of any registered pension scheme.
13. The income of any registered trust scheme.
14. The income of any registered pension fund.
15. The income of a registered provident fund.
16. The income from the investment of an annuity fund, as defined in section 19 of **this Act**, of an insurance company.
17. Pensions or gratuities granted in respect of wounds or disabilities caused in war and suffered by the recipients of such pensions or gratuities.

18. Any payment in respect of disturbance, not exceeding three months' salary, made in connexion with a change in the constitution of the Government of a Partner State or the Community to any person who, before such change, was employed in the public service of any of those Governments or of the Community.

19. Deleted by Act No. 8 of 1978, s. 9.

20. Deleted by Act No. 8 of 1978, s. 9.

21. Deleted by Act No. 8 of 1978, s. 9.

22. That part of the income of any officer of the Government or of the Community accrued in or derived from Kenya which consists of foreign allowances paid to such officer from public funds in respect of his office:

Provided that, where any person to whom such an allowance is paid is granted a deduction under section 15 of this Act in respect of any expenditure incurred in relation to an activity for which the allowance is paid, then the exemption conferred by this paragraph shall not apply to so much of such allowance as is equal to the amount of such deduction.

23. The income of the East African Development Bank and of Corporations established under Article 71 of the Treaty for East African Co-operation together with the income of subsidiary companies wholly owned by that Bank or by any of the said Corporations.

24. Deleted by Act No. 8 of 1978, s. 9.

25. The emoluments of any officer of the Desert Locust Survey who is not resident in Kenya.

26. The emoluments—

- (a) of any members of the armed forces of a country to which section 95 of the Constitution applies;
- (b) of any person in the public service of the Government of that country in respect of his office under that Government where such person is resident in Kenya solely for the purpose of performing the duties of his office,

where such emoluments are payable from the public funds of such country and are subject to income tax in such country.

27. The emoluments payable out of foreign sources in respect of duties performed in Kenya in connexion with a technical assistance or other agreement for developmental services or purpose to which the Government or the community is a party to any non-resident person or to a person who is resident solely for the purposes of performing those duties, in any case where the agreement provides for the exemption of such emoluments.

28. Any education grant paid by the Government of the United Kingdom under any agreement between that Government and the Government of Kenya and received by any person who is employed in the public service of Kenya or by the Community.

29. The income received by way of remuneration under any contract which was entered into consequent upon financial assistance being received from the International Co-operation Administration for the enterprise in respect of which the contract was so entered into and which provides that the income shall be exempt from tax.

30. The income received by virtue of their employment by citizens of the United States of America who are employed by the Department of Agriculture of the United States of America on research work in co-operation with Government.

31. Gains or profits resultant from any reward paid by the United Kingdom Atomic Energy Authority for the discovery of uranium ore in Kenya, except to the extent that such reward is liable to income tax in a country outside Kenya and there is, between that country and Kenya, provision for any form of double taxation relief.

32. All income of any non-resident person not having a permanent establishment in Kenya accrued in or derived from Kenya after 17th June, 1971, and which consists of interest or management and professional fees paid by the Tana River Development Company Limited or its successors in title.

33. Such part of the income of the East African Power and Lighting Company accrued in or derived from Kenya as is certified from time to time by the Minister to have been expended (whether before or after the date of commencement of this Act) at the request of the Government either—

- (a) in searching for a natural source in Kenya of geothermal energy; or
- (b) on investigations concerning the development in Kenya of electric power generation or supply,

such exemption to take effect in the year in which the expenditure is incurred.

34. The income of the General Superintendence Company Limited, a company incorporated in Switzerland, accrued in or derived from Kenya under an agreement dated 18th October, 1972, between the said company and the Central Bank of Kenya.

35. Interest on a savings account held with the Kenya Post Office Savings Bank.

36. Such part of the income of an individual, chargeable to tax under section 3(2)(f) as consists of a gain derived from the transfer of—

- (a) shares in the stock or funds of the Government, the High Commission or the Authority established under the Organization or the Community;
- (b) shares of a local authority;
- (c) a private residence if the individual owner has occupied the residence continuously for the three-year period immediately prior to the transfer concerned:

Provided that—

- (i) in determining whether or not a person has occupied a residence continuously for three years, any period during which he was temporarily absent from the residence shall be ignored;
- (ii) references to a private residence include the immediately surrounding land utilized exclusively for personal purposes as

- an adjunct to the residence and not for the production of income, but does not include any part of the residence and land utilized for business purposes;
- (iii) no individual may claim or be taken to have used more than one residence as his residence at the same time for the purposes of this Act;
 - (iv) no individuals may claim or be taken to have used more than one residence as their residence for the purposes of this Act at any time when they were husband and wife living together;
 - (v) no individual shall claim or be taken to have used a residence as a residence at any time when he was a dependant of either or both of his parents;
 - (vi) where a residence is used in part for business purposes, or is transferred in a single transaction together with land and other property used for the production of income, the taxable value of such property used for residential purposes shall be separately determined from that used for business purposes or for the production of income;
- (d) property (being land) transferred by an individual where—
 - (i) the transfer value is not more than thirty thousand shillings; or
 - (ii) agricultural property having an area of less than one hundred acres where such property is situated outside a municipality, gazetted township or an area that is declared by the Minister, by notice in the *Gazette*, to be an urban area for the purposes of this Act;
 - (e) land which has been adjudicated under the Land Consolidation Act (Cap. 283) or the Land Adjudication Act (Cap. 284) when the title to such land has been registered under the Registered Land Act (Cap. 300) and transferred for the first time;
 - (f) property (including investment shares) which is transferred or sold for the purpose of administering the estate of a deceased person where the transfer or sale is completed within two years of the death of the deceased or within such extended time as the Commissioner may allow in writing.

37. All allowances payable to the Speaker, Deputy Speaker, Vice-President, Ministers, Assistant Ministers, and all other Members of Parliament are exempt from income tax under section 5 of the National Assembly Remuneration Act (Cap. 5).

38. Deleted by Act No. 10 of 1987, s. 36.

39. Deleted by Act No. 10 of 1987, s. 36.

40. Interest earned on contributions paid into the Deposit Protection Fund established under the Banking Act (Cap. 488).

41. Interest paid on loans granted by the Local Government Loans Authority established by section 3 of the Local Government Loans Act (Cap. 270).

42. The income of a non-resident person who carries on the business of aircraft owner, charterer or air transport operator, from such business where the country

in which such non-resident person is resident extends a similar exemption to aircraft owners, charterers or air transport operators who are not resident in such country but who are resident in Kenya.

- 43.** The income of a registered individual retirement fund.
- 44.** The income of a registered home ownership savings plan.
- 45.** Income of the National Social Security Fund provided that the Fund complies with such conditions as may be prescribed.
- 46.** Dividends received by a registered venture capital company.
- 47.** Gains arising from trade in shares of a venture company earned by a registered venture capital company within the first ten years from the date of first investment in that venture company by the venture capital company:
Provided that the venture company has not been listed in any securities exchange operating in Kenya for a period of more than two years.
- 48.** Gains arising from trade in securities listed on any securities exchange operating in Kenya by any dealer licensed under the Capital Markets Authority Act (Cap. 485A):
Provided that such securities have been held for a period not exceeding twenty-four months from the date of acquisition.
- 49.** Interest income accrued in or derived from Kenya under financial arrangements made or guaranteed by the Export-Import Bank of the United States, an agency of the United States of America.
- 50.** (1) Investment income of a pooled fund or other kind of investment consisting of retirement schemes, provided that all the constituent schemes of the pooled fund are registered by the Commissioner;
(2) For the purposes of this paragraph, “**pooled fund**” has the meaning assigned to it under the Retirement Benefit Act, 1997 (No. 3 of 1997).
- 51.** Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.
- 52.** Interest income generated from cash flows passed to the investor in the form of asset-backed securities.
- 53.** Monthly or lump sum pension granted to a person who is sixty five years of age or more.

PART II – SECURITIES, THE INTEREST ON WHICH IS EXEMPT FROM
TAX

- 1.** Interest payable to non-resident persons on the following securities—
Kenya Government 2¾ per cent Stock 1977/83,

Kenya Government 3½ per cent Stock 1973/78,
Kenya Government 4½ per cent Stock 1971/78,
Kenya Government 5 per cent Stock 1978/82,
Kenya Government 5½ per cent Stock 1976/80,
Kenya Government 6½ per cent Stock 1972/74,
Kenya Government 6 per cent Loan to finance Development Programme 1957/60, 1960/63, 1980/93,
Nairobi City Council 3¼ per cent Stock 1970/74,
East African High Commission 4 per cent Stock 1972/74,
East African High Commission 4 per cent Stock 1973/76,
East African High Commission 5½ per cent Stock 1980/84,
East African High Commission 5 per cent International Co-operation Administration Loan 1978,
East African High Commission 4¾ per cent International Bank for Reconstruction and Development Loans 1974 (two issues),
East African High Commission 5¾ per cent Stock 1977/83.

2. The income of Sceptre Trust Limited accrued in or derived from Kenya from interest payable by the Government at the rate of 6½ per cent on two loans each of £250,000 made by Sceptre Trust Limited to the Government in 1959 and 1960 respectively for the purpose of Government staff housing and repayable over a period of twenty years.

3. The income of the International Bank for Reconstruction and Development accrued in or derived from Kenya from interest payable by the Government on a loan to be made in various currencies equivalent to \$8,400,000 (eight million four hundred thousand dollars) by the International Bank for Reconstruction and Development to the Government under the terms of loan Agreement No. 303 KE dated 29th November, 1961, for the purpose of Land Settlement and Development Projects.

4. The income of the Colonial Development Corporation accrued in or derived from Kenya from interest payable by the Government on a loan of £1,500,000 to be made by the Colonial Development Corporation to the Government under an agreement dated 18th December, 1961, for the purpose of Land Settlement and Development Projects.

5. The income of the Life and Casualty Insurance Company of Tennessee, a company incorporated in the United States of America, in so far as that income represents interest accrued in respect of or is derived from a loan of an amount not to exceed an aggregate of US\$2,100,000 charged on the revenues of the City Council of Nairobi and secured by a document described as a Loan Agreement, dated 1st July, 1969, made between the City Council of Nairobi of the one part and the Loan and Casualty Insurance Company of Tennessee of the other part relating to a project for housing development situated at Kimathi Estate, Nairobi.

6. The income of Kreditanstalt fur Wiederaufbau a statutory corporation incorporated in the Federal Republic of Germany in so far as such income represents interest accrued in respect of or derived from a loan of Deutsch Mark 27,257,515 made by the said Kreditanstalt fur Wiederaufbau to the Chemelil Sugar Company Limited under the provisions of a document described as a Loan Agreement dated 5th May, 1967, made between Chemelil Sugar Company Limited of the one part and Kreditanstalt fur Wiederaufbau of the other part relating to a loan for the supply of factory equipment for a sugar factory situated at Chemelil.

7. The income of SIFIDA Investment Company S.A., a company incorporated in Luxembourg, in so far as it consists of interest accrued in or derived from Kenya, whether before or after the date of commencement of this Act.

8. The income of the Export Development Corporation of Canada in so far as such income represents interest accrued in respect of or derived from a loan of Canadian \$3,900,000 under a loan agreement dated 22nd March, 1972, between Panafrican Paper Mills (East Africa) Limited of the one part and Export Development Corporation of the other part.

9. The income of Export-Import Bank of the United States, an agency of the United States of America, in so far as it consists of interest accrued in or derived from Kenya.

SECOND SCHEDULE

[Sections 4, 5 and 15, Act No. 2 of 1975, s. 5, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, L.N. 123/1976, Sch., L.N. 189/1977, Sch., Act No. 8 of 1978, s. 9, Act No. 13 of 1979, s. 5, Act No. 6 of 1981, s. 5, Act No. 14 of 1982, s. 21, Act No. 18 of 1984, s. 6, Act No. 8 of 1985, s. 15, Act No. 10 of 1986, s. 34, Act No. 10 of 1987, s. 37, Act No. 10 of 1988, s. 35, Act No. 8 of 1989, s. 22, Act No. 8 of 1991, s. 75, Act No. 4 of 1993, s. 58, Act No. 6 of 1994, s. 46, Act No. 13 of 1995, s. 88, Act No. 8 of 1996, s. 45, Act No. 4 of 1999, s. 40, Act No. 9 of 2000, s. 54, Act No. 6 of 2001, s. 54, Act No. 15 of 2003, s. 40, Act No. 4 of 2004, s. 60, Act No. 6 of 2005, s. 35, Act No. 10 of 2006, s. 30, Act No. 9 of 2007, s. 28, Act No. 8 of 2008, s. 39, Act No. 8 of 2009, s. 29, Act No. 10 of 2010, s. 33.]

DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE

PART I – DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON CERTAIN BUILDINGS

1. Deductions

(1) Subject to this Schedule, where a person incurs capital expenditure on the construction of an industrial building to be used in a business carried on by him or his lessee, a deduction equal—

- (a) in any case where the amount of the deduction has not been increased under this Schedule and which is not a case referred to in item (c), to one-fortieth; and
- (b) in any case where that amount has been so increased, to such fraction as so increased; and
- (c) in any case referred to in paragraph 5(1)(c), to one-twenty-fifth, of that expenditure shall be made in computing the gains or profits of such person for any year of income in which the building is so used:

Provided that—

- (i) where the building was so used for part only of such year of income, the deduction shall be proportionately reduced;
- (ii) where such building is sold and continues to be an industrial building used by the purchaser or his lessee, the deduction shall thereafter be made in computing the profits or gains of such person for any year of income in which such building is so used;
- (iii) where any deductions in respect of that capital expenditure are deductible in accordance with paragraph 24, 24A or 24B, the deductions under this paragraph shall be made by reference to that capital expenditure reduced by the amount of those deductions;
- (iv) where in any year of income an amount has in accordance with paragraph 24A(3) been treated as a trading receipt, the deductions under this paragraph shall be made by reference to that capital expenditure reduced by any deduction made in accordance with paragraph 24 and that expenditure shall be deemed to have been incurred in that year of income;
- (cc) in a case referred to in paragraph 1(1)(a) for the year of income commencing on or after 1st January, 2010, ten per cent;
- (d) in a case referred to in paragraphs 5(1)(c) and 5(1)(e) for the year commencing on or after 1st January, 2007, one-tenth;
- (dd) in a case referred to in paragraph 5(1)(e) for the year of income commencing on or after 1st January, 2010, fifty per cent;
- (e) in the case referred to in paragraph 5(1)(f) for the year commencing on or after 1st January 2008, five per cent;
- (ee) in a case referred to in paragraph 5(1)(f) or 5(1)(ff) for any year of income commencing on or after 1st January 2010, where roads, power, water, sewers and other social infrastructure have been provided by the person incurring the capital expenditure, twenty-five per cent.

(1A) Where a building is an industrial building within the meaning of subparagraph (1), the following civil works or structures on the premises of such building shall be deemed to be part of the building where they relate or contribute to the use of the building—

- (i) roads and parking areas;
- (ii) railway lines and related structures;
- (iii) water, industrial effluent and sewage works;
- (iv) communications and electrical posts and pylons and other electricity supply works; and
- (v) security walls and fencing.

(2) Notwithstanding anything in this Part, in no case shall the amount of deduction for a year of income exceed that which, apart from the making of such deduction, would be the residue of expenditure at the end of such year of income.

(3) For the purposes of this paragraph, “**construction of an industrial building**” includes the expansion or substantial renovation or rehabilitation of an industrial building, but does not include routine maintenance or repair.

2. Increase of deductions

Notwithstanding paragraph 1(1)(a), where the Commissioner is satisfied that, having regard to the type of construction or to the use to which any industrial building is put, its life is likely to be substantially less than forty years, he may, upon the application of the person entitled to claim a deduction under this Part, increase the amount of the deduction to such an amount as he may consider just and reasonable, and all the provisions of this Part shall apply accordingly.

3. Ascertainment of residue of expenditure

In this Part, the residue of expenditure at any time shall be—

- (a) in relation to a building which had not been used before the year of income 1974, the capital expenditure incurred on the construction of the building as computed under paragraph 1 less the total of—
 - (i) any deductions made under this Part; and
 - (ii) in a case to which proviso (iv) of paragraph 1(1) applies, the amount of deductions under this part which were deducted in computing the amount of the trading receipt under paragraph 24A(3); and
 - (iii) any deductions which would have been made had the building been an industrial building when first used.
- (b) in relation to a building which at the end of the year of income 1973 was an industrial building for the purposes of the Management Act, the residue of expenditure as ascertained under paragraph 3 of the Second Schedule to that Act less any deductions made under this Part;
- (c) in relation to a building which had been used before the end of the year of income 1973 but was not an industrial building for the purposes of the Management Act at the end of that year of income, the amount which would have been the residue of expenditure as ascertained under item (b) of this paragraph if it had always been an industrial building.

4. Sale of building prior to use

(1) Where capital expenditure is incurred on the construction of a building and before that building is used, it is sold—

- (a) any such expenditure actually incurred on the construction thereof shall be left out of account for the purposes of this Schedule; but
- (b) the person who purchases the building shall be deemed to have incurred capital expenditure on the construction thereof equal to the capital expenditure actually incurred on the construction of the building or to the amount paid by him, whichever is the less:

Provided that where the building is sold more than once before such building is used, item (b) of this paragraph shall have effect only in relation to the last sale.

(2) Where the expenditure incurred on the construction of a building was incurred by a person carrying on a business which consists, as to the whole or any part thereof, in the construction of buildings with a view to their sale and before the building is used he sells it in the course of that business or such part thereof, subparagraph (1)(b) of this paragraph shall have effect as if the reference to the capital expenditure actually incurred on the construction of the building were a reference to the price paid on such sale.

5. (1) Subject to this paragraph, in this Schedule “**industrial building**” means—

- (a) a building in use—
 - (i) for the purposes of a business carried on in a mill, factory or other similar premises; or
 - (ii) for the purposes of a transport, dock, bridge, tunnel, inland navigation, water, electricity or hydraulic power undertaking; or
 - (iii) for the purposes of a business which consists in the manufacture of goods or materials or the subjection of goods or materials to any process; or
 - (iv) for the purposes of a business which consists in the storage of goods or materials—
 - (A) which are to be used in the manufacture of other goods or materials; or
 - (B) which are to be subjected, in the course of a business to any process; or
 - (C) which, having been manufactured or produced or subjected, in the course of a business, to any process, have not yet been delivered to any purchaser; or
 - (D) on their arrival by sea or air into any part of Kenya; or
 - (v) for the purpose of a business consisting of ploughing or cultivating agricultural land as defined in paragraph 22 (other than land in the occupation of the person carrying on the business) or doing any other operation on such land, or threshing the crops of another person; or
 - (vi) for the purposes of a business which may be declared by the Minister by notice in the *Gazette* as being within the provisions of this paragraph either generally, or in relation to a particular class, or in a particular instance within that class;
- (b) a prescribed dwelling-house, that is to say a dwelling-house constructed for and occupied by employees of a business carried on by the person owning such dwelling-house, and which conforms with conditions as may be prescribed;
- (c) a building which is in use as a hotel or part of a hotel and which the Commissioner has certified to be an industrial building where such a building in use as a hotel includes any building directly related to the operations of the hotel contained within the grounds of the hotel complex, including staff quarters, kitchens, and entertainment and sporting facilities;

- (d) a building in use for the welfare of workers employed in any business or undertaking referred to in item (a) of this subparagraph.
- (e) a building in use as a hostel or an educational building, or a building in use for training, provided such building has been certified by the Commissioner for the purposes of this paragraph;
- (f) a building in use as a rental residential building where such building is constructed in a planned development area approved by the Minister for the time being responsible for matters relating to housing;
- (ff) a building in use as a commercial building other than a building referred to in subparagraph (1)(f).

(2) Item (a) of subparagraph (1) of this paragraph shall apply in relation to a part of a business or undertaking as it applies in relation to a business or undertaking:

Provided that where part only of a business or undertaking complies with the conditions set out in that item, a building shall not, by virtue of this subparagraph, be an industrial building unless it is in use for the purpose of that part of the business or undertaking.

(3) Notwithstanding subparagraph (1) and (2) but subject to subparagraph (4) of this paragraph, the expression “**industrial building**” does not include any building in use as, or as part of, a retail shop, showroom, office or dwelling-house, or for any purpose ancillary to the purposes of a retail shop, showroom or office:

Provided that this subparagraph shall not apply to a prescribed dwelling-house, or to, or to part of, a building which is a dwelling-house constructed for the occupation by persons employed in any business or undertaking referred to in subparagraph (1) of this paragraph or to a building constructed for the welfare of such persons, if such building will cease to belong to the person carrying on such business or undertaking on the coming to an end of a concession under which the business or undertaking is carried on, or if the building would have little or no value to such person if he ceased to carry on the business or undertaking on the termination of, or had little or no value to such person where the business or undertaking ceased to be carried on during, the year of income in respect of which any claim for a deduction has been made under this Part.

(4) Where part of a building is, and part thereof is not, an industrial building and the capital expenditure which has been incurred on the construction of the second-mentioned part is not more than one-tenth of the total capital expenditure which has been incurred on the construction of the building, the whole building shall be treated as an industrial building.

(5) In this paragraph—

“**bridge**” means a bridge, the use of which is subject to a charge or toll; and “**bridge undertaking**” shall be construed accordingly;

“**crop**” includes any form of vegetable produce;

“**dock**” includes a harbour, wharf, pier or jetty or other works in or at which vessels can ship or unship merchandise or passengers, not being a pier or jetty primarily used for recreation; and “**dock undertaking**” shall be construed accordingly;

“**electricity undertaking**” means an undertaking for the generation, transformation, conversion, transmission or distribution of electrical energy;

“**hydraulic power undertaking**” means an undertaking for the supply of hydraulic power;

“**retail shop**” includes premises of a similar character where a retail business (including repair work) is carried on;

“**undertaking**” does not include an undertaking not carried on by way of trade;

“**water undertaking**” means an undertaking for the supply of water for public consumption.

6. Interpretation

(1) A reference in this Part to the incurring of capital expenditure on the construction of a building does not include capital expenditure on the provision of machinery or on an asset which has been treated for a year of income as machinery.

(2) References in this Part to capital expenditure incurred on the construction of a building do not include capital expenditure on the acquisition of, or of rights in or over, land.

PART II – DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON MACHINERY

7. Wear and tear deductions

(1) Subject to this Part, where, during any year of income, any machinery owned by a person is used by him for the purposes of his business, there shall be made in computing his gains or profits for that year of income a deduction (in this Part referred to as a “wear and tear deduction”).

(2) The amount of the wear and tear deduction for a year of income shall be the appropriate percentage of the written down value at the end of that year, before making the deduction, of the machinery classified as follows—

- (a) tractors, combine harvesters, heavy earth-moving equipment and such other heavy self-propelling machines of a similar nature as in his discretion the Commissioner, having regard to the likely usage and depreciation in any particular case, may agree;
- (b) other self-propelling vehicles, including aircraft;
- (c) all other machinery, including ships,

and the appropriate percentage shall be 37½ per cent for class (a), 25 per cent for class (b) and 12½ per cent for class (c).

(3) For machinery purchased on or after 1st January, 1992, the amount of wear and tear deduction for a year of income shall be the appropriate percentage of the written down value at the end of that year, before making that deduction, of the machinery classified as follows—

- (a) tractors, combine harvesters, heavy earth-moving equipment and such other heavy self-propelling machines of a similar nature as in his discretion the Commissioner, having regard to the likely usage and depreciation in any particular case, may agree;

- (b) computers and peripheral computer hardware, calculators, copiers and duplicating machines;
- (c) other self-propelling vehicles, including aircraft;
- (d) all other machinery, including ships,

and the appropriate percentage shall be 37.5 per cent for the class of machinery in subparagraph (a), 30 per cent for the class of machinery in subparagraph (b), 25 per cent for the class of machinery in subparagraph (c), and 12.5 per cent for the class of machinery in subparagraph (d).

(4) For telecommunication equipment purchased and used by a telecommunication operator, other than machinery specified under subparagraph (3)(d), the amount of wear and tear for a year of income shall be twenty per cent of the amount of expenditure incurred.

(5) Where capital expenditure of a kind referred to in subparagraph (1) is incurred on or after the 1st January, 1997, that subparagraph shall be read as though the expression "five hundred thousand shillings" were substituted for "thirty thousand shillings" wherever the latter expression occurs.

(6) Where capital expenditure of a kind referred to in subparagraph (1) is incurred on or after the 1st January, 1998, that subparagraph shall be read as though the expression "one million shillings" were substituted for "thirty thousand shillings" wherever the latter expression occurs.

8. Ascertainment of written down value

(1) The written down value of each class of machinery referred to in paragraph 7 (2) or 7 (3) shall be calculated separately as at any time and shall be the amount still unallowed of capital expenditure on machinery of the class as construed in paragraph 9 of the Second Schedule to the Management Act, and as specified in paragraph 7 with the addition of the costs of capital expenditure on any machinery of that class purchased and the deduction of the amount realized on the sale of any machinery of that class sold in the year of income 1974, or any succeeding year of income, less any deductions made under this Part; and where the amount realized for machinery of any class sold in any year of income exceeds that which, but for the deduction of such amount would be the written down value of machinery of that class at the end of that year of income, the excess shall not be deducted but shall be treated as a trading receipt or, conversely, as a trading loss:

Provided that—

- (i) the cost of capital expenditure of any class of machinery in respect of which a deduction is allowable in accordance with paragraph 24, 24A or 24B shall be deemed to be that cost reduced by the amount of those deductions;
- (ii) where in any year of income an amount has, in accordance with paragraph 24A(3), been treated as a trading receipt, so much thereof as is referable to capital expenditure incurred on machinery of that class shall be deemed to be capital expenditure incurred on the purchase of machinery in that class in the year of income next succeeding that year of income.

(2) Subject to this Part, where machinery is brought into use for the purposes of a trade without being purchased or ceases permanently to be so used without being sold, it shall be deemed to have been purchased or sold as the case may be and the cost or amount realized shall be deemed to be the price which it would have fetched if sold in the open market.

9. Application to lessors

Where machinery is let upon terms that the burden of the wear and tear thereof falls directly upon the lessor, this Part shall apply in relation to him as if the machinery were, during the period of the letting, in use for the purposes of a business carried on by him.

10. Expenditure on buildings in connection with the installation of machinery

Where a person carrying on a business incurs capital expenditure on alterations to an existing building incidental to the installation of machinery for the purposes of the business, this Schedule shall have effect as if that expenditure were capital expenditure on the provision of that machinery and as if the works representing that expenditure formed part of that machinery.

11. Balancing deductions and balancing charges

(1) Where wear and tear deductions or investment deductions have been made in computing the gains or profits of a person under paragraph 7, 24, 24A or 24B and that person ceases to carry on the business for the purposes of which the machinery was used and the machinery cease to be owned by him, there shall be made in computing his gains or profit for the year of income in which the cessation occurs, a deduction or charge (in this Part referred to as a "balancing deduction" or a "balancing charge"); but—

- (a) for the purposes of this paragraph a partnership shall be deemed not to have ceased to carry on a business unless all the partners who carried it on cease to carry it on; and
- (b) where the machinery is sold by the liquidator of a company which is in the course of being wound up, the balancing deduction or balancing charge shall be made in computing the gains or profits of the company for the year of income in which the winding-up commenced; and
- (c) where, in the case of a balancing deduction, the total income for a year of income before taking account of the deduction is less than the amount of the deduction, the excess may be carried back and allowed in calculating the total income of the next preceding year of income, and so on, for as long as is necessary for the deduction to be absorbed by the total income of preceding years, not exceeding in all six in number.

(2) Subject to this Part, where on the cessation of a trade a balancing charge is to be made under this paragraph and—

- (a) no sale moneys are received by the person owning the machinery, or the written down value at the time of the cessation exceeds those

moneys, the balancing deduction shall be the written down value at the time of cessation, or the excess thereof over those moneys, as the case may be;

- (b) the sale moneys exceed the written down value, if any, at the time of cessation, the balancing charge shall be the amount of the excess or, where the written down value is nil, the amount of those money, as the case may be.

12. Effect in certain successions, transfers, etc.

Where a person succeeds to a business which until that time was carried on by another person, and machinery which, immediately before the succession was in use for the purposes of the business without being sold is, immediately after the succession, in use for the purposes of the business, that machinery shall, for the purposes of this Schedule, be treated as if it had been sold at the date of the succession to the person or persons carrying on the business immediately thereafter and as if the net proceeds of the sale had been the written down value of the machinery.

13. Special provisions as to certain sales

(1) This paragraph shall have effect in relation to sales of machinery where either—

- (a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; or
- (b) it appears with respect to the sale or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from this paragraph, might have been expected to accrue to the parties or any of them was the obtaining of a deduction under this Schedule.

(2) Where the machinery is sold at a price other than that which it would have fetched if sold in the open market, then, subject to this paragraph, the like consequences shall ensue for the purposes of this Schedule to all persons concerned as would have ensued if the machinery had been sold for the price which it would have fetched if sold in the open market.

(3) Where the sale is one to which subparagraph (1)(a) applies and subparagraph (1)(b) does not apply, and is a sale which would give rise to a balancing charge, and the parties to the sale by notice in writing to the Commissioner so elect, then subparagraph (2) of this paragraph shall not have effect but the same consequences shall ensue to the buyer and seller as would have ensued if the price for which the machinery was sold had been the written down value; but no election shall be made in any case where either the buyer or the seller is at the time of the sale a non-resident person.

14. Private use

Where machinery owned by a person is, during a year of income, used by him for the purposes of a business carried on by him and also used by him for other purposes, then in determining the amount of a wear and tear deduction or a balancing deduction or balancing charge or an amount treated as a trading receipt or the written down value of that machinery for a year of income, regard

shall be had to all the relevant circumstances of the case and in particular to the extent of the use for those other purposes and the Commissioner shall make such adjustments as he may determine to be just and reasonable.

15. Expenditure on private vehicle

(1) For the purposes of this Schedule, where capital expenditure in excess of thirty thousand shillings was incurred on or after 1st January, 1961, in respect of a road vehicle other than a commercial vehicle or a vehicle whose purchaser is a person whose main business is the hire or sale of vehicles, and such vehicles are used exclusively for hire or as stock-in-trade, that capital expenditure shall be deemed to be thirty thousand shillings; where the road vehicle is sold the sale price shall be deemed to be such proportion of the proceeds of sale as the Commissioner may determine to be just and reasonable, having regard to the original purchase price and the proportion thereof deemed under this paragraph to be capital expenditure.

(2) Where capital expenditure of a kind referred to in subparagraph (1) was incurred on or after 1st January, 1981, that subparagraph shall be read as though the expression “seventy-five thousand shillings” were substituted for “thirty thousand shillings” wherever the later expression occurs.

(3) Where capital expenditure of a kind referred to in subparagraph (1) is incurred on or after the 1st January, 1990, that subparagraph shall be read as though the expression “one hundred thousand shillings” were substituted for “thirty thousand shillings” wherever the later expression occurs.

(4) Where capital expenditure of a kind referred to in subparagraph (1) is incurred on or after the 1st January, 1997, that subparagraph shall be read as though the expression “five hundred thousand shillings” were substituted for “thirty thousand shillings” wherever the latter expression occurs.

(5) Where capital expenditure of a kind referred to in subparagraph (1) is incurred on or after the 1st January, 1998, that subparagraph shall be read as though the expression “one million shillings” were substituted for “thirty thousand shillings” wherever the latter expression occurs.

(6) Where capital expenditure of a kind referred to in subparagraph (1) is incurred on or after the 1st January, 2006, that subparagraph shall be read as though the expression “two million shillings” were substituted for “thirty thousand shillings” wherever the latter expression occurs.

PART III – DEDUCTIONS IN RESPECT OF MINING OPERATIONS

16. Definitions for Part III

(1) In this Part, unless the context otherwise requires—

“**expenditure**” means capital expenditure incurred in Kenya by a person carrying on a mining operation—

- (a) in searching for or in discovering and testing deposits of minerals, or in winning access to those deposits, whether or not the search is, or those deposits are, in an area contiguous to a mine in relation to which that person carries on mining operations;

- (b) in the acquisition of, or of rights in or over, deposits other than the acquisition from a person who has carried on mining in relation to those deposits;
- (c) in the provision of machinery which would have little or no value to that person if the mine ceased to be worked on the termination of the year of income in respect of which a claim for a deduction has been made under this Part, and a premium, or consideration in the nature of a premium, paid for the use of that machinery;
- (d) on the construction of a building or works which would have little or no value if the mine ceased to be worked on the termination of the year of income in respect of which a claim for a deduction has been made under this Part;
- (e) on development, general administration and management prior to the commencement of production or during a period of non-production,
but the expression “expenditure” shall not include—
 - (i) any expenditure on the acquisition of the site of those deposits, or of the site of those buildings or works, or of rights in or over the site;
 - (ii) any expenditure on works constructed wholly or mainly for subjecting the raw produce of those deposits to a process except a process designed for preparing the raw product for use as such;

“**mineral**” does not include common clay, murram, sand, limestone, sandstone, brine, diatomite, gypsum, anhydrite, sulphur, dolomite, kaolin, bauxite, sodium or potassium compounds, or any other mineral substance which for the time being is declared not to be a mineral under section 2 of the Mining Act (Cap. 306), unless it has been obtained by underground mining operations or is mineral oil obtained either under a licence granted under section 3 of the Oil Production Act (Cap. 308) or from the continental shelf and does not include a specified mineral;

“**mining**” includes every method or process by which a mineral is won.

(2) Reference in this Part to assets representing expenditure includes, in relation to expenditure on searching for, discovering and testing deposits, results obtained from any search, exploration or inquiry upon which the expenditure was incurred.

17. Deductions

(1) Subject to this Schedule, where a person carrying on a business of mining incurs expenditure in a year of income there shall be made, in computing his gains or profits for that year of income, a deduction equal to two-fifths of that expenditure and in each of the following six years of income a deduction equal to one-tenth of that expenditure.

(2) Notwithstanding anything contained in subparagraph (1) of this paragraph where the Commissioner is satisfied that, having regard to the estimated ore reserves and to any other relevant information, the mine is likely to be worked before the expiration of six years from the end of the year of income in which the

expenditure was incurred, he may, upon the application of the person who incurred the expenditure, increase the amount of the deductions for any year to such amount as he may consider just and reasonable.

(3) Where the amount of a deduction under this Part has been in any manner varied for a year, then deductions for subsequent years of income shall be so adjusted that the sum of deductions for all years of income shall not exceed the expenditure.

18. Apportionment of deductions

Where a person (the “transferor”) is entitled to a deduction under paragraph 17 in respect of expenditure, and his interest in the asset represented by such expenditure, or in any part of the asset, is transferred whether by operation of law or otherwise to some other person (the “transferee”)—

- (a) the amount of the deduction, for the year of income in which the transfer takes place, shall be apportioned in such manner as the Commissioner may determine to be just and reasonable between the transferee and the transferor; and
- (b) the transferee shall, to the exclusion of the transferor, be entitled, where the interest transferred is in the whole of the asset, to the whole of the deduction for a subsequent year of income, and where the interest transferred is in part only of the asset, to so much of the deduction as the Commissioner may determine to be just and reasonable.

19. Operations on separate mines treated separately

Where separate and distinct mining operations are carried on by the same person in mines that are not contiguous, the mines shall be treated for the purposes of this Part as if separate mining operations were carried on in relation thereto.

20. Expenditure incurred by persons not engaged in business of

(1) Any expenditure incurred for the purpose of a business of mining by a person about to carry it on shall be treated for the purposes of this Part as if it had been incurred by that person on the first day on which he does carry it on.

(2) Where a person incurs expenditure to which this Part applies on searching for or on discovering and testing any deposits of minerals, or winning access to those deposits and, without having carried on a business of mining, sells any assets representing such expenditure in relation to those deposits, then if the purchaser carries on a business of mining, the purchaser shall, for the purposes of that business be deemed to have incurred expenditure to which this Part applies equal to the price paid by him for those assets.

21. Sum received by vendor treated as trading receipt

Where, under subparagraph (2) of paragraph 20, the purchaser of assets representing expenditure is deemed to have incurred expenditure to which this Part applies equal to the price paid by him for such assets, then the sum received by the vendor as the price for those assets, after deducting therefrom expenditure incurred by him in selling those assets and expenditure incurred by him in Kenya on searching for, discovering, testing and winning access to mineral deposits, so far as such expenditure has not been otherwise deducted in ascertaining his total income for a year of income, shall be treated as a trading receipt for the year of income in which the sale took place; but if the vendor so

requests in writing the Commissioner may divide the amount of that sum into so many portions, not exceeding six, as he may think fit, and one portion shall be taken into account in ascertaining the total income of the vendor for the year of income in which the sale took place and for each of the previous years of income corresponding to the number of portions.

PART IV – DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON
AGRICULTURAL LAND

22. Deductions in respect of capital expenditure on farm works

(1) Subject to this Schedule, where in a year of income the owner or tenant of agricultural land incurs capital expenditure on the construction of farm works there shall be made, in computing his gains or profits for that year of income and the four following years of income, a deduction equal to one-fifth of that expenditure:

Provided that—

- (a) where in any year of income commencing on or after 1st January, 1985, the owner or tenant of agricultural land incurs capital expenditure on the construction of farm works there shall be made, in computing his gains or profits for that year of income and the two following years of income, a deduction equal to one third of that expenditure;
- (b) where in any year of income commencing on or after 1st January, 2007, the owner or tenant of agricultural land incurs capital expenditure on the construction of farm works, there shall be made, in computing his gains or profits for that year of income and the following year of income, a deduction equal to one-half of that expenditure;
- (c) where in any year of income commencing on or after 1st January, 2011, the owner or tenant of agricultural land incurs capital expenditure on the construction of farmworks, there shall be made, in computing his gains or profits for that year of income, a deduction equal to a hundred per cent of that expenditure.

(2) No capital expenditure shall be taken into account for the purposes of this paragraph unless it is incurred for the purposes of husbandry on the agricultural land in question.

(3) Where the capital expenditure—

- (a) is on a farm-house, one-third only of the expenditure shall be taken into account or, if the accommodation and amenities of the farmhouse are out of due relation to the nature and extent of the farm, such lesser proportion thereof as the Commissioner may determine to be just and reasonable;
- (b) is incurred on assets other than a farmhouse, being an asset which is to serve partly the purposes of husbandry and partly other purposes, then only such proportion thereof as the Commissioner may determine to be just and reasonable shall be taken into account for the purposes of this paragraph.

(4) Where a person (the “transferor”) would, if he continued to be the owner or tenant, as the case may be, of any agricultural land, be entitled to a deduction under this paragraph in respect of capital expenditure and the whole of his interest in the land in question, or in any part of such land, is transferred, whether by operation of law or otherwise, to some other person, (the “transferee”)—

- (a) the amount of the deduction, if any, for the year of income in which the transfer takes place, shall be apportioned in such manner as the Commissioner may determine to be just and reasonable between the transferor and the transferee; and
- (b) the transferee shall, to the exclusion of the transferor, be entitled, where the interest transferred is in the whole of the land, to the whole of the deduction for any subsequent year of income, and where the interest transferred is in part only of the land, to so much of the deduction as the Commissioner may determine to be just and reasonable.

(5) For the purposes of subparagraph (4) of this paragraph where an interest in land is a leasehold interest and that leasehold interest comes to an end, then such interest shall be deemed to have been transferred—

- (a) if an incoming tenant makes a payment to the outgoing tenant in respect of assets representing the expenditure in question, to the incoming tenant; and
- (b) in any other case, to the owner of the interest in immediate reversion on the leasehold interest.

(6) Where the amount of a deduction under this Part has been in any manner varied for any year, then deductions for subsequent years of income shall be so adjusted that the sum of deductions for all years of income shall not exceed the expenditure.

23. Definitions for Part IV

In this Part—

“**agricultural land**” means land occupied wholly or mainly for the purposes of a trade of husbandry;

“**farm works**” means farmhouses, labour quarters, any other immovable buildings necessary for the proper operation of the farm, fences, ditches, drains, water and electricity supply works other than machinery, windbreaks, and other works necessary for the proper operation of the farm.

PART V – INVESTMENT DEDUCTIONS

24. Buildings and machinery

(1) Subject to this Schedule, where capital expenditure is incurred—

- (a) on the construction of a building and on the purchase and installation therein of new machinery, and the owner of that machinery, being also the owner or lessee of that building, uses that machinery in that building for the purposes of manufacture; or

- (b) on the purchase and installation of new machinery in a part of a building other than a building or part thereof previously used for the purposes of manufacture, and—
 - (i) the owner of the new machinery subsequently uses that machinery in that building for the purposes of manufacture; and
 - (ii) the machinery has not been installed substantially in replacement of machinery previously in use in an existing business carried on by the owner of that new machinery;
- (c) on or after the 1st January, 1992 on the construction of a building where the owner or the lessee of that building uses the building for the purpose of manufacture; or
- (d) on or after the 1st January, 1992 on the purchase and installation or otherwise setting up the machinery for use as may be appropriate for the type of machine, of machinery to be used for the purpose of manufacture; or
- (dd) on or after 1st January 2005, on the purchase of machinery which is subsequently leased and used for the purpose of manufacture;
- (e) on the construction of a hotel building which is certified as an industrial building under paragraph 5(1)(c);
- (f) on the construction of a building or purchase and installation of machinery outside the City of Nairobi or the Municipalities of Mombasa or Kisumu whereof the value of the investment is not less than two hundred million shillings;
- (g) on the purchase of filming equipment by a local film producer licensed by the Minister responsible for matters relating to communication,

there shall be deducted, in computing the gains or profits of the person incurring that expenditure for the year of income in which they were first used (hereinafter referred to as "the year of first use"), either both the building and machinery referred to in subparagraph (a) or both the machinery and, for the purpose of manufacture, the part of the building in which that machinery has been installed referred to in subparagraph (b) or the building referred to in subparagraph (c), provided that, prior to its first being used for manufacture after its completion, it has been used for no other purpose, or the machinery referred to in subparagraph (d) or (dd), or the building referred to in subparagraph (e) or the building or machinery referred to in subparagraph (f), as the case may be, a deduction referred to as an investment deduction;

(2) The amount of the investment deduction under subparagraph (1) shall—

- (a) where the construction, installation or use, as the case may be, occurs outside the municipalities of Nairobi or Mombasa, be equal to the percentage of the capital expenditure applicable in accordance with the following table:

Where the year of first use is any year of income or accounting year commencing on or after	Percentage of the Capital Expenditure
1st January, 1988	60%
1st January, 1989	75%

Where the year of first use is in any year of income or accounting year commencing on or after	Percentage of the Capital Expenditure
1st January, 1990	85%
1st January, 1995	60%
1st July, 2000	100%
1st January, 2002	85%
1st January, 2003	70%
1st January, 2004	100%
1st January, 2005	100%
1st January, 2006	100%
1st January, 2007	100%
1st January, 2008	100%

- (b) where the construction, installation or use, as the case may be, occurs within the municipalities of Nairobi and Mombasa, be equal to the percentage of the capital expenditure applicable in accordance with the following table:

Where the year or of first use is any year of income or accounting year commencing on or after	Percentage of the Capital Expenditure
1st January, 1988	10%
1st January, 1989	25%
1st January, 1990	35%
1st January, 1995	60%
1st July, 2000	100%
1st January, 2002	85%
1st January, 2003	70%
1st January, 2004	100%
1st January, 2005	100%
1st January, 2006	100%
1st January, 2007	100%
1st January, 2008	100%

- (c) in the case of an investment referred to in subparagraph (1)(f), be equal to one hundred and fifty per cent of the capital expenditure;
- (d) in the case of the equipment referred to in subparagraph (1)(g), be equal to one hundred per cent of the capital expenditure.

(3) For the purposes of this paragraph—

- (a) where, under paragraph 24(1)(a) or 24(1)(c) a building is used partly for the purposes of manufacture and partly for other purposes, the capital expenditure on which the deduction in respect of the building is calculated shall be the capital expenditure attributable to that portion of the building which is used for the purposes of manufacture; but where the capital expenditure so attributable

exceeds nine-tenths of the total capital expenditure incurred on the construction of the building the whole building shall be treated as used for the purposes of manufacture;

- (b) where an existing building is extended by further construction, the extension shall be treated as a separate building;
- (c) capital expenditure incurred on the construction of a building does not include capital expenditure on the acquisition of, or of rights in or over, any land;
- (d) **“building”** includes any building structure and where the building is used for the purposes of manufacture it includes the civil works and structures deemed to be part of an industrial building under paragraph 1(1A) of this Schedule;
- (e) in the case referred to in paragraph 5(1)(f) for the year commencing on or after the 1st January, 2008, five per cent;

“installation” means affixing to the fabric of a building in a manner necessary for and appropriate to the proper operation of the machinery concerned;

“machinery” means machinery and equipment used directly in the process of manufacture, and includes machinery and equipment used for the following ancillary purposes—

- (i) generation, transformation and distribution of electricity;
- (ii) clean-up and disposal of effluents and other waste products;
- (iii) reduction of environmental damage; and
- (iv) water supply or disposal;
- (v) workshop machinery for the maintenance of the machinery;

“manufacture” means the making (including packaging) of goods or materials from raw or partly manufactured materials or other goods or the generation of electrical energy for supply to the national grid or the transformation and distribution of electricity through the national grid but does not extend to any activities which are ancillary to manufacture such as design, storage, transport or administration;

“new” means not having previously been used by any person, or acquired or held (other than by a supplier in the normal course of trade) by any person for use by the person incurring expenditure under this paragraph.

24A. Capital expenditure on buildings and machinery for purposes of manufacture under bond

(1) Subject to this Schedule, where capital expenditure is incurred—

- (a) on or after 1st January, 1988, on the construction of a building and on the purchase and installation therein of new machinery and the owner of that machinery being also the owner of that building uses that machinery for the purposes of manufacture under bond; or
- (b) on or after 1st January, 1996, on the purchase and installation of machinery to be used for the purposes of manufacture under bond,

there shall be deducted in computing the gains or profits of the person incurring that expenditure for the year of income in which the building and machinery

referred to in paragraph (a) or the machinery referred to in paragraph (b) was first used for manufacture under bond, a deduction referred to as an investment deduction.

(2) The amount of the investment deduction under subparagraph (1) shall be equal to—

- (a) seventy-five per cent of that capital expenditure where that manufacture is carried on within the municipalities of Nairobi or Mombasa; or
- (b) twenty-five per cent of that capital expenditure where that manufacture is carried on elsewhere.

(2A) The amount of investment deduction under subparagraph (2A) commencing on or after the 1st January, 1990 shall be equal to—

- (a) sixty-five per cent of that capital expenditure where that manufacture is carried on within the municipalities of Nairobi or Mombasa; or
- (b) fifteen per cent of that capital expenditure where that manufacture is carried on elsewhere.

(2B) The amount of investment deduction under subparagraph (2) shall be equal to the percentage of the capital expenditure applicable in accordance with the following table:

Where the year or of first use is any year of income or accounting year commencing on or after	Percentage of the Capital Expenditure
1st January, 1995	40%
1st July, 2000	Nil
1st January, 2002	15%
1st January, 2003	30%
1st January, 2004	40%
1st January, 2005	Nil
1st January, 2006	Nil
1st January, 2007	Nil
1st January, 2008	Nil

(3) The deduction allowable under subparagraph (2A) or (2B) shall be in addition to any deduction under paragraph 24:

Provided that where the person incurring that capital expenditure ceases to be eligible to engage in manufacture under bond within three years of the date on which that manufacture was commenced, an amount equal to the deduction allowed under this Part reduced by any deductions which might have been deductible in respect of that capital expenditure under Part I and Part II if a deduction under this Part had not been allowable, shall be taken into account as a trading receipt in computing the gains and profits of that person for the year of income in which he ceases to be eligible to engage in the manufacture under bond.

(4) (a) Capital expenditure incurred in the construction of a building does not include capital expenditure incurred on the acquisition of, or of rights in or over, land;

(b) “**building**”, “**installation**” and “**new**” shall have the meaning ascribed to those words in paragraph 24(3)(d) of this Schedule;

(c) “**Manufacture under bond**” shall have the meaning ascribed to these words in section 2(1) of the Customs and Excise Act (Cap. 472).

Capital expenditure on buildings and machinery for use in an export processing zone.

24B. Capital expenditure on buildings and machinery for use in an export processing zone

(1) Subject to this Schedule, where capital expenditure is incurred on or after the 1st January, 1992 on the construction of a building or on the purchase and installation of machinery by or for an export processing zone enterprise for use in an export processing zone for the purpose of carrying out the business activities for which that enterprise was licensed as an export processing zone enterprise within the first twenty years starting with the year in which that enterprise first became exempt from corporation income tax under paragraph 2(e) of the Third Schedule of this Act a deduction, referred to as an investment deduction, equal to one hundred per cent of the capital expenditure may be taken at the discretion of the enterprise against the gains or profits of that enterprise in the year in which the building or machinery is first used.

(2) During the twenty year period specified in subparagraph (1), paragraphs 24 and 24A shall not apply to an export processing zone enterprise.

(3) Capital expenditure incurred in the construction of building does not include capital expenditure incurred on the acquisition of, or rights in or over, land.

25. Shipping

Subject to this Schedule, where a resident person carrying on the business of a shipowner incurs capital expenditure to which this Schedule applies—

- (a) on the purchase of a new and hitherto unused power-driven ship of more than 495 tons gross; or
- (b) on the purchase, and subsequent refitting for the purposes of such business, of a used power-driven ship of more than 495 tons,

there shall be deducted in computing his gains or profits for the year of income in which the ship is first used in such business a deduction (referred to as a shipping investment deduction) equal to forty per cent of that capital expenditure, but—

- (a) not more than one shipping investment deduction shall be allowed in respect of the same ship;
- (b) *Deleted by Act No. 13 of 1975, s. 2;*
- (c) where a ship in respect of which a shipping investment deduction has been given, is sold within a period of five years from the end of the year of income in which the deduction was given, the deduction shall be withdrawn and treated as income of the vendor for the year of income in which the sale takes place.

26. Sale of buildings prior to use

Where capital expenditure is incurred on the construction of a building to which paragraph 24(1)(a), (c) or (f) applies and which is sold before it is first used then the provisions of paragraph 4 shall apply.

PART VI – MISCELLANEOUS PROVISIONS**27. Apportionment of consideration for sale, exchanges, etc., of any property or of lease hold interests**

(1) (a) Any reference in this Schedule to the sale of property includes a reference to the sale of that property together with any other property, and, where property is sold together with other property, so much of the net proceeds of the sale of the whole property as the Commissioner may determine to be just and reasonable as properly attributable to the first mentioned property shall, for the purposes of this Schedule, be deemed to be the net proceeds of the sale of the first mentioned property, and references to expenditure incurred on the provision or the purchase of property shall be construed accordingly.

(b) For the purposes of this paragraph all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are, or purport to be, agreed for separate items of that property or that there are, or purport to be, separate sales of separate items of that property.

(2) Subparagraph (1) of this paragraph shall, with the necessary adaptations, apply in relation to other sale moneys as they apply in relation to the net proceeds of sales.

(3) This Schedule shall have effect as if a reference therein to the sale of property included a reference to the exchange of property and, in the case of a leasehold interest, also included a reference to the surrender thereof for valuable consideration, and any provisions of this Schedule referring to sales shall have effect accordingly with the necessary adaptations and, in particular with the adaptations that references to the net proceeds of sale and to the price shall be taken to include references to the consideration for the exchange or surrender and references to capital sums included in the price shall be taken to include references to so much of the consideration as would have been a capital sum if it had taken the form of a money payment.

28. Interpretation of certain references to expenditure

(1) Unless the context otherwise requires, references in this Schedule to capital expenditure and capital sums in relation to the person incurring such expenditure, or paying such sums, do not include any expenditure or sum which is deductible otherwise than under this Schedule for the purpose of ascertaining his total income.

(2) Any reference in this Schedule to the date on which expenditure is incurred shall be construed as a reference to the date when the sum in question becomes payable.

29. Subsidies

(1) Expenditure shall not be regarded for any of the purposes of this

Schedule as having been incurred by a person in so far as it has been, or is to be met directly or indirectly by any Government or a local authority or by any person, whether in Kenya or elsewhere, other than the first mentioned person.

(2) In considering whether, for the purposes of this Schedule, any expenditure has been met or is to be met directly or indirectly by anyone other than the person incurring the expenditure, there shall be left out of account—

- (a) any insurance, moneys or other compensation moneys payable in respect of an asset which has been demolished, destroyed or put out of use; and
- (b) any expenditure met, or to be met, by a person, other than a Government or a local authority, being expenditure in respect of which, apart from this item, no deduction could be made under subparagraph (3) of this paragraph.

(3) Where a person, for the purposes of a business carried on or to be carried on by him or by a tenant of land in which he has an interest, contributes a capital sum (hereinafter referred to as a contribution) to expenditure on the provision of an asset being expenditure which, apart from subparagraph (1) of this paragraph, would have been regarded as wholly incurred by another person and in respect of which, apart from that subparagraph, a deduction would have been made under this Schedule, then, subject to this paragraph, such deductions, if any, shall be made to the contributor as would have been made to him if his contribution had been expenditure on the provision, for the purposes of that business, of a similar asset.

(4) Subject to this Schedule, the amount of the deductions and the manner in which they are to be made shall be determined on the following basis—

- (a) the asset shall be deemed to continue at all material times to be in use for the purposes of the business;
- (b) where the asset is machinery and, when the contribution was made, the business was carried on or was to be carried on by a tenant of land in which the contributor has an interest, the contributor shall be deemed to have let the machinery to such tenant on terms that the burden of the wear and tear thereof falls directly on the contributor.

(5) Where, when the contribution was made, the business for the purposes of which it was made was to be carried on or was to be carried on by the contributor, then, on a transfer of the business or any part thereof—

- (a) where the transfer is of the whole business, the deductions thereafter shall be made to the transferee;
- (b) where the transfer is of part only of the business, item (a) shall have effect with respect to so much of the deduction as the Commissioner may determine is properly referable to the part of the business transferred.

(6) Where, when the contribution was made, the business was carried on or was to be carried on by any tenant of land in which the contributor had an interest, the deduction for a year of income shall be made to the person who is entitled to the interest of the contributor in the land.

30. Prevention of double allowances

If a deduction is made under any Part in respect of any property, or in respect of capital expenditure on any property, in computing the gains or profits of a person for a year of income then, to the extent to which that deduction has been

made, no further deduction shall be made under that Part or any other Part or under any other provision of this Act in respect of, or in respect of capital expenditure on, that property in ascertaining the total income of that person for the same or a previous or subsequent year of income.

31. Increase of deductions

The amount of a deduction made under this Schedule may be increased to such an amount as may be prescribed by the Commissioner either generally, or in relation to a particular class of business, or in a particular instance.

31A. Where a person incurs capital expenditure on the purchase of machinery or on the construction of roads, bridges or similar infrastructure under a concessionaire arrangement, the deduction shall be spread and claimed in equal proportion over the period of the concession:

Provided that the period of concession shall be deemed to commence—

- (a) in the case of machinery, in the year in which the machinery is first put into use;
- (b) in the case of a road, bridge or similar infrastructure, in the year in which it is first put into use after completion.

31B. Subject to this Schedule, where a person incurs capital expenditure on the purchase or acquisition of the right to the use of a computer software, there shall be deducted, in computing his gains or profits for the year of income in which the software is first used and for subsequent years of income, an amount equal to one-fifth of that expenditure.

32. Other provisions as to interpretation

(1) In this Schedule, unless the context otherwise requires—

“approved business” *deleted by Act No. 2 of 1975, s. 5*

“control”, in relation to a body corporate, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or another body corporate, or by virtue of powers conferred by the articles of association or other document regulating that or another body corporate, that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person; and in relation to a partnership, means the right to a share of more than one-half of the assets or of more than one-half of the income of the partnership:

Provided that in the case of a body corporate, unless otherwise expressly provided for by the articles of association or other documents regulating it **“control”** shall mean the holding of shares or voting power of twenty-five per cent or more;

“income” includes an amount on which a charge to tax is authorized to be made under this Act;

“lease” includes an agreement for a lease where the term to be covered by the lease has begun and a tenancy but does not include a mortgage;

“machinery” includes ships and plant used in carrying on a business;

“sale moneys” means, in relation to—

- (a) a sale of property, the net proceeds of the sale;
- (b) the coming to an end of an interest in property, compensation payable in respect of that property;

- (c) the demolition or destruction of property, the net amount received for the remains of the property, together with insurance or salvage moneys received in respect of the demolition or destruction and other compensation of any description received in respect thereof, in so far as that compensation consists of capital sums.

(2) Any reference in this Schedule to any building, machinery, works, asset or farmhouse shall, except where the reference is to the whole of a building, be construed as including a reference to a part thereof.

(3) Any reference in this Schedule to the time of a sale shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

(4) For the purposes of this Schedule the price which any property would have fetched if sold in the open market shall be determined by the Commissioner.

(5) Where any income of an accounting period ending on some day other than the last day of a year of income is taken into account for the purpose of ascertaining total income for a year of income, then any reference in this Schedule to year of income shall be construed as a reference to that accounting period:

Provided that but where a deduction under this Schedule is related to a year of income and any income of an accounting period is so taken into account then, if that accounting period is more or less than twelve months, the amount of such deduction shall be proportionately increased or decreased, as the case may be.

33. For the purposes of this Schedule “**hotel**” means a hotel which has been classified as such by the Minister for the time being responsible for matters relating to tourism.

THIRD SCHEDULE

[Sections 29, 30, 31, 32, 33, 34, and 35, Act No. 2 of 1975, s. 5, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, Act No. 12 of 1977, s. 5, Act No. 8 of 1978, s. 9, Act No. 10 of 1980, s. 5, Act No. 12 of 1980, s. 3, Act No. 6 of 1981, s. 5, Act No. 14 of 1982, s. 22, Act No. 13 of 1984, s. 22, Act No. 18 of 1984, s. 7, Act No. 8 of 1985, s. 16, Act No. 10 of 1987, s. 38, Act No. 10 of 1988, s. 36, Act No. 8 of 1989, s. 23, Act No. 10 of 1990, s. 60, Act No. 21 of 1990, Sch., Act No. 8 of 1991, s. 76, Act No. 9 of 1992, s. 57, Act No. 4 of 1993, s. 59, Act No. 6 of 1994, s. 47, Act No. 13 of 1995, s. 89, Act No. 8 of 1996, s. 46, Act No. 8 of 1997, s. 50, Act No. 5 of 1998, s. 40, Act No. 4 of 1999, s. 41, Act No. 9 of 2000, s. 55, Act No. 6 of 2001, s. 55, Act No. 7 of 2002, s. 48, Act No. 15 of 2003, s. 41, Act No. 4 of 2004, s. 61, Act No. 6 of 2005, s. 36, Act No. 10 of 2006, s. 31, Act No. 9 of 2007, s. 29, Act No. 8 of 2008, s. 40, Act No. 8 of 2009, s. 30, Act No. 10 of 2010, s. 34, Act No. 4 of 2012, s. 22.]

RATES OF PERSONAL RELIEF AND TAX

HEAD A – RESIDENT PERSONAL RELIEF

1. Personal Relief

The amount of the personal relief shall be thirteen thousand nine hundred and forty-four shillings:

Provided that for the year of income 1995, all the income over £19,500 shall be charged additional tax at the rate of one-half shilling in each twenty shillings.

2. Insurance Relief

The amount of insurance relief shall be fifteen per cent of the amount of premiums paid but shall not exceed sixty thousand shillings per annum.

HEAD B – RATES OF TAX**1. The individual rates of tax shall be—**

	Rate in each Shilling
On the first Shs. 121,968	10%
On the next Shs. 114,912	15%
On the next Shs. 114,912	20%
On the next Shs. 114,912	25%
On all income over Shs. 466,704	30%

1A. The wife's employment, wife's professional and wife's self-employment income rates of tax shall be—

	Rate in each Shilling
On the first Shs. 121,968	10%
On the next Shs. 114,912	15%
On the next Shs. 114,912	20%
On the next Shs. 114,912	25%
On all income over Shs. 466,704	30%

2. The corporation rate of tax shall be—**(a) in the case of a resident company—**

	Rate of each Twenty Shillings
(i) for the year of income 1974 and each subsequent year of income up to and including the year of income 1990	9.00
(ii) for the year of income 1990	8.50
(iii) for the year of income 1991	8.00
(iv) for the year of income 1992 and each subsequent year of income	7.50
(v) for the year of income 1993 upto and including the year of income 1997	7.00
(vi) for the year of income 1998 upto and including the year of income 1999	6.50
(vii) for the year of income 2000 and each subsequent year of income	6.00

Provided that for a resident company with an accounting period ending between the 1st July, 1994 and the 30th June, 1995 the corporation rate of tax shall be increased by one-half shilling in each twenty shillings.

- (b) In the case of a non-resident company having a permanent establishment in Kenya—
- | | |
|--|-------|
| (i) for the year of income 1974 and each subsequent year of income including the year of income 1989 | 10.50 |
| (ii) for the year of income 1990 | 10.00 |
| (iii) for the year of income 1991 | 9.50 |
| (iv) for any year of income 1992 and each subsequent year of income | 9.00 |
| (v) for the year of income 1993 up to and including the year of income 1997 | 8.50 |
| (vi) for the year of income 1998 up to and including 1999 ... | 8.00 |
| (vii) For the year of income 2000 and each subsequent year of income | 7.50 |

Provided that for a non-resident company having a permanent establishment in Kenya with an accounting period ending between the 1st July, 1994 and the 30th June, 1995, the corporation rate of tax shall be increased by one-half shilling in each twenty shillings—

- (c) that part of the chargeable income of a resident insurance company which relates to its life insurance business where the rate shall be eight shillings in each twenty of chargeable income;
- (d) in the case of a company newly listed on any securities exchange approved under the Capital Markets Act (Cap. 485A) with at least thirty per cent of its issued share capital listed, twenty-five per cent for the period of five years commencing immediately after the year of income following the date of such listing;
- (e) in the case of a company newly listed on any securities exchange approved under the Capital Markets Act (Cap. 485A) which has at least forty per cent of its share capital listed, twenty per cent of the period of five years commencing immediately after the year of income following the date of such listing;
- (f) an export processing zone enterprise which does not engage in any commercial activities shall be exempted from paying any corporation tax for a period of ten years commencing with the year in which production, sales or receipts relating to the activities for which that enterprise has been licensed as an export processing zone enterprise commence; but the corporation rate of tax will be twenty-five per cent for the period of ten years commencing immediately thereafter:

Provided that for purposes of this subparagraph, “**commercial activities**” includes trading in, breaking bulk, grading, repacking or relabelling of goods and industrial raw materials.

3. The non-resident tax rates shall be—

- (a) in respect of management or professional fees or training fees, other than management or professional fees deductible under paragraph 5(2)(g) of the Ninth Schedule, consultancy, agency or contractual fee, twenty per cent of the gross sum payable:

Provided that the rate applicable to citizens of the East African Community partner States in respect of consultancy fees shall be fifteen per cent of the gross sum payable;

- (b) in respect of a royalty, twenty per cent of the gross amount payable;
- (c)
 - (i) in respect of a rent premium or similar consideration for the use or occupation of immovable property, thirty per cent of the gross amount payable;
 - (ii) in respect of a rent, premium or similar consideration for the use of property other than immovable property, fifteen per cent of the gross amount payable;
- (d) in respect of a dividend, ten per cent of the amount payable:

Provided that the rate applicable to citizens of the East African Community Partner States in respect of dividend shall be five per cent of the gross sum payable;

- (e)
 - (i) in respect of interest and deemed interest arising from a Government bearer bond of at least two years duration and interest, other than interest which is deductible under paragraph 5(2)(h) of the Ninth Schedule, discount or original issue discount, fifteen per cent of the gross sum payable;
 - (ii) in respect of interest, arising from bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent of the gross amount payable;
- (f) in respect of a pension or retirement annuity, five per cent of the gross amount payable;
- (g) in respect of an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience, twenty per cent of the gross amount payable;
- (h) in respect of an activity by way of supporting, assisting or arranging any appearance or performance mentioned in subparagraph (g) of this paragraph, twenty per cent of the gross amount payable;
- (i) in respect of any management or professional fees deductible under paragraph 5(2)(g) of the Ninth Schedule, twelve and a half per cent of the gross sum payable;
- (j) in respect of any interest which is deductible under paragraph 5(2)(h) of the Ninth Schedule, ten per cent of the gross sum payable;
- (k) in respect of gains or profits from the business of a ship-owner which is chargeable to tax under section 9(1) of the Act, two and a half per cent of the gross amount received;
- (l) in respect of gains and profits from the business of transmitting messages by cable or radio communication, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet and satellite or any other similar method of communication, five per cent of the gross amount received.
- (m) in respect of winnings from betting and gaming, twenty per cent.

4. Deleted by Act No. 6 of 1994, s. 47.

5. The resident withholding tax rates shall be—

- (a) in respect of a dividend, fifteen per cent of the amount payable;
- (b) in respect of interest, discount or original issue discount arising from—
 - (i) bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent;
 - (ii) Government Bearer Bond of at least two years duration and other sources, fifteen per cent;
 - (iii) bearer bonds with a maturity of ten years and above, ten per cent of the gross amount payable,
 of the gross amount payable;
- (c) in respect of a commission or fee, paid or credited by an insurance company to any person for the provision, whether directly or indirectly, of an insurance cover to any person or group of persons, five per cent of the gross amount payable to all others;
- (d)
 - (i) in respect of a payment of a pension or any withdrawal made after the expiry of fifteen years from the date of joining the fund, or on the attainment of the age of fifty years, or upon earlier retirement on the grounds of ill-health or infirmity of body and mind, from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund, in excess of the tax free amounts specified under section 8(4) and 8(5) in any one year and, provided that tax has not been deducted under section 37—
 - 10% on the first Shs. 400,000
 - 15% on the next Shs. 400,000
 - 20% on the next Shs. 400,000
 - 25% on the next Shs. 400,000
 - 30% on any amount over Shs. 1,600,000 of the amount in excess of the tax free amount:
 Provided that the tax so deducted shall be final;
 - (ii) in respect of a withdrawal before the expiry of fifteen years from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund in excess of the tax free amounts specified under section 8(4) and 8(5) in any one year—
 - 10% on the first Shs. 121,968
 - 15% on the next Shs. 114,912
 - 20% on the next Shs. 114,912
 - 25% on the next Shs. 114,912
 - 30% on any amount over Shs. 466,704 of the amount in excess of the tax free amount;

- (iii) in respect of surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds, thirty per cent of the gross sum payable;
- (e) in respect of a qualifying dividend, five per cent of the amount payable;
- (f)
 - (i) in respect of management or professional fee or training fee, other than contractual fee, the aggregate value of which is twenty-four thousand shillings in a month or more, five per cent of the gross amount payable;
 - (ii) in respect of contractual fee the aggregate value of which is twenty-four thousand shillings in a month or more, three per cent of the gross amount payable;
- (g) in respect of a royalty, five per cent of the gross amount payable;
- (h) in respect of qualifying interest—
 - (i) ten per cent of the gross amount payable in the case of housing bonds; and
 - (ii) twenty per cent of the gross amount payable in the case of bearer instrument; and
 - (iii) fifteen per cent of the gross amount payable in any other case;
- (i) *Deleted by Act No. 10 of 2010, s. 34;*
- (j) in respect of winnings from betting and gaming twenty per cent:
Provided that the tax so deducted shall be final.

6. (1) The rate of deduction for a transaction chargeable to withholding tax under subsection (3A) of section 35 shall be three per cent of the gross amount of the aggregate consideration of the transaction.

(2) The gains or profits arising from the transfer of property under the Eighth Schedule shall be taxed at a rate of ten per cent.

7. The rate of presumptive income tax in respect of agricultural produce under subsection (1) of section 17A shall be two per cent of the gross amount of payment or the gross value of export.

8. The rate of advance tax under section 12A shall be—

- (a) for vans, pick-ups, trucks, prime movers, trailers and lorries: one thousand five hundred shillings per ton of load capacity per year or two thousand four hundred shillings per year, whichever is the higher;
Provided that advance tax shall not be imposed on tractors or trailers used for agricultural purposes;
- (b) for saloons, station-wagons, mini-buses, buses and coaches: sixty shillings per passenger capacity per month or two thousand four hundred shillings per year, whichever is the higher;
- (c) *Deleted by Act No. 10 of 2010, s. 34.*

9. The rate of tax in respect of turnover shall be three per cent of the gross receipts of the business of a taxable person under section 12C.

FOURTH SCHEDULE

[Sections 15 and 35, Act No. 6 of 1981, s. 5, Act No. 8 of 1983, s. 18, Act No. 8 of 1985, s. 17, Act No. 9 of 1989, Second Sch., Act No. 8 of 2008, s. 41.]

FINANCIAL INSTITUTIONS

A bank or financial institution or mortgage finance company licensed and the Banking Act (Cap. 488).

An insurance company licensed under the Insurance Act (Cap. 487).

The Kenya Reinsurance Corporation established by the Reinsurance Corporation Act.

A building society registered under the Building Societies Act (Cap. 489).

The National Housing Corporation established under the Housing Act (Cap. 117).

A co-operative society registered under the Co-operative Societies Act (Cap. 490).

The Kenya Post Office Savings Bank established by the Kenya Post Office Savings Bank Act (Cap. 493B).

The Agricultural Finance Corporation established by the Agricultural Finance Corporation Act (Cap. 323).

A person licensed under Part VII of the Hire-purchase Act (Cap. 507).

FIFTH SCHEDULE

[Section 2, Act No. 7 of 1976, s. 2, Act No. 13 of 1984, s. 23, Act No. 10 of 1988, s. 37, Act No. 4 of 1993, s. 60.]

SCHEDULED PROFESSIONS AND SCHEDULED QUALIFICATIONS

Profession	Qualifications
1. Medical	Any person who is registered as a medical practitioner under the Medical Practitioners and Dentists Act (Cap. 253).
2. Dental	Any person who is registered as a dentist under the Medical Practitioners and Dentists Act (Cap. 253).
3. Legal	Any person who is an advocate within the meaning of the Advocates Act (Cap. 16).
4. Surveyors—	
(a) Land Surveyor	Any person licensed as a surveyor under the Survey Act (Cap. 299).
(b) Surveyor	Any person who is a fellow or professional associate of the Royal Institution of Chartered Surveyors.

Profession	Qualifications
5. Architects or Quantity Surveyors	Any person who is registered as an architect or quantity surveyor under the Architects and Quantity Surveyors Act (Cap. 525).
6. Veterinary Surgeons	Any person who is registered or licensed as a veterinary surgeon under the Veterinary Surgeons Act (Cap. 366).
7. Engineers	Any person who is registered under the Engineers Registration Act (Cap. 530).
8. Accountants	Any person who is registered as an accountant under the Accountants Act (Cap. 531).
9. Certified Public Secretaries	A person who is registered under the Certified Public Secretaries of Kenya Act (Cap. 534).

SIXTH SCHEDULE

[Section 133, Act No. 2 of 1975, s. 5.]

TRANSITIONAL PROVISIONS

1. In and for the purposes of the application of the Management Act under subsection (4) of section 133 of this Act—

- (a) references in the Management Act to the Authority shall be read as references to the Minister;
- (b) references in the Management Act to the Commissioner-General and to other officers shall be read as references to the Commissioner and equivalent officers appointed under this Act;
- (c) the local committees and the tribunal appointed for Kenya under the Management Act shall continue in being for the purpose of such application;
- (d) any rules made under the Management Act shall, to the extent that they refer to Kenya, continue to have full force and effect.

2. Legal proceedings commenced prior to 1st January, 1974, under the Management Act shall not be abated by reason only of the operation of subsection (2) of section 133 of this Act, and where the Commissioner-General was a party to any such proceedings the Commissioner shall be substituted as a party in place of the Commissioner-General.

3. (1) Subject to this Schedule, the continuity of the operation of the Law relating to income tax shall not be affected by the substitution of this Act for the Management Act and accordingly—

- (a) so much of any enactment or document as refers, whether expressly or by implication, to or to things done or to be done under

or for the purposes of any provision of this Act shall, if and so far as the nature of the subject matter of the enactment or document permits, be construed as including in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the Management Act has or had effect, reference to, or, as the case may be, to things done or to be done under or for the purposes of, that corresponding provision;

- (b) so much of an enactment or document as refers, whether expressly or by implication, to or to things done or to be done under or for the purposes of, any provision of the Management Act shall, if and so far as the nature of the subject matter of the enactment or document permits, be construed as including in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Act has effect, a reference to, or, as the case may be, to things done or deemed to be done or to be done under or for the purposes of, that corresponding provision.

(2) References in this paragraph to things done or to be done under a provision include in particular, and without prejudice to the generality of the references, references to charges to tax, deductions, personal allowances reliefs, repayments, assessments, notices, or returns made, granted, served or furnished, or to be made, granted, served or furnished, under that provision.

4. Where the ascertainment of the total income of any person for the year of income 1973 results in a deficit, the total income of such person for the year of income 1974 shall be computed as if section 13(4) of the Management Act continued to apply to that year of income.

5. Where any farmer has elected under section 16 of the Management Act not to take into account the values of livestock and produce at the beginning and end of each such year of income for the purposes of ascertaining his income therefrom for each such year of income, then such election shall be deemed to be an election made in accordance with section 17 of this Act.

6. Where, immediately prior to the commencement of this Act, there is for the purpose of the Second Schedule to the Management Act in relation to a person a residue of expenditure or expenditure still unallowed, then such residue of expenditure or expenditure still unallowed, as the case may be, shall, in relation to such person, be the residue of expenditure or expenditure still unallowed, as the case may be, on the commencement of this Act for the purposes of the Second Schedule to this Act.

7. Where under this Act—

- (a) a sum is deemed to be income of, or in respect of, a year of income prior to the commencement of this Act; or
- (b) *Deleted by Act No. 2 of 1975, s. 5.*
- (c) the Commissioner may divide any amount into portions and any portion is taken into account in computing the gains or profits or in ascertaining total income for any year of income prior to the commencement of this Act,

then an assessment in relation thereto for such year of income may be made as if such sum or portion, as the case may be, had been income charged to tax under the Management Act.

8. Where under the Management Act the income of a beneficiary under any trust or settlement has been charged to tax for a year of income on the basis of the amount receivable under that trust or settlement in such year of income, nothing in this Act shall operate to charge such beneficiary on income received after the commencement of this Act which has been charged on him under the Management Act.

9. Any arrangements specified in notices issued under section 55 of the Management Act shall continue to have effect as if they had been made under section 41 of this Act.

10. Local committees and the members thereof appointed for areas under section 97 of the Management Act shall continue to act according to the terms of the notices making such appointments as if such local committees and the members thereof had been established and appointed by notices under section 82 of this Act.

11. Where, after the commencement of this Act, a payment is made in respect of the refund or return of contributions made or premiums paid, prior to the commencement of this Act, under an approved pension scheme, approved pension fund, approved annuity contract, approved trust scheme or approved provident fund mentioned in subsections (1), (2), (3) and (4) of section 8 of the Management Act, such payment shall in the manner and to the extent provided in those subsections, and in section 3(c), of the Management Act, be deemed to be income charged to tax under section 3(2)(e) of this Act:

Provided that—

- (i) references in section 8(2) to “**any year of income**” shall be construed as meaning any year of income prior to the commencement of this Act; and
- (ii) references in section 8(2) to “the year of income” and “the relevant year of income” shall be construed as references to the year ending 31st December, 1974; and
- (iii) in section 8(2) the proviso thereto shall be read and construed as if the following words were deleted, namely—
 - (a) “which expired earlier than the year of income (hereinafter referred to as the relevant year of income) prior to the year of income—
 - (i) in which it was received; or
 - (ii) in the case of a policy, in which the policy was assigned or transferred; or
 - (iii) in which the employee left the service of the employer; or
 - (iv) in which the person died, whichever is the earlier; and
 - (b) in excess of one year of the period—
 - (iv) section 8(3) and (4) shall apply only in respect of contributions made, or in case of paragraph (a) of subsection (4) thereof in respect of a pension right accrued, prior to the commencement of this Act.

SEVENTH SCHEDULE

[Act No. 2 of 1975, s. 5.]

Deleted by Act No. 8 of 1978, s. 9

EIGHTH SCHEDULE

[Sections 3 and 15, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, Act No. 8 of 1978, s. 9, Act No. 6 of 1981, s. 5, Act No. 14 of 1982, s. 23, Act No. 8 of 1985, s. 18.]

ACCRUAL AND COMPUTATION OF GAINS FROM PROPERTY OTHER
THAN INVESTMENT SHARES TRANSFERRED BY INDIVIDUALS

PART I

1. Interpretation

(1) In this Part of the Schedule, except where the context otherwise requires—

“**adjusted cost**” has the meaning assigned thereto in paragraph 8 of this Schedule;

“**company**” includes—

- (a) a members' club deemed under section 21(1) to be carrying on a business;
- (b) a trade association that elects under section 21(2) to be deemed to carry on a business;

“**consideration**” means consideration in money or money's worth;

“**individual**” includes more than one individual or an unincorporated association or body of individuals including trustees and partners;

“**land**” includes—

- (a) buildings on land and anything attached to land or permanently fastened to anything attached to land (whether on or below the surface);
- (b) standing timber, trees, crops and other vegetation growing on land; and
- (c) land covered by water;

“**marketable security**” includes a security of such a description as to be capable of being sold and stock as defined in section 2 of the Stamp Duty Act (Cap. 480);

“**property**”—

- (a) in the case of a company has the meaning assigned thereto in the Interpretation and General Provisions Act (Cap. 2), and includes property acquired or held for investment purposes but does not include a road vehicle;
- (b) in the case of an individual means—
 - (i) land situated in Kenya and any right or interest in or over that land; and

- (ii) a marketable security situated in Kenya, other than an investment share as defined in Part II of this Schedule;

“**transfer**” has the meaning assigned thereto in paragraph 6 of this Schedule;

“**transfer value**” has the meaning assigned thereto in paragraph 7 of this Schedule.

(2) For the purposes of this schedule—

- (a) a reference to a transfer of property includes a reference to a part transfer of property; and
- (b) there is a part transfer of property where, on a person making a transfer, any description of property derived from the transferred property remains undisposed of.

(3) For the purposes of this Schedule two persons are “related persons” if—

- (a) either person participates directly or indirectly in the management, control or capital of the business of the other; or
- (b) any third person participates directly or indirectly in the management, control or capital of the business of both.

(4) For the purposes of subparagraph (3) of this paragraph a reference to “person” includes—

- (a) in the case of an individual, a reference to a relative (as defined in section 26(5)) of that person; and
- (b) a reference to a company.

(5) For the purposes of this Schedule—

- (a) shares or securities being marketable securities issued by a municipal or a Government authority, or by a body created by such an authority, are situated in the country of that authority; and
- (b) subject to paragraph (a) of this paragraph, shares or securities (being marketable securities) are situated where they are registered and, if registered in more than one register, where the principal register is situated.

2. Taxation of gains

Subject to this Schedule, the income in respect of which tax is chargeable under section 3(2)(f) is the whole of a gain which accrues—

- (a) to a company on or after the 1st January, 1975; or
- (b) to an individual on or after the 13th June, 1975,

on the transfer on or before the 13th June, 1985, of property situated in Kenya, whether or not the property was acquired, in the case of a company before the 1st January, 1975, and in the case of an individual before the 13th June, 1975.

3. Income not chargeable

(1) Income is not chargeable to tax under section 3(2)(f) of this Act where, and to the extent that, it is chargeable to tax under any other provision of this Act.

(2) The gain accruing to a company on any transfer of machinery classified in paragraph 7 of the Second Schedule is not chargeable to tax under section 3(2)(f).

4. Computation of gains

(1) The gain which accrues to a person on the transfer of any property is the amount by which the transfer value of the property exceeds the adjusted cost of the property.

(2) Where, in computing the gain accruing to a person on the transfer of any property, it is found that the adjusted cost of the property exceeds the transfer value of the property, the amount of the excess is the loss realized by the person on the transfer of the property.

(3) Any gain or loss realized by a person on the transfer of property shall be deemed to be realized by the person at the time of the transfer, whether or not the consideration is payable by instalments but a payment by way of interest on any part of the consideration not immediately payable shall not be treated as part of the transfer value of the property.

(4) Debts incurred on the transfer of property which the Commissioner considers to have become bad shall be deemed to be a loss for the purposes of section 15(3)(f) and those provisions shall apply accordingly.

(5) Section 15(2)(e) does not apply in relation to a loss realized by a person on the transfer of property.

5. Dealings by nominees, trustees and liquidators, and for the enforcement of securities

(1) In relation to any property held by a person as nominee for another person or as trustee for a person absolutely entitled as against the trustee (or for two or more persons who are so entitled in possession, whether as joint tenants or tenants in common), or as liquidator for any company, this Schedule shall apply as if the property were vested in, and the acts of the nominee, trustee or liquidator in relation to the property were the acts of the person or persons for whom the person is nominee, trustee or liquidator (transfers between the person or persons and the nominee, trustee or liquidator being disregarded accordingly).

(2) Where a person entitled to property by way of security or to the benefit of a charge or encumbrance on property, deals with the property for the purpose of enforcing or giving effect to the security, charge or encumbrance, his dealings with it shall be treated as if they were done through him as nominee by the person entitled to the property subject to the security, charge or encumbrance, and this subparagraph shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or encumbrance as receiver and manager as it applies to the dealings of the person so entitled.

6. Meaning of transfer

(1) Subject to this Schedule there is a transfer of property for the purposes of this Schedule—

- (a) where property is sold, exchanged, conveyed or otherwise disposed of in any manner whatever (including by way of gift), whether or not for consideration; or
- (b) on the occasion of the loss, destruction or extinction of property whether or not a sum by way of compensation or otherwise, or under a policy of insurance, is received in respect of the loss,

destruction or extinction of the property unless such sum is utilized to reinstate the property in essentially the same form and in the same place within one year of the loss, destruction or extinction of the property or within a longer period of time approved by the Commissioner; or

- (c) on the abandonment, surrender, cancellation or forfeiture of, or the expiration of substantially all rights to, property, including the surrender of shares or debentures on the dissolution of a company.
- (2) There is no transfer of property for the purposes of this Schedule—
- (a) in the case of the transfer of property for the purpose only of securing a debt or a loan, or on any transfer by a creditor for the purpose only of returning property used as security for a debt or a loan;
 - (b) in the case of the issuance by a company of its own shares or debentures;
 - (c) by the vesting in the personal representative of a deceased person by operation of law of the property of that deceased person;
 - (d) by the transfer by a personal representative of any property to a person as legatee in the course of the administration of the estate of a deceased person. For this purpose “**legatee**” includes a person taking under a devise or other testamentary disposition or on an intestacy or partial intestacy whether he takes beneficially or as a trustee;
 - (e) by the vesting in the liquidator by an order of a court of the property of a company under section 240 of the Companies Act (Cap. 486);
 - (f) by the vesting in the official receiver or other trustee in bankruptcy of the property of a bankrupt under section 57 of the Bankruptcy Act (Cap. 53); or
 - (g) by the transfer by a trustee of property, which is shown to the satisfaction of the Commissioner to be subject to a trust, to a beneficiary on his becoming absolutely entitled thereto.

7. Transfer value

(1) Subject to this Schedule, the transfer value of property shall be computed by reference to such of the following amounts (if any) as are appropriate having regard to the manner of the transfer, namely—

- (a) the amount of or the value of the consideration for the transfer of the property;
- (b) sums received in return for the abandonment, forfeiture or surrender of the property;
- (c) sums received as consideration for the use or exploitation of the property;
- (d) sums received by way of compensation for damage or injury to the property or for the loss of the property;
- (e) sums received under a policy of insurance in respect of damage or injury to, or the loss or destruction of, the property;

- (f) any amount by which the liability of a person to another person entitled to property by way of security or to the benefit of a charge or encumbrance is reduced as a result of dealings with the property for the purposes of enforcing or giving effect to the security, charge or encumbrance, together with any amount received by the person out of the proceeds of such dealings.

(2) Subject to this Schedule, for the purpose of computing the transfer value of any property there shall be deducted the incidental costs to the transferor of making the transfer.

(3) In any case where no amount is ascertainable under this Schedule as the transfer value of any property the transfer value of the property shall be deemed to be nil.

8. Adjusted cost

(1) Subject to this Schedule, the adjusted cost of any property is—

- (a) the amount of or value of the consideration for the acquisition or construction of the property;
- (b) the amount of expenditure wholly and exclusively incurred on the property at any time after its acquisition by or on behalf of the transferor for the purpose of enhancing or preserving the value of the property at the time of the transfer;
- (c) the amount of expenditure wholly and exclusively incurred at any time after the acquisition of the property by the transferor establishing, preserving or defending the title to, or a right over, the property; and
- (d) the incidental costs to the transferor of acquiring the property.

(2) For the purpose of computing the adjusted cost of any property, an amount computed shall be reduced by such amounts as have been allowed as deductions under section 15(2).

(3) Where a company issues to any of its shareholders shares—

- (a) that do not constitute a dividend under section 7(1)(d) or (e), the cost of the shares—
 - (i) shall be the sum paid for the shares; or
 - (ii) if no sum is paid for the shares, shall be deemed to be nil, and the shareholder shall allocate, in the manner prescribed, the cost of his existing shares between such old shares and such new shares; or
- (b) that constitute, wholly or partly, a dividend under either of those paragraphs, the amount which constitutes a dividend shall be treated as part of the cost of the shares, and the shareholder shall allocate, in the manner prescribed, the cost of the existing shares between such old shares and such new shares.

(4) Where there is a part transfer of property the adjusted cost of the property shall be allocated to the part transferred in accordance with a method approved by the Commissioner.

(5) The Commissioner may make rules for the purposes of subparagraph (3) prescribing the manner of allocation to be prescribed under that subparagraph.

9. Market value

(1) Where property is acquired or transferred—

- (a) otherwise than by way of a bargain made at arms length;
- (b) by way of a gift in whole or in part;
- (c) for a consideration that cannot be valued; or
- (d) as the result of a transaction between persons who are related then, for the purposes of—
 - (i) paragraph 7 of this Schedule, the amount of the consideration for the transfer of the property shall be deemed to be equal to the market value of the property at the time of the transfer; and
 - (ii) paragraph 8 of this Schedule, the amount of the consideration for the acquisition of the property shall be deemed to be equal to the market value of the property at the time of the acquisition or to the amount of the consideration used in computing stamp duty payable on the transfer by which the property was acquired, whichever is the lesser.

(2) Property is acquired or transferred by way of a bargain at arms length only if the consideration is determined as between an independent willing buyer and an independent willing seller.

(3) The Commissioner may determine the market value of any property, and a reference in this paragraph to the market value of property is a reference to the price which the property would fetch if sold in the open market as so determined.

10. Incidental costs

For the purposes of paragraphs 7(2) and 8(1)(d) of this Schedule, the incidental costs of the acquisition or transfer of property shall consist of expenditure wholly and exclusively incurred by the person acquiring the property or the transferor for the purposes of the acquisition or transfer, as the case may be, of the property being—

- (a) fees, commission or remuneration paid for the professional services of any surveyor, valuer, accountant, agent or legal adviser;
- (b) costs of transfer (including stamp duty);
- (c) in the case of an acquisition, the cost of acquisition (including mortgage costs) and the cost of advertising to find a seller, and costs reasonably incurred for the purposes of this Schedule in making any valuation or in ascertaining market value;
- (d) in the case of a transfer, the cost of advertising to find a buyer and costs reasonably incurred for the purposes of this Schedule in making any valuation or in ascertaining market value; and
- (e) any other costs which the Commissioner may allow as being just and reasonable.

11. Amounts not allowable in computing transfer value or adjusted cost

No amount shall be allowed—

- (a) under paragraph 7(2) of this Schedule as part of the incidental costs of making a transfer; or
- (b) under paragraph 8 of this Schedule as part of the adjusted cost of any property,

if that amount has been or is otherwise allowed as a deduction in computing gains or profits chargeable to tax under section 3(2)(a) of this Act.

12. Transfer or acquisition of property with other property

Where property is transferred or acquired together with other property in pursuance of one bargain, then, notwithstanding that separate prices are, or purport to be, agreed for separate items of that property, the Commissioner may determine what part of the adjusted cost or the transfer value is reasonably attributable to each of the properties involved, which determination shall be binding on both the transferor and the transferee of the property.

(2) Deleted by Act No. 8 of 1978.

13. Exemption

(1) No gain or loss shall be included in the computation of income under section 3(2)(f) of this Act in the case of a transfer of property in exchange for other property that is necessitated by, and takes place pursuant to, a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of corporate identity involving one or more companies (to the extent otherwise permitted by law) found by the Minister in his discretion to be in the public interest:

Provided that following all such exchanges, the cost of the property acquired by him shall be the cost of the property transferred, except that the cost to a company of property received by it in exchange for the issue of its own shares or debentures shall be the cost to the issuee of such property received.

(2) As a condition of making his finding that any one of the transactions referred to in subparagraph (1) of this paragraph is in the public interest the Minister may require one or more of the parties to the transaction to agree, for the purposes of this Act, as to the treatment of any charge, deduction or other item, present or future involved in or arising out of the transaction, including, without limitation, the treatment of property received as a dividend, the charge of a gain or loss to income, the cost or valuation of any property, the allocation of cost or value between different properties, and the accounting treatment of any item.

(3) Any agreement made pursuant to subparagraph (2) of this paragraph shall, for the purposes of this Act, be binding on the party and its successors in title, as to matters covered by the agreement.

PART II – ACCRUAL AND COMPUTATION OF GAINS FROM INVESTMENT SHARES**14. Interpretation**

In this Part of this Schedule—

“adjusted cost” means—

- (a) in the case of investment shares acquired before 13th June, 1975, the market price at which the shares could have been purchased in

a transaction between an independent willing buyer and an independent willing seller on the Nairobi Stock Exchange immediately prior to the close of business on 12th June, 1975:

Provided that but if the transferor of the investment shares can prove to the satisfaction of the Commissioner that he actually paid more for the shares than that market price, the actual cost to the transferor of the shares may be substituted for that market price; and

- (b) in the case of investment shares acquired on or after 13th June, 1975, the amount or value of the consideration for the acquisition of the shares;

“consideration” means consideration in money or money’s worth;

“investment shares” means shares of companies, municipal or Government authorities or a body created by such authorities, as are listed and traded on the Nairobi Stock Exchange;

“transfer value” means the amount of value of the consideration for the transfer of investment shares (less any amount which would be deductible under paragraph 10 of Part I of this Schedule if the gains were being computed under that Part).

15. Computation of gains

The gain subject to tax under this Part of this Schedule is the amount by which the transfer value of investment shares transferred by any person who is an individual exceeds the adjusted cost of such shares.

16. Deduction of tax

The gain ascertained under paragraph 15 of this Schedule is subject to a deduction of income tax at the rate of seven and a half per cent of such gain.

16A. Losses

Where in computing the gain accruing to a person on the transfer of any investment shares, it is found that the adjusted cost of the shares exceeds the transfer value of those shares the amount of the excess is the loss realized by the person on the transfer of the investment shares.

17. Set-off of tax

The provisions of section 39 apply to tax deducted under paragraph 16 of this Schedule.

18. Collecting of tax

A stockbroker who conducts the transfer of investment shares on behalf of a transferor shall collect and remit tax to the Commissioner in accordance with section 35(5).

19. Remittance of tax

The remittance of money by a stockbroker under paragraph 18 of this Schedule shall be a full and final discharge to the stockbroker as against all persons from liability in respect of such money.

20. Failure to collect and remit

A stockbroker who fails to collect and remit as required under paragraph 18 of this Schedule, the amount of income tax out of the proceeds (over which he has control) accruing as a result of the transfer of investment shares is jointly and severally liable with the transferor of the shares for payment of the tax.

21. Exemption

(1) Where the transferor of investment shares is an unincorporated association or body of individuals of a public character which has been exempted from income tax under paragraph 10 of the First Schedule no deduction of income tax shall be made under this Part of this Schedule.

(2) Gains from a transfer of investment shares for or in connexion with a pension fund, trust scheme, or provident fund registered with the Commissioner shall not be subject to deduction of income tax under this Part of this Schedule.

**PART III – REDUCTION OF CHARGEABLE GAINS IN RESPECT OF
PROPERTY ACQUIRED BEFORE 1ST JANUARY, 1975, AND
TRANSFERRED BEFORE 1ST JANUARY, 1985**

22. Interpretation

(1) In this Part of this Schedule—

“**property**” means “**property**” as defined in Part I of this Schedule;

“**transfer**” has the meaning assigned thereto in paragraph 6 of this Schedule.

(2) Property shall for the purposes of this part of this Schedule be deemed to have been acquired by the taxpayer on the date on which it passed or was conveyed into his name or into the name of another person for his absolute benefit and to have been transferred by the taxpayer on the date on which there was a transfer of the property by the taxpayer.

23. Application

The provisions of this Part of this Schedule shall apply only to property acquired before 1st January, 1975, which is also transferred before 1st January, 1985.

24. Amounts represented by A and B in reduction formula

In paragraph 25—

A is—

- (a) respect of property acquired before 1st January, 1955, the number 1955; or
- (b) in respect of property acquired on or after 1st January, 1955, but before 1st January, 1975, the number given by the year of acquisition of the property.

B is the number given by the year of transfer of property transferred on or after 1st January, 1975.

25. Reduction formula

Gains chargeable to tax under section 3(2)(f) in respect of property acquired before 1st January, 1975, and transferred before 1st January, 1985, shall be reduced by the percentage given by the formula—

$$\frac{1975 - A}{B - 1954} \times 100$$

NINTH SCHEDULE

[Sections 4, 15 and 18, Act No. 18 of 1984, s. 8, Act No. 10 of 2010, s. 35]

TAXATION OF PETROLEUM COMPANIES**PART I – INTERPRETATION****1. Interpretation**

In this Schedule, unless the context otherwise requires—

“**affiliate**” means a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, another person;

“**control**” has the meaning ascribed to it in paragraph 32 of the Second Schedule;

“**crude oil**” means—

- (a) all hydrocarbons regardless of gravity which are produced at the wellhead in liquid state at atmospheric conditions of temperature and pressure;
- (b) asphalt and ozokerites; and
- (c) the liquid hydrocarbons known as distillate or condensate obtained from natural gas by condensation or extraction;

“**intangible drilling costs**” means expenditure that has no salvage value, including expenditure on labour, fuel, repairs, maintenance, hauling, mobilization and demobilization and supplies and materials, other than supplies and materials for well casings or other well fixtures, which is for or incidental to drilling, cleaning deepening, completing or abandoning wells and is incurred in respect of—

- (a) the determination of well locations, geological and geophysical studies, and topographical and geographical surveys preparatory to drilling;
- (b) the drilling, shooting, testing and cleaning of wells; and
- (c) the clearing, draining and levelling of land, road building and the laying of foundations;

“**natural gas**” means hydrocarbons that are in a gaseous phase at atmospheric conditions of temperature and pressure, including wet mineral gas, dry mineral gas, casinghead gas and residue gas remaining after the extraction or separation of liquid hydrocarbons from wet gas, and non-hydrocarbon gas produced in association with liquid or gaseous hydrocarbons;

“**petroleum**” means mineral oil and includes crude oil, natural gas and hydrocarbons produced or capable of being produced from oil shales and tar sands;

“**petroleum agreement**” means an agreement, contract or other arrangement between the Government and a petroleum company entered into under the Petroleum (Exploration and Production) Act (No. 14 of 1984);

“**petroleum company**” means a corporate body that carries out, in addition to any other activities, operations under a petroleum agreement entered into under the Petroleum (Exploration and Production) Act, 1984;

“**petroleum service subcontractor**” means a non-resident person who provides services in Kenya to a petroleum company;

“**production**” means the quantity of petroleum produced, saved and not used in the operations to which a petroleum company is entitled under a petroleum agreement;

“**production expenditure**” means the day-to-day expenditure on the operations of a petroleum company, but does not include the other costs deductible under paragraph 5(2);

“**qualifying expenditure**” means capital expenditure, other than intangible drilling costs, incurred in the operations of a petroleum company on—

- (a) plant, machinery or fixtures in Kenya, but where the expenditure is of the kind referred to in paragraph 15 of the Second Schedule, the provisions of that paragraph shall apply;
- (b) pipelines and storage tanks in Kenya and installation thereof;
- (c) the erection of rigs and tankage assembly in Kenya;
- (d) the construction of industrial buildings in Kenya, as defined in paragraph 5 of the Second Schedule, and structures of works of a permanent nature, but excluding a building in use as a retail shop, showroom, office or dwelling house, and the provisions of paragraph 5(4) of the Second Schedule, where part of the use is excluded, shall apply;
- (e) subject to paragraph 7(5), the acquisition of, or of rights in or over, petroleum deposits in Kenya; and
- (f) searching for discovering and testing petroleum deposits in Kenya, or gaining access thereto;

“**well**” means an opening in the ground or seabed, other than a seismic hole, through which petroleum may be obtained, or which is made for exploration purposes or for the injection of a fluid into an underground deposit.

PART II – TAXATION OF PETROLEUM COMPANIES

2. Determination of income

(1) In determining the gains or profits of a petroleum company for a year of income for the purposes of this Act there shall be brought into account the value of the production to which a petroleum company is entitled under a petroleum agreement in that year of income.

(2) For the purposes of subparagraph (1), the value of production shall be the total of—

- (a) the price receivable for that production disposed of by a petroleum company in sales at arm's length; and
- (b) the market value, calculated in accordance with paragraph 3, of production not disposed of by a petroleum company in sales at arm's length.

3. Sales of petroleum at arm's length

(1) For the purposes of this Schedule, a sale of petroleum is a sale at arm's length if the following conditions are satisfied—

- (a) the price is the sole consideration for the sale;
- (b) the terms of the sale are not affected by any commercial relationship, other than that created by the contract of sale itself, between the seller or an affiliate and the buyer or an affiliate; and
- (c) the seller or an affiliate do not have, directly or indirectly, an interest in the subsequent resale or disposal of the petroleum or any product derived therefrom.

(2) For the purposes of this Schedule, the market value of petroleum shall be determined in accordance with the petroleum agreement entered into with the petroleum company but where the terms of the petroleum agreement do not in any case provide a valuation, the market value shall be—

- (a) where petroleum is disposed of to third parties at arm's length, the amount actually receivable for that sale, at the FOB point of export, or at the point that title and risk pass to the buyer;
- (b) in any other case—
 - (i) if there have been sales to third parties at arm's length during the current calendar quarter, the weighted average per unit price paid in those sales, at the FOB point of export, or at the point that title and risk pass to the buyer, adjusted for quality, grade and gravity, and any special circumstance;
 - (ii) if there have been no sales to third parties at arm's length during the current calendar quarter, the weighted average per unit price at the FOB point of export, or at the point that title and risk pass to the buyer, paid elsewhere in arm's length sales of petroleum of a similar quality, grade and quantity, adjusted for any special circumstances of those sales.

4. Disposal of petroleum

Where a person disposes of petroleum and, for the purposes of ascertaining the gains or profits of that person, the market value of the petroleum is calculated in accordance with paragraph 3, the consideration for the acquisition of that petroleum, for the purposes of ascertaining the gains, profits or losses of the person acquiring that petroleum, shall be that market value.

5. Allowable deductions

(1) For the purposes of ascertaining the gains or profits for a petroleum company for a year of income, there shall be deducted the expenditure referred to in subparagraph (2) incurred in that year, but this shall not prevent other deductions authorized by this Act, and where an item of expenditure is specifically deductible under a provision of this Schedule, that item shall not be deductible under another provision of this Act.

(2) For the purposes of subparagraph (1), there shall be deducted—

- (a) intangible drilling costs;
- (b) geological and geophysical costs;
- (c) payments to the Government, or any agency thereof, pursuant to the provisions of the petroleum agreement entered into with the petroleum company;
- (d) production expenditure;
- (e) executive and general administrative expenses wholly and exclusively incurred in Kenya by a petroleum company;
- (f) where a non-resident petroleum company operates in Kenya through a permanent establishment in Kenya, only those reasonable executive and general administrative expenses incurred outside Kenya by that person, including management or professional fees, but limited to the amount that is attributable to the permanent establishment in Kenya and is fairly and reasonably allocated thereto;
- (g) management or professional fees, including those paid to persons outside Kenya limited to the amount that is attributable to the petroleum company and is fairly and reasonably payable thereby; and
- (h) interest paid, including interest paid by a non-resident petroleum company and fairly and reasonably allocated to a permanent establishment maintained in Kenya by that company, but no interest paid shall be deductible unless—
 - (i) the payment does not exceed the amount that would have been payable on a loan concluded at arm's length where the loan, repayment thereof, and the interest payable constitute the only consideration for the making of the loan;
 - (ii) the loan, in respect of which interest is paid, is applied for operations by the petroleum company in Kenya, but where only part of the loan is applied in accordance with this paragraph only the interest payable in respect of that part shall be deductible;
 - (iii) tax on interest paid has been deducted and paid to the Commissioner under section 35.

(3) Where expenditure is incurred on an asset representing qualifying expenditure, there shall be made, in ascertaining the gains or profits for the year of income in which that asset is first brought into use in Kenya, or in which production commences, whichever is the later, and the four following years of income, a deduction equal to one-fifty of the expenditure.

(4) Where a well which fails to discover petroleum is drilled and abandoned, the expenditure incurred in drilling the well, which has not been deducted under another provision of this Act, shall be deducted in the year of income in which the well is abandoned.

(5) Where in ascertaining the gains or profits of a petroleum company in a year on income, there results a deficit, the amount of that deficit shall be an allowable deduction in ascertaining the gains or profits of the previous year of income but the deficit may only be carried back—

- (a) from a year of income which the petroleum company has ceased permanently to produce petroleum; and
- (b) for not more than three years of income from the year in which the deficit occurred.

6. Transactions with affiliates

Where a transaction takes place between a petroleum company and an affiliate, the income chargeable, or the deduction allowable to that company, shall be deemed to be the amount that might have been expected to accrue if that transaction had been conducted by independent persons dealing at arm's length.

7. Assignments of a petroleum agreement and disposal of assets

(1) An assignment of a right under a petroleum agreement shall not give rise to a chargeable gain under the Eight Schedule but, subject to this paragraph, the consideration for the assignment shall be treated as a receipt of the petroleum company, and tax shall be charged accordingly.

(2) Where an assignment of a right under a petroleum agreement involves the disposal of assets which represent qualifying expenditure, there shall be deducted from the consideration for the assignment the amount of the qualifying expenditure not yet allowed against income.

(3) Where the assignment is of part only of the rights held by a petroleum company, or where not all the assets which represent qualifying expenditure are included in the assignment, the amount of qualifying expenditure not yet allowed against income which is to be deducted from the consideration for the assignment shall be apportioned by the Commissioner.

(4) The amount to be treated as a receipt for the purposes of subparagraph (1) shall be, in the case of an assignment at arm's length, the consideration therefore and in any other case, the market value of that which is assigned, but where part of the consideration consists of the undertaking by the assignee of a work obligation, no amount in respect thereof shall be taken into account under this paragraph.

(5) Where a right under a petroleum agreement is assigned, the assignee shall be treated as having incurred, at the date of the assignment, qualifying expenditure equal to the lesser of the total amount of the consideration paid for the assignment and the market value of the rights and assets representing qualifying expenditure assigned.

(6) Subject to paragraph 6, where a petroleum company sells, disposes or removes from Kenya an asset which represents qualifying expenditure, otherwise than on an assignment of a right under a petroleum agreement, and the net proceeds of the sale are—

- (a) less than the qualifying expenditure not yet allowed against income, a deduction, in this Schedule referred to as a “balancing deduction”, shall be made to the company, in the year of income in which the sale or disposal takes place, equal to the difference;
- (b) more than the qualifying expenditure not yet allowed against income, a charge, in this Schedule referred to as a “balancing charge”, shall be made to the company, in the year of income in which the sale or disposal takes place, equal to the difference.

(7) Subject to this Part, where an asset representing qualifying expenditure is brought into use without being purchased, or, without being sold, ceases permanently to be used, by a petroleum company, it shall be deemed to have been purchased or sold at market value.

PART III – TAXATION OF PETROLEUM SERVICE SUBCONTRACTORS

8. Petroleum service subcontractors

Notwithstanding any other provision in this Act, profits or gains of a petroleum service subcontractor in respect of services provided in Kenya to a petroleum company shall be deemed to be income derived from Kenya and payment of tax by the petroleum company in accordance with this Part shall release the petroleum service subcontractor from liability for tax arising on that part of his income, profits or gains which derive from those services.

9. Assumed profit rate

(1) Petroleum service subcontractors shall be deemed to have made a taxable profit equal to fifteen per cent, in this paragraph referred to as the “assumed profit rate”, of the moneys referred to in subparagraph (2) which profits shall be taxed at the rate set out in the Third Schedule applicable to non-resident companies which have a permanent establishment in Kenya.

(2) The assumed profit rate shall be applied to all moneys paid by a petroleum company to a petroleum service subcontractor, hereinafter referred to as the “taxable service fee”, but excluding—

- (a) moneys actually paid by a petroleum company to reimburse the petroleum service subcontractor for the cost of mobilisation and, where applicable, demobilization; and
- (b) reimbursement of expenses.

(3) Payment for mobilization and demobilization shall not exceed the amounts normally paid in the international petroleum industry, having regard to the circumstances of the contract, and shall not be at a level calculated to transfer a part of the taxable service fee to the non-taxable moneys referred to in subparagraph (2)(a).

(4) In this Part—

“**mobilization and demobilization**” means the movement of men and equipment to Kenya prior to operating, and from Kenya after completion

thereof, provided the movement is not to a third party, but does not include movement of men and equipment in Kenya during operations;

“**reimbursement of expenses**” means payment by a petroleum company to a petroleum service subcontractor to reimburse that subcontractor for payments made to a third party on behalf of the petroleum company in respect of goods and services which are incidental to the subcontract and would not normally, in the international petroleum industry, be included in the taxable service fee, but does not include a charge for handling or administration.

10. Payments

(1) A payment shall not be made by or on behalf of a petroleum company to a petroleum service subcontractor unless an invoice has been issued therefor and a petroleum service subcontractor shall issue distinct and separate invoices to the petroleum company in respect of—

- (a) the taxable service fee;
- (b) the amounts payable for mobilization and demobilization; and
- (c) the reimbursement of expenses.

(2) The invoice for reimbursement of expenses shall have attached copies of the invoices to which it relates and further copies of those invoices shall be kept with the records required by paragraph 12.

(3) When paying a taxable service fee the petroleum company shall—

- (a) deduct an amount of tax equal to the sum produced by applying the income tax rate referred to in paragraph 9(1) to the assumed profit;
- (b) issue to the petroleum service subcontractor a certificate showing the gross amount of the invoice, the amount deducted for tax and the net amount payable; and
- (c) retain a copy of the invoice and certificate for a period of three years.

(4) Where a person is required to deduct tax under this Schedule and fails to deduct the whole or part thereof, or fails to remit the amount deducted to the Commissioner in accordance with this Schedule, the provisions of this Act relating to the collection and recovery of tax and the payment of interest thereof shall apply as if the tax were payable by that person on the day when it should have been remitted to the Commissioner.

11. Returns

(1) The tax collected by a petroleum company under this paragraph in a month shall be remitted to the Commissioner on or before the twentieth day of the month following the month in which the deduction is made with a return of amounts paid and tax deducted, hereinafter referred to as the “subcontractors return” showing in respect of the month—

- (a) the total taxable service fee paid;
- (b) the total tax deducted and remitted;
- (c) the total amount paid for mobilization and demobilization; and
- (d) the total amount paid for reimbursement of expenses.

(2) Before making a first payment to a petroleum service subcontractor, a petroleum company shall deliver to the Commissioner a summary of the terms of the contract with that subcontractor including the terms and rates for operating, mobilization and demobilization and reimbursement of expenses, and shall deliver a summary of any change in those terms within fourteen days thereof.

(3) A petroleum company shall, if required, deliver to the Commissioner a copy of the contract with the subcontractor in substantially the same terms as the summary referred to in subparagraph (2).

12. Records

A petroleum company shall keep up-to-date records, referenced to the invoices of the petroleum service subcontractor and agreeing with the subcontractors return available for inspection at all reasonable time by the Commissioner and showing in respect of each payment made to a petroleum service subcontractor—

- (a) the name and address of the subcontractor and the services provided;
- (b) the date and amount of the invoice showing separately the totals for the items set out in paragraph 10(1);
- (c) the tax deducted; and
- (d) the monthly total of tax deducted and remitted to the Commissioner.

TENTH SCHEDULE

[Section 17A, Act No. 8 of 1989, s. 24, Act No. 6 of 1994, s. 48, Act No. 13 of 1995, s. 90, Act No. 5 of 1998, s. 41, Act No. 4 of 1999, s. 42.]

AGRICULTURAL PRODUCE AND AUTHORISED AGENTS

Produce	Authorized Agents
Maize (grain)	Kenya Seed Company Limited. National Cereals and Produce Board. Millers.
Wheat (grain)	Kenya Seed Company Limited. Kenya Grain Growers Co-operative Union. National Cereals and Produce Board. Millers.
Barley (grain)	Kenya Breweries Limited.
Rice (Paddy)	National Irrigation Board.
Cut Sugar-cane	Miwani Sugar Mills Limited. Chemilil Sugar Co. Limited. Mumias Sugar Co. Limited. Associated Sugar Co. Limited. Sony Sugar Company Limited. Muhoroni Sugar-Cane Farmers Co-operative Union Limited.

Produce	Authorized Agents
Pyrethrum Flower (Wet and Dry)	Pyrethrum Board of Kenya.
Tobacco Leaf	BAT (Kenya) Limited. Mastermind Tobacco (K) Limited.
Tea Leaf	Kenya Tea Development Authority. James Finlays P.L.C. Brooke Bond Kenya Limited. Eastern Produce Africa Limited. Sasini Tea and Coffee Limited. George Williamson (K) Limited. Pannel Bellhouse Mwangi & Co. (Kaisugu Ltd.). Kosagat Tea Estate. Theta Group Limited. (Kibwari Tea Estate Limited). Mitchel Cotts & Co. (E.A.) Limited. (Nandi Tea Estates Limited). Estates Services Limited. (Siret Tea Co. Limited). Karirana Estates Limited. Livingstone Registrars Limited. (Ngorongo Tea Factory Limited). African Highlands Produce Company.
Coffee	Coffee Board of Kenya.
Raw Cashewnuts	Kenya Cashewnuts Limited. National Cereals and Produce Board.
Pigs	Farmers Choice Limited. Uplands Bacon Factory Limited.
Raw Cotton	Mwea Ginnery. Kibos Ginnery. Hola Ginnery. Makueni Ginnery. Meru Ginnery. Salawa Ginnery. Malindi Ginnery. Homa Bay Ginnery. Kendu Bay Ginnery. Nambale Ginnery. Samia Ginnery. Malakisi Ginnery. Ndere Ginnery.

Produce	Authorized Agents Lamu Ginnery. Kitui Ginnery.
Hides and Skins	Kamiti Tanners Limited. Aziz Din Nabi Bux. New Market Leather Factory Limited. Bulleys Tanneries Limited. Nakuru Chrome Tanning Co. Limited. Nakuru Tanners Limited. Bata Shoe Co. Limited. Sagana Tanneries Limited. Alpharama Limited. Barbar Tannery Limited. Othor Tanneries. Furs & Wool Limited. Kitale Tanneries Limited. Garissa Tanners Limited. Leather Industries of Kenya Limited. East African Leather Factory Limited. Lake Tanners Limited. Deras Limited.

ELEVENTH SCHEDULE

[Section 4B, Act No. 10 of 1990, s. 61, Act No. 8 of 1991, s. 77, Act No. 6 of 1994, s. 49, Act No. 7 of 2002, s. 48A, Act No. 15 of 2003, s. 42, Act No. 9 of 2007, s. 30.]

TAXATION OF EXPORT PROCESSING ZONE ENTERPRISES

1. In this Schedule, unless the context otherwise requires, “**export processing zone enterprise**” has the same meaning as that ascribed to it in the Export Processing Zones Act, 1990.
2. An export processing zone enterprise shall maintain its business accounts in a convertible foreign currency of its choice provided that the Commissioner’s consent of that choice has been requested and obtained.
3. During the period in which an export processing zone enterprise is exempt from corporation tax according to paragraph 2(f) of the Third Schedule—
 - (a) the enterprise shall be deemed to be a non-resident subject to a non-resident rate of withholding tax on payments made to such an enterprise and, where such payments are made by a person who is not an export processing zone enterprise, the tax shall be a final tax; and
 - (b) payments by an export processing zone enterprise to any person other than a resident person shall be deemed to be exempted from tax.

4. Notwithstanding that an export processing zone enterprise will be exempted from paying any corporation tax for the period specified in subparagraph 2(f) of the Third Schedule, the enterprise will nonetheless be required to comply with Part VIII of the Act and will submit an annual return of income under section 52 or a return of income, together with a self-assessment of tax under section 52B and business accounts under section 54 as is the case with all liable enterprises, and in the event of failure to submit a return or late submission of a return, the enterprise will be liable to a penalty of two thousand shillings per day for as long as the failure continues.

5. The penalty imposed under paragraph (4) shall, for the purposes of the provisions of the Act relating to the deduction and recovery of the tax, be deemed to be tax.

6. The employees and directors, other than non-residents, of an export processing zone enterprise shall be liable to personal income tax and the export processing zone enterprise employing them will be required to comply with rules and regulations concerning the deduction of tax from their employment income.

7. Where an export processing zone enterprise contracts out manufacturing services to a related resident company that is not an export processing zone enterprise, all income derived from the sale by the export processing zone enterprise of the goods produced shall be treated as the income of the related resident company, unless the Commissioner is satisfied that, the services provided to the export processing zone were paid for at a fair market price.

8. Where the related resident company that is not an export processing zone enterprise provides services other than manufacturing services to an export processing zone enterprise, the related resident company shall not deduct the cost of providing such services unless the Commissioner is satisfied that the services were provided at a fair market price.

9. For purposes of this Schedule, two companies are related when one company owns whether directly or indirectly twelve and one-half per cent or more of the voting shares of the other company.

TWELFTH SCHEDULE

[Section 12, Act No. 10 of 1990, s. 62, Act No. 8 of 1991, s. 78, Act No. 4 of 1993, s. 61, Act No. 13 of 1995, s. 91, Act No. 8 of 1996, s. 47, Act No. 7 of 2002, s. 49.]

PROVISIONS RELATING TO INSTALMENT TAX

1. (a) Except as specified under paragraph (b), instalment tax payable by all persons under section 12 shall be reduced under the provisions of section 12 (4) and be payable on the due dates as required under section 92 in the proportions specified as follows—

Proportions of the amount calculated under section 12 payable on or before the twentieth day (except for the fourth month's instalment which shall be payable by the last day) of the following months in the accounting period of the current year of income:

For persons with
accounting periods
commencing on or
after

	Fourth Month	Sixth Month	Ninth Month	Twelfth Month
1st January, 1990			15%	
1st January, 1991			30%	
1st January, 1992			45%	
1st January, 1993			60%	20%
1st January, 1994		15%	60%	25%
1st January, 1995		30%	45%	25%
1st January, 1996	25%	25%	25%	25%

(b) Where a person can satisfy the Commissioner that more than two thirds of his income is derived from agricultural, pastoral, horticultural or similar activities, the instalment tax payable by such persons under section 12 will be reduced under the provisions of section 12(4) and be payable on the due dates as required under section 92 in the proportions specified as follows—

Proportions of the amount calculated under section 12 payable on or before the twentieth day of the following months in the current year of income:

For persons with
accounting periods
commencing on or
after

	Sixth Month	Ninth Month	Twelfth Month
1st January, 1990		15%	
1st January, 1991		30%	
1st January, 1992		45%	
1st January, 1993		60%	20%
1st January, 1994		75%	25%
1st January, 1995		75%	25%

2. Where the instalment tax payable is calculated by reference to subsection 2(b) of section 12 and—

- (a) the company's immediate preceding year consists of less than three hundred and sixty five days, the tax payable for the preceding year will be deemed to be an amount that would have been assessed had the company's immediate preceding year been made up of three hundred and sixty five days by multiply in the ratio that three hundred and sixty five days is of the number of days in that year of income;
- (b) the company that is making payment was formed as a result of amalgamation of two or more companies, the tax assessed and payable for the immediately preceding year will be deemed to be the aggregate of the tax that would have been payable by all the predecessor companies;
- (c) the company that is making payment has had transferred to it during winding up in the year preceding the year of income all or

substantially all the property from any of the companies which it controls by means of the holding of shares or possession of voting power, the company's tax payable in the preceding year will be deemed to be the aggregate of its own tax payable together with that of the company that it controls;

- (d) the company making payment has had transferred to it by a related company in the preceding year of income all or substantially all of its property the company's tax payable in the preceding year of income will be deemed to be the sum total of the tax payable by both the transferor and the transferee companies;
- (e) the company making payment has commenced its business in that year of income, the company's preceding year of income will be deemed to be NIL;
- (f) **"tax assessed and payable for the preceding year"** shall be taken to mean the amount payable immediately before the due date for the instalment tax and shall disregard any subsequent amendments and adjustments;
- (g) where under this Act, a person has been permitted to make up the accounts of his business for a period greater than twelve months, the person shall calculate the instalment tax payable for such period in accordance with section 12 of this Act, and then multiply the result by the ratio of the number of days in the current year of income to 365 days.

3. The payment of instalment tax payable under section 12 shall be accompanied by the following information—

- (a) a declaration of the choice of method adopted by the person in computing the instalment tax payable;
 - (b) where the tax is computed on the basis of an estimate of the current year of income, the total income of the person making the payment for that year of income including income deemed to be his under this Act which is chargeable to tax based on all information available to him at the date upon which the return is made and which he believes to be true, and the tax chargeable on that income calculated by reference to the appropriate reliefs and rates of tax in force at the date of the return;
 - (c) where the tax is computed on the basis of the preceding year assessment, the amount of tax assessed for the preceding year;
 - (d) a declaration by the person making the return or by the person in whose name he is assessable that the instalment payment of a full and true estimate to the best his knowledge and belief.
-

THIRTEENTH SCHEDULE

[Act No. 9 of 1992, s. 58, Act No. 6 of 1994, s. 50, Act No. 8 of 1997, s. 51.]

TRANSACTIONS FOR WHICH PERSONAL IDENTIFICATION NUMBER
(PIN) WILL BE REQUIRED

Institution	Purpose of Transaction
Commissioner of Lands	Registration of titles and stamping of instruments.
Local Authorities	Approval of plans and payment of water deposits.
Registrar of Motor Vehicles	Registration of motor vehicles transfer of motor vehicles, licensing under the Traffic Act (Cap. 403).
Registrar of Business Names	New registration.
Registrar of Companies	Underwriting of politics.
Ministry of Commerce	trade licensing.
Commissioner of VAT	Applying for registration.
Customs and Excise	Importation of goods Customs Clearing and Forwarding.
Kenya Power and Lighting Company Ltd.	Payment of deposit for power connection.
All Government Ministries and public bodies	All contracts, supply of goods and services.
Company partnership, institution or other legally constituted body of persons; and	
provision of consultancy, agency or other contract services.	

CHAPTER 470

INCOME TAX ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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INCOME TAX (TRIBUNAL) RULES, 1973

ARRANGEMENT OF RULES

Rule

1. Citation.
 2. Interpretation.
 3. Appointment of clerk.
 4. Form of and time for lodging an appeal.
 5. Memorandum of appeal.
 6. Statement of facts of appellant.
 7. Service of memorandum of appeal.
 8. Statement of facts of Commissioner.
 9. Notice and place of hearing.
 10. Procedure.
 11. Tribunal to determine own procedure in certain matters.
 12. Copies of documents admissible.
 13. Fees and costs.
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[Subsidiary]

Rules under section 83

INCOME TAX (TRIBUNAL) RULES, 1973

[L.N. 5/1974.]

1. Citation

These Rules may be cited as the Income Tax (Tribunal) Rules, 1973.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**appeal**” means an appeal to the Tribunal under section 86(1)(a);

“**appellant**” means a person entering an appeal and the advocate or duly authorized agent of that person;

“**chairman**” means the chairman of the Tribunal appointed under section 83(2);

“**clerk**” means the clerk of the Tribunal appointed pursuant to rule 3 of these Rules;

“**memorandum**” means a memorandum of appeal presented under rule 4 of these Rules;

“**section**” means a section of the Act.

3. Appointment of clerk

(1) The Commissioner shall appoint a person to be the clerk of the Tribunal, and such person may be an officer of the Income Tax Department.

(2) The clerk shall, in matters relating to appeals to the Tribunal and procedure therefor, comply with any general and special directions lawfully given by the chairman.

(3) The clerk shall by notice in the *Gazette* notify his address for the presentation or service of documents for the purposes of these Rules, and shall in the same manner notify any change in such address.

4. Form of and time for lodging an appeal

An appeal shall be entered by presentation of a memorandum of appeal, together with five copies thereof, to the clerk within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 86(1):

Provided that where the Tribunal is satisfied that, owing to absence from his normal place of residence, sickness or other reasonable cause, the appellant was prevented from presenting a memorandum within such period, and that there has been no unreasonable delay on his part, the Tribunal may extend that period notwithstanding that the period has already expired.

5. Memorandum of appeal

A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

6. Statement of facts of appellant

(1) Each copy of a memorandum shall be accompanied by—

- (a) a copy of the confirming notice, or the amending notice, as the case may be;
- (b) a copy of the notice of appeal; and

[Subsidiary]

- (c) a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed a copy of each document or extract from a document referred to upon which the appellant proposes to rely as evidence at the hearing of the appeal.

(2) In this rule—

“**amending notice**” means a notice setting out an amendment to an assessment served under section 85(3)(a);

“**confirming notice**” means a notice confirming an assessment served under section 85(3)(b).

7. Service of memorandum of appeal

Within forty-eight hours after the presentation of a memorandum to the clerk, a copy thereof and of the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Commissioner.

8. Statement of facts of Commissioner

(1) The Commissioner shall, if he does not accept any of the facts of the appellant, within twenty-one days after service thereof upon him under rule 7 of these Rules, file with the clerk a statement of facts together with five copies thereof and the provisions of rule 6(1)(c) shall *mutatis mutandis* apply to that statement of facts.

(2) At the time of filing a statement of facts pursuant to paragraph (1) of these Rules, the Commissioner shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) If the Commissioner does not desire to file a statement of facts under this rule, he shall forthwith give written notice to that effect to the clerk and to the appellant, and in that case the Commissioner shall be deemed at the hearing of the appeal to have accepted the facts set out in the statement of facts of the appellant.

9. Notice and place of hearing

(1) As soon as may be convenient after receipt by him of the memorandum the clerk shall notify the chairman of such receipt.

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the clerk that he does not intend to do so, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal and the clerk shall cause notice thereof to be served on the appellate and the Commissioner.

(3) The clerk shall cause to be supplied to each member of the Tribunal a copy of the notice of hearing and of all documents received by him from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

10. Procedure

At the hearing of an appeal, the following procedure shall be observed—

- (a) the Commissioner shall be entitled to be present or to be represented;
- (b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence:

Provided that, save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than any grounds stated in the memorandum and may not adduce evidence of facts or documents unless those facts have been referred to in, and copies of those documents have been annexed to, the statement of facts of the appellant;

[Subsidiary]

- (c) at the conclusion of the statement, and evidence on behalf of the appellant, the Commissioner shall be entitled to make such submissions, supported by relevant evidence, and the provisions of subparagraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Commissioner;
- (d) the appellant shall be entitled to reply but may not raise a new issue or argument;
- (e) the chairman or a member of the Tribunal may at any stage of the hearing ask any questions of the appellant or the Commissioner or a witness examined at the hearing, as he considers necessary to the determination of the appeal;
- (f) a witness called and examined by either party may be cross-examined by the other party to the appeal and if so cross-examined may be re-examined;
- (g) a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;
- (h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;
- (i) before the Tribunal considers its decision the parties to the appeal shall withdraw from the meeting, and the Tribunal shall deliberate the issue according to law and reach its decision thereon;
- (j) the decision of the Tribunal shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;
- (k) minutes of the meeting shall be kept and the decision of the Tribunal recorded therein.

11. Tribunal to determine own procedure in certain matters

In matters of procedure not governed by these Rules or the Act, the Tribunal may determine its own procedure.

12. Copies of documents admissible

Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence:

Provided that the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

13. Fees and costs

No fees shall be payable, and a Tribunal shall not make any order as to costs, on an appeal save where the grounds of appeal are held by the Tribunal to be frivolous, in which case the Tribunal may order the appellant to pay as costs to the Commissioner a sum not exceeding five hundred shillings.

Declaration under definition of “Permanent or Semi-Permanent Crops” under section 2(1)

DECLARATION OF CROPS

[L.N. 17/1975, L.N. 19/1985, L.N. 269/1986, L.N. 158/1989, L.N. 54/2005, L.N. 66/2006.]

Cashew nuts, citrus, cloves, coconuts, coffee, essential oils, New Zealand flax, passion fruit, pawpaws, pineapples, pyrethrum, sisal, wattle, sugar-cane, tea, rubber, vanilla, apples, pears, peaches, plums, apricots, cocoa, macadamia, cinchona and tara, are declared to be permanent or semi-permanent crops for the purposes of the Act with effect from 1st January, 1974.

Jojoba plant and bananas.

Roses.

Grape Vines.

Eucalyptus, pine and cypress.

Avocadoes and mangoes.

Notices under sections 13(2) and 14(2)

INCOME TAX EXEMPTIONS

(The following exemptions have been made; reference should be made to the appropriate legal notice for the text in any case).

Industrial and Commercial Development Corporation Investment Company Limited.

[L.N. 93/1974.]

Executive Secretary of African Social Studies Programme.

[L.N. 43/1975.]

Regional and Deputy Regional Directors of Christian Children's Fund.

[L.N. 44/1975.]

Kenya Accountants and Secretaries National Examination Board.

[L.N. 116/1975.]

Non-Resident Income from licensees under the Oil Production Act.

[L.N. 118/1975.]

Morgan Grenfell and Company Limited.

[L.N. 147/1975.]

Deutsche Gesellschaft für Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH.

[L.N. 148/1975.]

Deutsche Gesellschaft für Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH.

[L.N. 149/1975.]

Deutsche Gesellschaft für Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH.

[L.N. 186/1976.]

European Investment Bank.

[L.N. 97/1977.]

Nederlandse Financierings—Maatschappij voor Ontwikkelingslanden N.V.

[L.N. 122/1977.]

Deutsche Gesellschaft für Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH.

[L.N. 123/1977.]

Commonwealth Development Corporation.

[L.N. 124/1977.]

Manufacturers Hanover Export Finance Limited.

[L.N. 125/1977.]

Morgan Grenfell and Company Limited.

[L.N. 126/1977.]

United States Agency for International Development.

[L.N. 147/1977.]

Federal Home Loan Bank of New York.

[L.N. 148/1977.]

*Income Tax***[Subsidiary]**

Danish Turnkey Dairies Limited.	[L.N. 163/1977.]
European Investment Bank.	[L.N. 272/1977.]
European Investment Bank.	[L.N. 13/1978.]
European Investment Bank.	[L.N. 14/1978.]
European Investment Bank.	[L.N. 15/1978.]
European Development Fund.	[L.N. 35/1978.]
Guinness Mahon and Company Limited.	[L.N. 129/1978.]
European Investment Bank.	[L.N. 258/1978.]
European Investment Bank.	[L.N. 259/1978.]
Osterreichische Landerbank Aktiengesellschaft.	[L.N. 45/1979.]
Process Engineering Company S.A.	[L.N. 79/1979.]
Union Bank of Switzerland.	[L.N. 83/1979.]
European Development Fund.	[L.N. 127/1979.]
European Investment Bank.	[L.N. 128/1979.]
Commonwealth Development Corporation.	[L.N. 179/1979]
Industrial Development Bank of India.	[L.N. 285/1979.]
Kenya Power Company Limited.	[L.N. 167/1980.]
Institute of Certified Public Accountants of Kenya.	[L.N. 168/1980.]
Kenya Medical Association.	[L.N. 169/1980.]
East African Medical Journal.	[L.N. 169/1980.]
Guinness Mahon and Company Limited.	[L.N. 10/1981.]
Rift Valley Development Trust.	[L.N. 52/1981.]

Income Tax

[Subsidiary]

Deloraine Estate Limited.	[L.N. 52/1981.]
Various Financial Institutions.	[L.N. 155/1981.]
Navy, Army and Air Force Institute.	[L.N. 4/1982.]
Export Development Corporation.	[L.N. 240/1983.]
Skandinaviska Enskilda Banken.	[L.N. 72/1984.]
President.	[L.N. 240/1985.]
Policyholder's Compensation Fund	[L.N. 68/2006.]

NOTICES UNDER SECTION 35(7)

Industrial Development Bank Limited.	[L.N. 286/1979.]
Development Finance Company of Kenya Limited.	[L.N. 115/1980.]
Industrial and Commercial Development Corporation Limited.	[L.N. 116/1980.]

NOTICES UNDER SECTION 41

Double Taxation Relief (Kenya/Zambia).	[E.A.C. L.N. 10/1970.]
Double Taxation Relief (Kenya/Denmark).	[E.A.C. L.N. 5/1973.]
Double Taxation Relief (Kenya/Norway).	[E.A.C. L.N 6/1973.]
Double Taxation Relief (Kenya/Sweden).	[E.A.C. L.N. 14/1973.]
Double Taxation Relief (Kenya/United Kingdom).	[L.N. 253/1977.]
Double Taxation Relief (Kenya/Federal Republic of Germany).	[L.N. 20/1980.]
Double Taxation Relief (Kenya/Canada).	[L.N. 111/1987.]
Double Taxation Relief (Kenya/India).	[L.N. 61/1989.]

INCOME TAX (LOCAL COMMITTEES) RULES, 1974

ARRANGEMENT OF RULES

Rule

1. Citation.
 2. Interpretation.
 3. Appointment of clerk.
 4. Form of and time for lodging an appeal.
 5. Memorandum of appeal.
 6. Statement of facts of appellant.
 7. Service of memorandum.
 - 7A. Response by Commissioner.
 8. *Deleted.*
 9. Notice and place of hearing.
 10. Procedure.
 11. Local committee to determine own procedure in certain matters.
 12. Copies of documents admissible.
 13. Fees and costs.
-

[Subsidiary]

Rules under section 82

INCOME TAX (LOCAL COMMITTEES) RULES, 1974

[L.N. 7/1974, L.N. 103/1976, L.N. 95/1980, L.N. 53/2012.]

1. Citation

These Rules may be cited as the Income Tax (Local Committees) Rules, 1974.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**appeal**” means an appeal to a local committee under section 86 or section 89;

“**appellant**” means a person entering an appeal and the advocate or duly authorized agent of such person;

“**clerk**” means the clerk of a local committee appointed pursuant to rule 3 of these Rules;

“**memorandum**” means a memorandum of appeal presented under rule 4 of these Rules;

“**respondent**” includes a person who under section 89(3)(c) or (d) is entitled to appear on an appeal as if he were a party thereto and the advocate or duly authorized agent of that person;

“**section**” means a section of the Act.

3. Appointment of clerk

(1) The Commissioner shall appoint an officer of the Income Tax Department to be the clerk to a local committee:

Provided that one officer may, in discretion of the commissioner, be appointed as clerk to two or more local committees.

(2) A clerk shall, in matter relating to appeals to the local committee and procedure therefor, comply with any general and special directions lawfully given by the chairman.

(3) A clerk shall by notice in the *Gazette* notify his address for the presentation or service of documents for the purpose of these Rules and shall in the same manner notify and change in such address.

4. Form of and time for lodging an appeal

An appeal shall be entered by presentation of a memorandum of appeal to the clerk within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 86(1):

Provided that where the local committee is satisfied that owing to absence from his normal place of residence, sickness or other reasonable cause the appellant was prevented from presenting a memorandum within such period and that there has been no unreasonable delay on his part, the local committee may extend that period within which such memorandum may be presented.

5. Memorandum of appeal

A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

6. Statement of facts of appellant

(1) A memorandum shall be accompanied by—

- (a) a copy of the confirming notice, the amending notice or the notice of the decision of the Commissioner as the case may be;

- (b) a copy of the notice of appeal;
- (c) a statement, signed by the appellant, setting out the facts on which the appeal is based and referring to any documentary or other evidence which it is proposed to adduce at the hearing of the appeal.

(2) In this rule—

“**amending notice**” means a notice setting out an amendment to an assessment served under section 85(3)(a);

“**confirming notice**” means a notice confirming an assessment served under section 85(3)(b);

“**decision of the Commissioner**” means a decision or act of the Commissioner which, under section 90, may be the subject of an appeal.

[L.N. 53/2012, r. 2.]

7. Service of memorandum

Within forty-eight hours after the presentation of a memorandum to the clerk, a copy thereof and of the statement of facts of the appellant shall be served by the appellant upon the Commissioner and upon every other respondent.

7A. Response by Commissioner

(1) The Commissioner shall, within thirty days of being served with a memorandum and statement of facts in accordance rule 7 file a response, with the clerk, stating the facts upon which the response is based and specifying any documentary or other evidence that he proposes to adduce at the hearing of the appeal.

(2) The Commissioner shall, upon filing a response in accordance with paragraph (1), serve a copy of the response together with copies of any documents annexed thereto, upon the appellant.

(3) Where a local committee is satisfied that, the Commissioner was for any reasonable ground, unable to file the statement of facts with the clerk within the prescribed period, the local committee may extend the time within which the Commissioner shall file a response.

[L.N. 53/2012, r. 3.]

8. Deleted by L.N. 103/1976, s. 2.

9. Notice and place of hearing

(1) As soon as may be convenient after receipt by him of a memorandum the clerk shall notify the chairman of such receipt.

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the clerk that he does not intend to do so, fix a time, date and place for a meeting of the local committee for the purpose of hearing the appeal and the clerk shall cause notice thereof to be served on the appellant, the Commissioner and every other respondent.

(3) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

10. Procedure

At the hearing of an appeal, the following procedure shall be observed—

- (a) the Commissioner and any other respondent shall be entitled to be present or to be represented;

[Subsidiary]

- (b) the appellant shall state the ground of his appeal and may support it by relevant evidence:

Provided that, save with the consent of the local committee and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum and may not adduce any evidence other than evidence previously adduced to the Commissioner;

- (c) at the conclusion of the statement and evidence on behalf of the appellant, the Commissioner and any other respondent shall be entitled to make submissions, supported by such relevant evidence as may be necessary to support his case;
- (d) the appellant shall be entitled to reply but may not rely on any ground of appeal or on evidence other than that adduced at the hearing;
- (e) the chairman or a member of the local committee may at any stage of the hearing to ask any questions of the appellant or the Commissioner, or any other respondent, or a witness examined at the hearing, which he considers necessary to the determination of the appeal;
- (f) a witness called and examined by a party may be cross-examined by another party to the appeal and if so cross-examined may be re-examined;
- (g) a witness called and examined by the local committee may be cross-examined by a party to the appeal;
- (h) the local committee may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary and on such terms as it may determine;
- (i) before the local committee considers its decision the parties to the appeal shall withdraw from the meeting, and the local committee shall deliberate the issue according to law;
- (j) the decision of the local committee shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;
- (k) minutes of the meeting shall be kept and the decision of the local committee recorded therein.

11. Local committee to determine own procedure in certain matters

In matters of procedure not governed by these Rules or the Act, a local committee may determine its own procedure.

12. Copies of documents admissible

Save where a local committee in a particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence, but the local committee may at any time direct that the original shall be produced notwithstanding that a copy has already been admissible in evidence:

Provided that the local committee may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

13. Fees and costs

No fees shall be payable, and a local committee shall not make any order as to costs, on an appeal save where the grounds of appeal are held by the committee to be frivolous, in which case the committee may order the appellant to pay as costs to the Commissioner and each other respondent a sum not exceeding five hundred shillings.

INCOME TAX (APPEALS TO THE HIGH COURT) RULES, 1974

ARRANGEMENT OF RULES

Rule

1. Citation.
 2. Interpretation.
 3. Form of and time for filing appeal.
 4. Form of memorandum.
 5. Statement of facts of appellant.
 6. Registration of memorandum.
 - 6A. Abatement of appeals.
 7. Service of memorandum of appeal.
 8. Statement of facts of respondent.
 9. Notice and place of hearing.
 10. Right to begin.
 11. Dismissal of appeal for appellant's default.
 12. Readmission of appeal dismissed for default.
 13. Rehearing on application of respondent against whom *ex parte* decree made.
 14. Grounds of appeal.
 15. Additional evidence.
 16. Copies of documents admissible.
 17. Proceedings in chambers.
 18. Execution of decree where tax payable is not set out therein.
 19. Fees.
 20. Extent to which rules on civil procedure apply.
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[Subsidiary]

Rules under section 91

INCOME TAX (APPEALS TO THE HIGH COURT) RULES, 1974

[L.N. 105/1974, L.N. 41/1980.]

1. Citation

These Rules may be cited as the Income Tax (Appeals to the High Court) Rules, 1974.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**address for service**” means a place of residence or a place of business within the jurisdiction;

“**appeal**” means an appeal to the Court under section 86(2);

“**memorandum**” means a memorandum of appeal presented under rule 3;

“**Registrar**” means the Registrar or a Deputy Registrar of the Court;

“**respondent**” includes a person who under section 89(3) is entitled to appear before a committee;

“**section**” means a section of the Act.

3. Form of and time for filing appeal

No appeal shall be filed unless a memorandum of appeal is presented to the Registrar during office hours, and a copy served upon the respondent, within 30 days after the date of service upon the respondent of a notice of appeal under section 86(2) of the Act:

Provided that where the Court is satisfied that, owing to absence from Kenya, sickness, or other reasonable cause, the appellant was prevented from presenting the memorandum of appeal within that period and that there has been no unreasonable delay on his part, the Court may extend that period.

[L.N. 41/1980, s. 2.]

4. Form of memorandum

Every memorandum shall contain an address for service, shall be signed by the appellant or his advocate and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

5. Statement of facts of appellant

A memorandum shall be accompanied by—

- (a) a copy of the decision or the notice of the decision appealed against;
- (b) a copy of the notice of appeal served on the respondent; and
- (c) a statement, signed by the appellant or his advocate, setting out the facts upon which the appeal is based, and respectively specifying and referring to documentary or other evidence which it is proposed to adduce at the hearing of the appeal.

6. Registration of memorandum

(1) After the memorandum and the documents referred to in rule 5 of these Rules have been presented, and all filing and service fees due in relation thereto have been paid, the Registrar shall cause the date of presentation to be date-stamped thereon, and

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the appeal shall be numbered and entered (as an Income Tax Appeal) in the register of appeals, in accordance with rule 8(1) of Order XLI of the Civil Procedure Rules (Cap. 21, Sub. Leg.)

(2) After entry of an appeal in the register of appeals as provided in paragraph (1), the Registrar shall ensure that, in respect of all documents relating to the appeal, the words "Income Tax Appeal" and the number of that appeal are included in the title of the appeal wherever the title occurs.

(3) The date on which the memorandum is presented is the date of filing of the appeal notwithstanding any dispute as to the amount of any service fee payable.

6A. Abatement of appeals

An appeal shall abate in any case where any filing and service fees due in relation to that case have not been paid in full within fourteen days of the appellant having been notified of the total amount of the fees payable by him, and where an appellant is so notified by post he shall be deemed, until the contrary is proved, to have received notification at the time at which the letter would be delivered in the ordinary course of post.

[L.N. 41/1980, s. 2.]

7. Service of memorandum of appeal

A copy of the memorandum of appeal and the documents referred to in rule 5 of these Rules shall be served by the Registrar upon the respondent upon payment of the prescribed fee for service thereof:

Provided that in a case referred to in section 89(3)(c) service shall be made by the appellant.

8. Statement of facts of respondent

The respondent shall, if he intends to contest the appeal, present to the Registrar, during office hours and within thirty days of the service upon him of the copy memorandum and the documents referred to in rule 5, a statement in duplicate each signed by him, giving an address for service, setting out the facts on which he relies, and respectively specifying and referring to documentary or other evidence which he proposes to adduce at the hearing of the appeal, and a copy of the statement shall be served by the Registrar upon the appellant upon payment of the prescribed fee for service thereof.

9. Notice and place of hearing

Unless the parties otherwise agree, the Registrar shall give fifteen clear day's notice in writing to the parties of the date and place fixed for the hearing of the appeal.

10. Right to begin

(1) On the day and at the time fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent and the appellant shall be entitled to reply.

11. Dismissal of appeal for appellant's default

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may, subject to section 87(2)(a), make an order that the appeal be dismissed.

(2) Where the appellant appears and the respondent does not appear, the Court may proceed to hear the appeal *ex parte*.

[Subsidiary]

12. Readmission of appeal dismissed for default

Where an appeal is dismissed under rule 11 of these Rules the appellant may apply to the Court to which the appeal is preferred for the readmission of the appeal, and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit.

13. Rehearing on application of respondent against whom *ex parte* decree made

Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Court to which the appeal is preferred to rehear the appeal; and if he satisfies the Court that the memorandum of appeal and the documents referred to in rule 5 of these Rules were not duly served, or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall rehear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

14. Grounds of appeal

The appellant shall not, except by leave of the Court and upon such terms as the Court may determine, rely on a ground other than a ground stated in the memorandum of appeal.

15. Additional evidence

Should it appear to the Court at the hearing of the appeal that documentary or oral evidence other than that referred to in the statement of facts of the appellant or respondent should be admitted, the Court may admit that evidence.

16. Copies of documents admissible

Subject to the provisions of section 121 and save where the Court in a particular case otherwise directs or where any party to the appeal objects, copies of documents shall be admissible in evidence, but the Court may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

Provided that the Court may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

17. Proceedings in chambers

(1) Ancillary applications to a judge, if not made at the hearing, shall be made by summons entitled in the matter of the appeal, supported by affidavit.

(2) If no appeal is pending, the summons shall be entitled in the matter of the intended appeal.

18. Execution of decree where tax payable is not set out therein

Where a decree following the decision of the Court does not specify the amount of tax payable under the assessment as determined by the Court then, for the purposes of the execution of that decree, the Commissioner shall—

- (a) where the decision of the Court results in an amendment to the assessment, file with the Registrar a copy, certified by him, of a notice served under section 87(2)(f) on the person assessed; or
- (b) where the decision does not result in an amendment to the assessment, file with the Registrar a statement signed by him setting out the amount of tax payable under the notice of assessment served under section 78 or the amending notice, as the case may be,

and thereupon such decree shall have effect as if it were a decree for the payment of the amount of tax as is set out in the notice or statement, as the case may be.

19. Fees

A filing fee of one hundred shillings shall be payable on presentation of an appeal under these Rules, and the scale of fees for the time being in force in civil matters in the Court shall apply in respect of the service of all documents, and to all subsequent acts, applications or proceedings, in relation to such appeal.

20. Extent to which rules on civil procedure apply

The rules determining procedure in civil suits before the Court in so far as those rules relate to recognized agents and advocates, to service, to consolidation, to admissions, to the production, impounding and return of documents, to the summoning and attendance of witnesses, to adjournments, to the examination of witnesses, to affidavits, to judgment and decree, to the execution of decrees, to the attachment of debts, to the death, bankruptcy and marriage of parties, to withdrawal, discontinuance and adjustment, to security for costs, to commissions, to corporations, to trustees, executors and administrators, and to the enlargement of time shall, to the extent to which those rules are not inconsistent with the Act or these Rules, apply to an appeal as if it were a civil suit but, save as provided in these Rules, the procedure relating to civil suits before the Court shall not apply to an appeal.

INCOME TAX (P.A.Y.E.) RULES, 1973

ARRANGEMENT OF RULES

Rule

1. Citation.
 2. Interpretation.
 3. Application of section 128 of Act.
 4. Deduction of tax.
 5. Calculation of monthly tax due.
 6. Calculation of deduction and maintenance of records.
 7. Notification of emoluments and tax deducted.
 - 8.
 9. End of month procedure.
 - 9A.
 10. Payment of tax by employer.
 11. Employer failing to pay tax or to provide required certificate.
 12. Recovery of tax.
 13. *Deleted.*
 14. Inspection of employer's records.
 15. Death of employer.
 16. Change of employer.
 17. Penalty.
-

[Subsidiary]

Rules under section 130

INCOME TAX (P.A.Y.E.) RULES, 1973

[L.N. 257/1973, L.N. 122/1986, L.N. 201/1986, L.N. 319/1987, L.N. 31/1994, L.N. 98/2001, L.N. 175/2001, L.N. 80/2008, L.N. 90/2009, L.N. 84/2010, L.N. 54/2011.]

1. Citation

These Rules may be cited as the Income Tax (P.A.Y.E) Rules, 1973.

2. Interpretation

(1) In these Rules, unless the context otherwise requires—

“**Commissioner**” includes an officer authorized in writing by the Commissioner to exercise and perform functions conferred upon the Commissioner under these Rules;

“**emoluments**” means—

- (a) gains or profits from employment or services rendered which are payable in money; and
- (b) the value of housing provided by an employer ascertained under section 5 (3) of the Act; and
- (c) the value of benefit or facility provided by the employer, where the total value exceeds three thousand shillings per month; and
- (d) *Deleted by L.N. 90/2009, r. 2,*

but does not include gains or profits which, in the opinion of the Commissioner, are in respect of casual employment only;

“**employee**” includes an individual receiving emoluments in respect of any employment, office, appointment or past employment;

“**monthly pay**”, in relation to a month, means the emoluments receivable by an employee during that month, calculated in accordance with the Act and these Rules;

“**monthly personal relief**”, in relation to any month, means that amount of personal relief to which an employee is entitled in that month in accordance with the relief claim form which he has completed together with any other amount for that month notified to the employer by the Commissioner, and unused monthly personal relief, from a previous month or months in the same year of income;

“**monthly personal relief notification**” means a notification provided by the Commissioner to the employer with respect to monthly personal relief of the employee;

“**relief claim form**” means the relief claim form provided, or in a particular case authorized, by the Commissioner on which an employee claims the reliefs to which he is entitled under Part V of the Act;

“**tax deduction card**” means the tax deduction card in the form provided by the Commissioner, or such other document corresponding to a tax deduction card as may be authorized by the Commissioner in a particular case, and on which such information as the Commissioner may direct with respect to tax is recorded;

“**tax tables**” means the tables of income tax computed by the Commissioner in accordance with the rates of income tax specified in the Act for any year of income;

“**unused personal relief**”, in relation to a month or months in the same year of income, means such amount of monthly personal relief as is in excess of the tax payable under these Rules in that month or months.

[Subsidiary]

(2) Nothing in these Rules shall apply to an employer none of whose employees receive emoluments exceeding three thousand six hundred shillings per annum or such greater sum as the Commissioner may, by notice in the *Gazette*, specify.

[L.N. 122/1986, s. 2, L.N. 201/1986, s. 2, L.N. 319/1987, Sch., L.N. 98/2001, s. 2, L.N. 80/2008, s. 2, L.N. 90/2009, s. 2.]

3. Application of section 128 of Act

Section 128 of the Act shall apply to a notice or other document which is authorized or required to be given, served or issued by the Commissioner under these Rules.

4. Deduction of tax

(1) An employer who makes a payment of, or on account of, emoluments during a month to an employee of his who is liable to payment of tax shall deduct tax from those emoluments in accordance with these Rules.

(2) An employer who fails to comply with the requirement of subrule (1) shall be guilty of an offence.

5. Calculation of monthly tax due

An employer shall in each month calculate, by reference to the tax tables, the tax due from each of his employees in that month having regard to the monthly personal relief of that employee:

Provided that an employee shall be entitled to a relief from only one employer.

[L.N. 54/2011, s. 2.]

6. Calculation of deduction and maintenance of records

(1) On the occasion of the last payment of emoluments in any month to an employee, the employer shall, except where these Rules otherwise provide, ascertain, in respect of that month, the monthly pay of the employee, the monthly tax chargeable thereon, and the monthly personal relief of the employee.

(2) If, in the case of an employee, the tax chargeable for a month exceeds his monthly personal relief then the employer shall deduct the amount of such excess from the last payment of emoluments in that month, but if the tax chargeable in a month is greater than the last payment of emoluments in that month:

Provided that if the tax chargeable in any month is greater than the last payment of emoluments to the employee in that month, the employer shall deduct such amount of tax as is not recoverable from such payment from the first payment of emoluments in the following month and from any subsequent such payments as may be necessary to recover that amount.

(3) The employer shall, on the tax deduction card, record for every month in which a payment of emoluments is made to an employee, such particulars as the Commissioner may direct in respect of any such payment.

(4) An employer who fails to comply with paragraph (2) or (3) of this Rule shall be guilty of an offence.

7. Notification of emoluments and tax deducted

On the occasion of the last payment of emoluments in any month to an employee, the employer shall in writing notify the employee of the total amount of the emoluments paid by the employer to the employee during such month, the total tax deducted from such emoluments and such other particulars as the Commissioner may require.

[Subsidiary]

8. (1) If an employee is aggrieved by a calculation with respect to the deduction of tax from his emoluments and is unable to reach agreement with his employer, then—

- (a) the employer shall inform the employee of his rights under this rule and shall, at the request of the employee, furnish the employee with a written statement showing the manner in which the employer arrived at such calculation;
- (b) the employee may give notice of objection in writing to the Commissioner, but any such notice shall be valid only if—
 - (i) it states precisely the grounds of his objection;
 - (ii) there is enclosed therewith the written statement furnished by his employer; and
 - (iii) it is received by the Commissioner within thirty days of the date on which that statement was received by the employee.

(2) On receipt of a notice of objection under this rule the Commissioner shall consider the objection and, subject to and in accordance with these Rules, may amend the calculation or reject the objection.

(3) The Commissioner shall forthwith notify the employer and the employee in writing of his decision on an objection and thereafter on the occasion of any payment to such employee in any month of, or on account of, emoluments the amount of tax deducted therefrom by the employer shall be in accordance with such decision.

(4) Notwithstanding that a valid objection has been made, on the occasion of any payment to the employee in any month of, or on account of, emoluments from which tax is to be deducted in accordance with these Rules, the amount of tax deducted by the employer shall be in accordance with the calculation by the employer until the employer is notified by the Commissioner of his decision with respect to the objection.

(5) Where an amount of tax has been deducted in excess of the amount payable by reason of a decision of the Commissioner under this rule, the Commissioner shall refund that amount to the employee.

9. End of month procedure

At the end of every month, an employer shall compile, in such manner as the Commissioner may direct, a list which shall include the name of each employee in his employ from whose emoluments tax was deducted during that month together with the particulars of the amount of tax deducted and such other particulars as the Commissioner may require.

9A. Before the 10th day of the month following the end of each quarter, an employer shall render to the Commissioner a return of emoluments made to each employee in each of the three months, the tax deducted and such other particulars as the Commissioner may require:

Provided that an employer who furnishes the returns of emoluments on a monthly basis using information technology shall not be required to furnish quarterly returns under this paragraph.

[L.N. 90/2009, s. 3, L.N. 84/2010, s. 2.]

10. Payment of tax by employer

(1) Before the tenth day following the end of every month or before any other day which may be notified to him by the Commissioner, an employer shall, subject to paragraph (2) of this Rule, pay, to such person as the Commissioner shall direct, all amounts of tax which the employer has deducted under these Rules during such month:

[Subsidiary]

Provided that in the case of a director, the due date shall be before the tenth day following the end of the month in which payment was made to the director, or the fourth month after the accounting date, whichever is the earlier.

(2) Paragraph (1) of this Rule shall not apply to any employer in respect of any month in which the total amount of tax deducted by him is less than one hundred shillings, and in that case, or where in a month no tax is deductible by an employer under these Rules, the employer shall send, before the tenth day following the end of such month or before any other day which may be notified to him by the Commissioner, to the Commissioner a certificate, in the form authorized or provided by the Commissioner, showing either that the amount of tax which he deducted in that month was less than one hundred shillings or that he deducted no tax in that month:

Provided that when the amount of tax deducted by an employer in any month is less than one hundred shillings, such amount shall be added to the amount of tax deducted by him in the following month, or months, and when in a month the total of all such amounts is greater than one hundred shillings, the employer shall comply with paragraph (1) of this Rule; so however, that the employer shall comply with paragraph (1) of this Rule in the month of December in each year notwithstanding that the total amounts of such tax is less than one hundred shillings.

(3) A person to whom the Commissioner has, under paragraph (1) of this Rule, directed that an employer pay such amount of tax shall keep a record of payment in such form as the Commissioner may direct and shall enter therein particulars of tax which has been paid to him.

(4) Any employer who, having deducted tax under this rule fails to account therefor in the manner that the Commissioner may direct, or who fails to comply with paragraph (2) of this Rule, shall be guilty of an offence.

[L.N. 31/1994, s. 2.]

11. Employer failing to pay tax or to provide required certificate

(1) If, before the tenth day following the end of every month, or before a later day that may have been notified to him by the Commissioner, an employer has paid no amount of tax under rule 10 for that month and the Commissioner is unaware of the amount, if any, which the employer is liable to pay, or the employer has failed to provide the certificate mentioned in paragraph (2) of that rule, the Commissioner may give notice to the employer requiring him to render, within the time specified in the notice, a return showing the name of every employee to whom he made a payment of emoluments in the period stated in the notice, together with those particulars with regard to each employee that the notice may require, being particulars of—

- (a) a calculation under rule 5 appropriate to the employee's case;
- (b) the payments of emoluments made to the employee during that period; and
- (c) any other matter affecting the calculation of the tax which the employer was liable under these Rules to deduct from the payments of emoluments to the employee during that period.

(2) The Commissioner shall ascertain and certify to the best of his knowledge and belief the amount of tax which the employer would have been liable to pay under rule 10 in respect of the month in question had he complied with the provision of these Rules.

(3) The production of the return made by the employer under paragraph (1), and of the certificate of the Commissioner under paragraph (2), shall be sufficient evidence that the amount shown in the certificate is the amount of tax which the employer would have been liable to pay under rule 10 in respect of the month in question had he complied with the provisions of these Rules and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

[Subsidiary]

(4) Where a notice given by the Commissioner under paragraph (1) extends to two or more consecutive months, these Rules shall have effect as if those consecutive months were one month.

(5) If the Commissioner is not satisfied that the amount paid in respect of a month is the full amount which the employer would have been liable to pay under rule 10 had he complied with these Rules, he may notwithstanding that an amount of tax has been paid by the employer under that rule in respect of that month give a notice under paragraph (1) of this rule and thereupon this rule shall have effect monthly.

12. Recovery of tax

For purposes of the recovery of tax which an employer would have been liable to pay under rule 10 had he complied with the provisions of these Rules, that employer shall be deemed to have been appointed an agent of his employee under section 96 of the Act.

13. Deleted by L.N. 84/2010, s. 3.

14. Inspection of employer's records

(1) An employer, when called upon to do so by the Commissioner, shall produce, in English or any other language which the Commissioner may allow, for inspection, at the employer's premises or at any other place the Commissioner may require—

- (a) all wages sheets, salary vouchers, and other books, documents and records whatever relating to the calculation or payment of the emoluments of his employees in respect of the years or months specified by the Commissioner, or to the deduction of tax by reference to those emoluments; or
- (b) any of those wages sheets, salary vouchers and other books, documents and records which may be specified by the Commissioner.

(2) The Commissioner may, on the occasion of an inspection under this rule, prepare a certificate, by reference to the information obtained from the inspection, showing—

- (a) the tax which it appears from the documents and records so produced that the employer would have been liable to pay under rule 10 for the years or months covered by the inspection had he complied with the provisions of these Rules;
- (b) the tax which, to the best of his knowledge and belief, has not been paid as the Commissioner has directed.

(3) The production of the certificate mentioned in paragraph (2) shall be sufficient evidence that the employer is liable to pay, in respect of the years or months mentioned in the certificate, the amount shown therein pursuant to paragraph (2)(b), and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

15. Death of employer

If an employer dies, anything which he would have been liable to do under these Rules shall be done by his personal representatives, or, in the case of an employer who paid emoluments on behalf of another person, by the person succeeding him, or, if no person succeeds him, the person on whose behalf he paid those emoluments.

16. Change of employer

Where there has been a change in the employer from whom an employee receives emoluments in respect of the same employment, the employer after the change shall, in relation to a matter arising after the change, be liable to do anything which the employer

[Subsidiary]

before the change would have been liable to do under these Rules if the change had not taken place, but the employer after the change shall not be liable for the payment of tax which was deductible from emoluments paid to the employee before the change took place.

17. Penalty

A person guilty of an offence under these Rules shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

[L.N. 98/2001, L.N. 175/2001, s. 2.]

INCOME TAX (DISTRAINT) RULES, 1973

[L.N. 6/1974, L.N. 73/2000, L.N. 83/2008.]

1. These Rules may be cited as the Income Tax (Distraint) Rules, 1973.
2. In these Rules, unless the context otherwise requires—
 - “**distrainee**” means the debtor named in an order;
 - “**distraint agent**” means a person appointed as a distraint agent under rule 3 of these Rules;
 - “**distress**” means a distress levied pursuant to an order;
 - “**distress debt**” means the amount of tax, and interest charged thereon, specified in an order;
 - “**distraitor**” means an officer in the service of the Income Tax Department who is authorized to levy distress;
 - “**goods**” means movable property of a distrainee (other than growing crops and goods which are liable to perish within ten days of attachment) which is liable under the law to attachment and sale in execution of a decree of a court;
 - “**order**” means an order issued by the Commissioner under section 102 of the Act.
3. The Commissioner may appoint distraint agents to assist distraitors in the execution of orders:

Provided that no person shall be appointed a distraint agent unless he satisfies the Commissioner—

 - (a) that he is of good repute and financial standing;
 - (b) that he is qualified under the law relating thereto to levy distress by way of attachment of movable property in execution of a decree of a court; and
 - (c) that he has contracted a policy of insurance in an adequate sum against theft, damage or destruction by fire of any goods which may be placed in his custody by reason of the performance by him of his duties as a distraint agent.
4. (1) A distraint agent shall, on appointment, furnish the Commissioner with security, by means of a deposit or in such other manner as the Commissioner may approve, in the sum of ten thousand shillings, and such security shall be refunded or cancelled on the termination of the appointment of the agent unless it is forfeited under this rule.

(2) If any distraint agent is convicted of an offence involving fraud or dishonesty in connexion with such functions performed by him as any agent, the court by which he is convicted may make an order as to the forfeiture of the security or part thereof furnished by him under paragraph (1) of this rule, or any part of such security, and the provisions of the Criminal Procedure Code (Cap. 75), in so far as they relate to forfeiture of recognizances, shall apply *mutatis mutandis* to the forfeiture of security under this rule.
5. (1) An order may be executed at any time after it has been duly served on the distrainee in the manner provided by rule 6 of these Rules.

(2) An order shall be executed by attachment of such goods of the distraitees as, in the opinion of the distraitor, are of a value which, on sale by public auction, would realize a sum sufficient to meet the distress debt and the costs and expenses of the distress incurred by the distraitor.

[Subsidiary]

6. (1) An order shall be issued by the Commissioner in duplicate and service thereof shall be effected by service by the distrainer of a copy of the order on the distrainee in person or, if after using all due and reasonable diligence, the distrainee cannot be found, by service of a copy on an agent of the distrainee empowered to accept service, or on an adult member of the family of the distrainee who is residing with him.

(2) A person served with a copy of an order under this rule shall endorse on the order an acknowledgement of service and if that person refuses to make endorsement the distrainer shall leave the copy of the order with that person after stating in writing thereon that the person upon whom he served the order refused to sign the acknowledgment and that he left, at the time, date and place stated therein, a copy of the order with that person and the name and address of the person (if any) by whom the person on whom the order was served was identified, and thereupon the order shall be deemed to have been duly served.

(3) *Deleted by L.N. 83/2008, s. 2.*

7. (1) In executing distress the outer door of a dwelling-house shall not be broken open unless that dwelling-house is in the occupancy of the distrainee and he refuses or in any way prevents access thereto, but when the distrainer or distraint agent executing distress has duly gained access to a dwelling-house he may break open the door of any room in which he has reason to believe goods of the distrainee to be.

(2) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to her religion or local custom does not appear in public, the distrainer shall give notice to that woman that she is at liberty to withdraw, and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing he may enter that room for the purpose of attaching goods therein, using at the same time every precaution consistent with these provisions to prevent their clandestine removal.

[L.N. 73/2000, s. 3.]

8. As soon as practicable after the attachment of goods under these Rules, the distrainer or distraint agent shall—

- (a) issue a receipt in respect thereof to the distrainee;
- (b) forward to the Commissioner a report containing an inventory of all items attached, the value of each item as estimated by the distrainer or distraint agent, the address of the premises at which the goods are kept pending sale, the name and address of the distraint agent in whose custody the goods have been placed and the arrangements, if any, made or to be made for the sale by public auction of the goods on the expiration of ten days from the date of attachment.

[L.N. 73/2000, s. 4.]

9. On the sale by public auction of goods attached under these Rules the distrainer shall cause the sale to be stopped when the sale has realized a sum equal to or exceeding the distress debt and the costs and expenses incurred by the distrainer, and thereupon any of the goods remaining unsold shall at the cost of the distrainee be restored to the distrainee.

10. Immediately after the completion of a sale by public auction of goods attached under these Rules, the distrainer shall make a return to the Commissioner specifying the items which have been sold, the amounts realized by the sale and the manner in which the proceeds of the sale were applied.

11. (1) Where a distrainee has, within ten days of attachment of his goods under these Rules, paid or given security accepted by the Commissioner for the whole of the tax due from him together with the whole of the costs and expenses incurred by the distrainer in

[Subsidiary]

executing the distress, the distrainor shall at the cost of the distrainee forthwith restore the attached goods to the distrainee and return the order to the Commissioner who shall cancel it.

(2) Any sum paid by a distrainee under this rule shall be applied by the Commissioner first in settlement of the costs and expenses incurred by the distrainor and as to the balance, if any, in settlement of the distress debt or such part thereof as the Commissioner shall direct.

12. Where any goods attached under these Rules include livestock, the distrainor may make appropriate arrangements for the transport, safe custody and feeding of the livestock and any costs and expenses incurred thereby shall be recoverable from the distrainee under rule 9 or 11 of these Rules, as the case may be, as costs and expenses incurred by the distrainor.

13. In addition to a claim for other costs and expenses which may be incurred by the Commissioner or the distrainor in levying any distress under these Rules there may be claimed by the distrainor and recovered under rule 9 or 11 of these Rules, as the case may be, costs at the rate specified in the Schedule to these Rules.

14. The maximum rates of remuneration which a distraint agent shall be entitled to demand from the distrainor for his assistance in executing a distress under these Rules, and which may be recovered by the distrainor under rule 9 or 11 of these Rules, as the case may be, shall be those specified in the Schedule to these Rules.

15. The maximum rate of commission to be paid to an auctioneer by the distrainor as remuneration for his services for the sale by public auction of goods attached under these Rules, and which may be recovered by the distrainor under rule 9 of these Rules, shall be five per cent of the amount realized on the sale, and where an auctioneer has also rendered services as a distraint agent, he shall be entitled, in addition to a commission under this rule, to remuneration for those services as provided in rule 14 of these Rules.

16. The rates of remuneration specified in the Schedule to these Rules shall be deemed to include all expenses of advertisements, inventories, catalogues, insurance and necessary charges for safeguarding goods attached under these Rules.

SCHEDULE

[L.N. 73/2000, s. 5, L.N. 83/2008, s. 3.]

RATES OF REMUNERATION

1. Distrainor’s Charges

Where no distress is levied and distress debt and any costs and expenses incurred by the distrainor are paid by the distrainee on demand or within thirty minutes thereafter the distrainee shall pay the distrainor the following costs—

	<i>Shs.</i>
(a) where the distress debt does not exceed Shs. 3,000	300
(b) where the distress debt exceeds Shs. 3,000	120

2. Distraint Agent’s Charges

(a) Where no distress is levied and the distress debt and any costs and expenses incurred by the distrainor are paid by the distrainee on demand or within thirty minutes thereafter the distraint agent shall be entitled to a remuneration of	Shs. 120
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[Subsidiary]

SCHEDULE—continued

- (b) For attaching goods or attaching and keeping possession thereof for ten days or part thereof, when the estimated value of the property, or the distress debt and costs and expenses, whichever is less—
 - (i) does not exceed Shs. 30,000 Four per cent thereof
 - (ii) exceeds Shs. 30,000 Three per cent thereof
- (c) Where the goods or any part thereof are sold by public auction, the distraint agent's charges shall instead be calculated in the manner directed in paragraph (b) above by reference to the total amount realized on sale after deduction of the auctioneer's commission under regulation 15.
- (d) For keeping possession of any attached goods after the expiration of $\frac{1}{4}$ per cent of the ten days from the date of attachment for each day, or part thereof value of the goods with a maximum of Shs. 60.
- (e) Reasonable expenses incurred by the distraint agent in transporting goods attached, and such travelling expenses by car, or a rateable proportion thereof, as the Commissioner may approve.

INCOME TAX (PRESCRIBED DWELLING-HOUSE) RULES, 1974

[L.N. 8/1974, L.N. 266/1986.]

1. These Rules may be cited as the Income Tax (Prescribed Dwelling-house) Rules, 1974.

2. For the purposes of paragraph 5(1)(b) of the Second Schedule to the Act the conditions with which a dwelling-house shall conform in order to be a prescribed dwelling-house shall be that the dwelling-house is certified by a Labour Officer, as defined in section 2 of the Employment Act (Cap. 226), as having been provided under section 9 of that Act.

[L.N. 266/1986, s. 2.]

INCOME TAX (RETIREMENT BENEFITS) RULES, 1994

ARRANGEMENT OF RULES

Rule

1. Citation.
 2. Interpretation.
 3. Existing schemes.
 4. Registration of pension funds.
 5. Registration of provident funds.
 6. Registration of individual retirement funds.
 7. Discretionary registration.
 8. Registration procedure.
 9. Alteration of scheme regulations to be notified.
 10. Withdrawal of registration.
 11. Revocation.
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[Subsidiary]

INCOME TAX (RETIREMENT BENEFITS) RULES, 1994

[L.N. 318/1974, L.N. 50/1980, L.N. 232/1988, L.N. 197/1994, L.N. 211/1995, L.N. 124/1996, L.N. 74/2000, L.N. 99/2001, L.N. 106/2001, L.N. 98/2002, L.N. 55/2004, L.N. 52/2005, L.N. 79/2008.]

1. Citation

These Rules may be cited as the Income Tax (Retirement Benefit) Rules, 1994, and shall come into operation on 17th June, 1994.

2. Interpretation

(1) In these Rules, unless the context otherwise requires—

“**employee**” means an employee participating in a registered scheme;

“**employer**” means a person carrying on a business wholly or partly in Kenya in connection with which a scheme is established;

“**pension**” includes a pension from employment and a retirement annuity;

“**scheme regulations**” means the regulations specifically governing the constitution and administration of a particular scheme;

“**trustee**” includes a person having the management or control of a fund or scheme.

(2) For the purposes of this rule and rules 8 and 9, “**scheme**” means a pension fund, a pension scheme, an individual retirement fund, a provident fund or trust fund.

3. Existing schemes

Subject to these Rules, a pension fund, pension scheme or provident fund which was established in Kenya and approved for the purposes of the Management Act or a trust scheme or annuity contract approved for the purposes of the Management Act, shall be deemed respectively to be a registered pension fund, registered pension scheme, registered provident fund, registered trust scheme and registered annuity contract for the purposes of the Act.

4. Registration of pension funds

A pension fund to which rule 3 does not apply shall, upon application being made under rule 8, be registered by the Commissioner for the purposes of the Act if he is satisfied that it—

- (a) is registered with the Retirement Benefits Authority; and
- (b) provides that all moneys payable thereunder shall be paid in Kenya; and
- (c) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and
- (d) provides that, in the case of a provident fund where a surplus is identified by the audit required under paragraph (j)(i), such surplus shall be allocated to the respective accounts of the members of the fund in lieu of new contributions by the employer in the year and subsequent years until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions by the employer; and
- (e) *deleted by L.N. 79/2008, s. 2;*
- (f) provides that the payment of pension shall not commence—
 - (i) until the retirement of the employee from service with the employer on or after the employee attains the age of fifty years; or

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- (ii) except upon earlier retirement on account of infirmity of mind or body; and
- (g) does not provide for the payment of sums on the death of an employee except a lump sum payable to the estate, or a lump sum or an annuity or both whether directly or indirectly payable to the widow or widower or dependants, of that employee; and
- (h) does not provide for the payment of an annuity, to the widow or widower of an employee, other than annuity for a term certain or during the life of that widow or widower or during the minority of a dependant of that employee; and
- (i) provides that, not more than one third of the pension or such other portion thereof as may be prescribed under the Retirement Benefits Act, 1997 (No. 3 of 1997), may be payable as a lump sum by way of commutation of a pension:
- Provided that benefits arising from additional voluntary contributions may be fully commuted;
- (j) provides that—
- (i) in the case of a defined contribution pension fund, an audit shall be carried out once every year during which all assets shall be valued at their current market prices and all surplus funds not allocated to the account of a member of the fund identified:
- Provided that, where the fund makes provision for a reserve fund, the amount of this reserve fund that does not exceed ten per cent of the market value of the assets may be excluded from the surplus funds not allocated to the account of a member of the fund;
- (ii) in the case of a defined benefit pension fund, an actuarial investigation shall be carried out by a certified actuary at least once every three years beginning from 1st January, 1995 during which any actuarial deficiency or surplus in the fund shall be determined;
- (iii) the audited accounts or the actuarial report as the case may be, shall be sent to the Commissioner of Income Tax, the Commissioner of Insurance and all members of the fund shall be notified of the availability of the audited accounts or actuarial report for scrutiny at the offices of the fund manager not later than thirty days from the date of the completion of the audit, or report; and
- (iv) any surplus funds identified shall appropriately be allocated to the respective accounts of the members, and upon the fund being wound up, the surplus funds shall be deemed to be the funds of the employer, unless the trust deed of such scheme specifies otherwise, and shall be required to be withdrawn and charged to tax in the hands of the employer; and
- (k) provides that, in the case of a defined contribution pension fund that maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, disability or death, as the case may be, in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the fund at that time.

[L.N. 211/1995, s. 2, L.N. 124/1996, s. 2, L.N. 74/2000, s. 2, L.N. 99/2001, s. 2, L.N. 106/2001, s. 2, L.N. 98/2002, s. 2, L.N. 55/2004, s. 2, L.N. 52/2005, s. 2, L.N. 79/2008, s. 2.]

[Subsidiary]

5. Registration of provident funds

A provident fund to which rule 3 does not apply shall, upon application being made under rule 8, be registered by the Commissioner for the purposes of the Act if he is satisfied that it—

- (a) is registered with the Retirement Benefits Authority; and
- (b) provides that all sums payable thereunder shall be paid in Kenya; and
- (c) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and
- (d) provides that in respect of any one employee, the aggregate of contributions for a year of income by the employee to registered pension and registered provident funds and by the employer on behalf of the employee under the defined contribution provisions of a registered fund shall together not exceed thirty per cent of the employee's pensionable income for that year of income or nine thousand pounds, or, where contributions are made in respect of part-year of service by the employee, seven hundred and fifty pounds per month whichever is less:

Provided that in the case of a provident fund where a surplus is identified by the audit required under paragraph (g)(i), such surplus shall be allocated to the account of members of the fund in lieu of contributions by the employer in the year and each subsequent year until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions by the employer; and

- (e) provides that—
 - (i) the maximum amount payable to an employee in respect of the employer's contribution shall not exceed thirty-six thousand pounds plus interest and other income accrued thereon in the fund; or
 - (ii) where the employee participates in more than one registered provident fund established by the employer, the limit of thirty-six thousand pounds plus interest and other accrued income shall apply to the total amounts so payable from all those funds; and
 - (iii) the fund shall consist only of contributions by the employer in respect of his employees, and contributions by those employees, together with interest and other accrued income thereon, and securities purchased out of the fund together with the interest paid on those securities; and
 - (iv) in the case of an employee who was a member of a registered provident fund prior to 7th June, 1990, the lump sum under subparagraphs (i) and (ii) may be paid after the completion of the specified period of service; or
 - (v) if the employee became a member of a registered provident fund after 7th June, 1990, the lump sum under subparagraphs (i) and (ii) shall apply only if the period of service with that employer is not less than five years except that the lump sum may be paid on deferred basis upon the employee attaining the age of fifty years; and
 - (vi) notwithstanding that the conditions set in subparagraphs (iv) and (v) have not been satisfied, a contributing employee who is a member of a registered provident fund may receive the full amounts payable under subparagraphs (i) and (ii) after attaining the age of fifty-five years or such earlier age as the Commissioner may permit but not before he attains the age of forty years; and
- (f) provides that all benefits derived from contributions made by an employee shall vest immediately in the employee; and

- (g) provides that—
- (i) an audit shall be carried out once every year during which all assets shall be valued at their market prices and all surplus funds not allocated to the account of a member of the fund identified:
 - (ii) the audited accounts shall be sent to the Commissioner of Income Tax, the Commissioner of Insurance, and all members of the fund notified of its availability for scrutiny at the offices of the fund manager, not later than thirty days from the date of completion of the audit; and
- (h) provides that, in the case of a provident fund that maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, disability or death, as the case may be, in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the fund at that time.

[L.N.211/1995, s. 3, L.N. 124/1996, s. 3, L.N. 74/2000, s. 3, L.N. 98/2002, s. 3, L.N. 55/2004, s. 3, L.N. 52/2005, s. 3.]

6. Registration of individual retirement funds

An individual retirement fund shall, upon application being made under rule 8, be registered by the Commissioner for the purposes of this Act if he is satisfied that it—

- (a) is registered with the Retirement Benefit Authority; and
- (b) provides that all sums payable thereunder shall be paid in Kenya; and
- (c) provides that the only contributions received shall be—
 - (i) funds transferred from another registered fund or registered individual retirement fund under section 22A(5) of the Act where the Commissioner has been duly informed of the transfer of funds; or
 - (ii) contributions by or on behalf of an individual who qualifies for a deduction under section 22B of the Act; and
- (d) provides that the funds shall be invested in qualifying assets; and
- (e) provides that no loan or other benefit shall be provided out of the fund to the beneficiary or any person not dealing at arm's length with that beneficiary; and
- (f) provides that an individual beneficiary can direct that all funds in his individual retirement fund be transferred to another such account with the same or another qualified institution without unreasonable delay and with notification of the Commissioner; and
- (g) provides that the payment of pension shall not commence until retirement after the attainment of the age of fifty years or upon earlier retirement on the grounds of ill health or infirmity of body or mind or on leaving the country permanently; and
- (h) *deleted by L.N. 55/2004, s. 4;*
- (i) provides that upon the death of the beneficiary the funds shall be distributed or transferred as legally required; and
- (j) provides that all benefits derived from contributions by or on behalf of an individual shall vest in that individual immediately.

[L.N. 98/2002, s. 4, L.N. 55/2004, s. 4.]

7. Discretionary registration

The Commissioner may, subject to such conditions as he thinks fit, register, for the purposes of the Act, another pension fund or provident fund which does not fully comply with every requirement of rule 4, 5 or 6 but which in his opinion substantially so complies.

[Subsidiary]

8. Registration procedure

(1) Application for the registration of a scheme under rule 4, 5, 6 or 7 shall be made by the trustee of the scheme to the Commissioner in writing accompanied by two copies of the trust deed or other documents constituting the scheme and the scheme regulations.

(2) The Commissioner shall, as soon as practicable after considering the application, notify the trustee in writing whether the scheme is acceptable for registration, and the same notification shall specify either—

- (a) the reason therefor, if it is not acceptable; or
- (b) the year of income in respect of which the registration is first to take effect, if it is so acceptable.

9. Alteration of scheme regulations to be notified

Where an alteration is made to scheme regulations, the trustee of the scheme shall immediately inform the Commissioner in writing thereof and such alteration shall not be effective unless written approval is received from the Commissioner.

10. Withdrawal of registration

(1) The Commissioner may at any time, by notice in writing to the trustee of a scheme, withdraw the registration of—

- (a) a registered pension fund (whether registered under rule 3 or 4) the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 4; or
- (b) a registered provident fund (whether registered under rule 3 or 5) the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 5; or
- (c) a registered individual retirement fund the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 6; or
- (d) a scheme registered under rule 7 which he is satisfied on reasonable grounds no longer meets the requirements of that rule or which has failed or ceased to fulfil any conditions of registration imposed under that rule; or
- (e) a registered pension scheme or registered trust scheme, the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer fulfils the conditions under which it was approved under the Management Act except where those conditions have been varied by these Rules; or
- (f) a scheme the accounts of which fail or cease to be maintained to the satisfaction of the Commissioner.

(2) A withdrawal of registration under this rule shall take effect from the beginning of the year of income in which the grounds for that withdrawal arose or such later date as the Commissioner may determine.

11. Revocation

The Income Tax (Retirement Benefit) Rules, 1993 are revoked.

INCOME TAX (REGISTERED HOME OWNERSHIP SAVINGS PLAN) RULES, 1995

ARRANGEMENT OF RULES

Rule

1. Citation and commencement.
 2. Interpretation.
 3. Application for registration.
 4. Requirements for registration.
 5. Notification of registration.
 6. Supply of information to the Commissioner.
 7. Alteration of trust deed, rules, etc.
 8. Withdrawal of registration.
-

[Subsidiary]

INCOME TAX (REGISTERED HOME OWNERSHIP SAVINGS PLAN) RULES

[L.N. 210/1995, L.N. 82/2007.]

1. Citation and commencement

These Rules may be cited as the Income Tax (Home Ownership Savings Plan) Rules, 1995, and shall come into operation on the 1st January, 1996.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**institution**” means an approved institution operating a home ownership savings plan registered in accordance with these Rules;

“**Plan**” means a home ownership savings plan;

“**qualifying deposits**” means—

- (i) funds transferred from another Plan under section 22C of the Act; or
- (ii) any deposits which qualify for a deduction under section 22C of the Act.

3. Application for registration

(1) An approved institution offering a home ownership savings plan to depositors may apply to the Commissioner for registration of the Plan for the purposes of the Act.

(2) An application under this rule shall—

- (a) be made in writing addressed to the Commissioner;
- (b) be signed by two of the officials of the approved institution;
- (c) be accompanied by two certified copies of either the trust deed, or any rules or other document constituting the plan.

[L.N. 82/2007, s. 2.]

4. Requirements for registration

The Commissioner may, on receipt of an application under rule 3, register a Plan if—

- (a) it is established in Kenya;
- (b) the trust deed, rules or other document constituting the Plan provide that—
 - (i) all sums held on account of a depositor shall be used to purchase or construct a permanent house in Kenya;
 - (ii) no deposit made or benefit accruing or payable to the depositor shall be pledged as security for a loan or shall be capable of assignment unless the depositor dies;
 - (iii) upon the death of the depositor, the balance of the funds in his account shall be transferred to his spouse, any of his children who have attained the age of eighteen years or any relative of the depositor who is a qualifying individual without closing the account;
 - (iv) only qualifying deposits may be made by a depositor under the Plan;
 - (v) *deleted by L.N. 82/2007, s. 3;*
 - (vi) no loan or other benefit shall be provided out of the account to the depositor or to any person not dealing at arm's length with the depositor;

[Subsidiary]

- (vii) a depositor may, subject to the approval of the Commissioner, direct that all funds held in his account be transferred to another institution operating a similar Plan without undue delay;
- (viii) the depositor may at any time on or before the ninth year after the qualifying year withdraw all the sums deposited without deduction of tax to purchase or construct a permanent house for his occupation:
Provided that any excess amount of the withdrawal not used for the purchase or construction of the house shall be subject to tax;
- (ix) in every year starting with the qualifying year up to the tenth year the depositor shall make in his account an annual deposit of up to thirty thousand shillings;
- (x) upon the death of the depositor, any funds held in his account shall be transferred as provided in these Rules and any sums not applied towards the purchase or construction of a permanent house shall be subject to tax;
- (xi) in the case of expenditure on an existing house, no distinction shall be made between the value of the existing building and the land on which it stands;
- (xii) in the case of the construction of a house, qualifying expenditure shall consist of construction services and building material supported by such evidence as the Commissioner may require;
- (xiii) all funds in a depositor's account shall be withdrawn as a lump sum by the end of the ninth year following the qualifying year.

[L.N. 82/2007, s. 3.]

5. Notification of registration

The Commissioner shall, as soon as reasonably practicable after considering the application, notify the applicant in writing whether or not the Plan is acceptable for registration, and the same notification shall specify either—

- (a) the reason therefor, if it is not acceptable; or
- (b) the year of income in respect of which the registration is first to take effect, if it is acceptable.

6. Supply of information to the Commissioner

An institution shall, in respect of every depositor saving under a Plan, forward to the Commissioner—

- (a) the personal identification number of the depositor;
- (b) a certified copy of an affidavit sworn by the depositor confirming that he does not directly or indirectly own and has not previously directly or indirectly owned and has not previously directly or indirectly owned any interest in a permanent house;
- (c) the amount of deposits, mode of investment and any withdrawals thereof;
- (d) such other information as the Commissioner may from time to time require.

7. Alteration of trust deed, rules, etc.

Where an alteration is made to the trust deed, the rules or other document constituting the Plan, the institution shall forthwith notify the Commissioner in writing and such alteration shall not be effective unless written approval thereof is received from the Commissioner.

[Subsidiary]

8. Withdrawal of registration

(1) The Commissioner may, by notice in writing to the institution, withdraw the registration of a Plan if—

- (a) the provisions of the trust deed, the rules or other document constituting the Plan have either been breached or so altered that the Plan no longer meets the requirements of the Act or these Rules; or
- (b) the accounts of the Plan fail or cease to be maintained to the satisfaction of the Commissioner.

(2) A withdrawal of registration under this rule shall take effect from the beginning of the year of income in which the grounds for that withdrawal arose or such later date as the Commissioner may determine, and the accumulated funds thereof shall be taxed in the year in which the registration is withdrawn.

INCOME TAX (VENTURE CAPITAL ENTERPRISE) RULES, 1997

ARRANGEMENT OF RULES

Rule

1. Citation and commencement.
 2. Interpretation.
 3. Registration of venture capital companies.
 4. Prohibited activities.
 5. Registration procedure.
 6. Withdrawal of registration.
-

[Subsidiary]

INCOME TAX (VENTURE CAPITAL ENTERPRISE) RULES, 1997

[L.N. 103/1997, L.N. 31/2008, L.N. 82/2008.]

1. Citation and commencement

These Rules may be cited as the Income Tax (Venture Capital Enterprise) Rules, 1997 and shall be deemed to have come into operation on the 1st September, 1996.

[L.N. 82/2008, s. 3.]

2. Interpretation

In these Rules, unless the context otherwise requires—

“**eligible activities**” means activities other than those listed in rule 4 of these Rules;

“**fund manager**” means a person licensed by the Capital Markets Authority under the provisions of the Capital Markets Authority Act (Cap. 485A) for the purpose of managing a venture capital enterprise;

“**venture capital enterprise**” means a company incorporated in Kenya for the purpose of investing in new or expanding venture capital enterprise.

[L.N. 31/2008, s. 2, L.N. 82/2008, s. 4.]

3. Registration of venture capital companies

A venture capital enterprise shall, upon application under rule 5, be registered by the Commissioner for the purposes of this Act if the Commissioner is satisfied that—

- (a) it is incorporated in Kenya; and
- (b) it is incorporated for the purpose of investing in new or expanding venture capital enterprises; and
- (c) it is registered by the Capital Markets Authority; and
- (d) it is managed by a fund manager; and
- (e) seventy-five per cent or more of its portfolio of investable funds is invested by way of equity or quasi-equity investment in venture capital enterprises; and
- (f) the primary activities of the venture capital enterprise in which it has invested are approved activities.

[L.N. 31/2008, s. 3, L.N. 82/2008, s. 5.]

4. Prohibited activities

The primary activities of a venture capital enterprise shall not include—

- (a) trading in real property;
- (b) banking and financial services; or
- (c) retail and wholesale trading services.

[L.N. 31/2008, s. 4, L.N. 82/2008, s. 6.]

5. Registration procedure

(1) An application for registration of a venture capital enterprise under rule 3 shall be made in writing and shall be accompanied by—

- (a) two copies each of the company's—
 - (i) memorandum of articles of association;

- (ii) certificate of incorporation;
- (iii) certificate of registration by the Capital Markets Authority;
- (iv) Personal Identification Number Card;
- (b) the fund manager's licence under the Capital Markets Authority Act;
- (c) any other information as may be required by the Commissioner.

(2) The Commissioner shall, as soon as practicable after considering the application, notify the fund manager in writing whether the venture capital enterprise is acceptable for registration, and the same notification shall specify either—

- (a) the reason therefore, if it is not acceptable; or
- (b) the year of income in respect of which the registration is first to take effect, if it is so acceptable.

[L.N. 31/2008, s. 5, L.N. 82/2008, s. 7.]

6. Withdrawal of registration

(1) The Commissioner may at any time, by notice in writing to the fund manager, withdraw the registration of a venture capital company if in the opinion of the Commissioner, that venture capital company no longer qualifies for registration under these Rules.

(2) A withdrawal of registration under this Rule shall take effect from the beginning of the year of income in which the grounds for that withdrawal arose or such later time as the Commissioner may determine.

INCOME TAX (WITHHOLDING TAX) RULES, 2001

ARRANGEMENT OF RULES

Rule

1. Citation and commencement.
 2. Interpretation.
 3. Application of section 128 of the Act.
 4. Deduction of withholding tax.
 5. Maintenance of records.
 6. Certificate of tax deduction.
 7. Dispute in calculation of withholding tax.
 8. Payment of withholding tax.
 9. Person failing to pay tax or provide required certificate.
 10. Recovery of tax.
 11. Withholding return at end of each year.
 12. Inspection of personal records.
 13. Death of an individual.
 14. Change in circumstances of a person.
 - 14A. Penalty for failure to deduct or remit withholding tax.
 15. General penalty.
-

[Subsidiary]

INCOME TAX (WITHHOLDING TAX) RULES, 2001

[L.N. 100/2001, L.N. 96/2002, L.N. 54/2004.]

1. Citation and commencement

These Rules may be cited as Income Tax (Withholding Tax) Rules, 2001.

2. Interpretation

In these Rules, unless the context otherwise requires:—

“**Commissioner**” includes an officer authorised in writing by the Commissioner to exercise the powers or to perform functions conferred upon the Commissioner under these Rules;

“**payee**” means a person who receives income from a payer after deduction of withholding tax;

“**payer**” means a person who deducts withholding tax for the purposes of these Rules;

“**withholding tax**” means tax subject to deduction as determined in accordance with the provisions of the Act and these Rules;

“**withholding tax rate**” means the respective rate of tax set out in the Third Schedule as applicable to the specified class of income;

“**withholding tax deduction card**” means a deduction card, in such form as the Commissioner may provide, or such other document corresponding to a withholding tax deduction card as may be authorised by the Commissioner in any particular case, and on which the information that the Commissioner may direct with respect to tax is recorded.

3. Application of section 128 of the Act

Section 128 of the Act shall apply to a notice or other document which is authorised or required to be given, served or issued by the Commissioner under these Rules.

4. Deduction of withholding tax

(1) A person who makes a payment of, or on account of, any income which is subject to withholding tax shall deduct tax therefrom in the amount specified—

- (a) under paragraphs 3 and 5 of Head B of the Third Schedule; and
- (b) where the Government of Kenya has double taxation agreement with the Government of another country, in the terms of that agreement:

Provided that the rates of tax under this subrule shall not exceed the rates specified under paragraph (a).

(2) A person who fails to comply with the requirement of subrule (1) commits an offence.

5. Maintenance of records

(1) On the occasion of making a payment, a person shall keep a record in respect of, name of payee, Personal Identification Number (PIN), gross amount paid, nature of payment and amount of tax deducted.

(2) A person shall, on the tax deduction card or such other document as may be authorised by the Commissioner, record such particulars as the Commissioner may direct in respect of that payment.

(3) Any person who fails to comply with subrule (1) or (2) commits an offence.

6. Certificate of tax deduction

Upon making a payment and deducting withholding tax in any month, the person making the payment shall furnish the payee with a certificate showing the gross amount paid, the total tax deducted and such other particulars as the Commissioner may require.

7. Dispute in calculation of withholding tax

(1) If a person to whom payment is made under paragraph 6 is aggrieved by reason of the nature of a payment and the rate of withholding tax applied and is unable to reach an agreement with the payer—

- (a) the payer may inform the payee of his rights under this rule and shall, at the request of the payee furnish him with a written statement showing the manner in which the payer calculated the tax deducted;
- (b) the payee may give a notice of objection in writing to the Commissioner, but that notice shall be valid only if—
 - (i) it states precisely the grounds of his objection;
 - (ii) there is enclosed therewith the written statement furnished by the payer; and
 - (iii) it is received by the Commissioner within thirty days of the date on which the statement from the payer under paragraph (a) was received by the payee.

(2) On receipt of a notice of objection under this rule, the Commissioner shall consider the objection and, subject to and in accordance with these Rules, may amend the calculation or reject the objection.

(3) The Commissioner shall notify the payer and the payee in writing of his decision on the objection and thereafter, on the occasion of making payment to the payee the calculation of the tax shall be in accordance with that decision.

(4) Notwithstanding that a valid objection has been made, on the occasion of making a payment to the payee from which tax is to be deducted in accordance with these Rules, the amount of tax to be deducted shall be in accordance with the calculation made by the payer until the payor is notified by the Commissioner of his decision on the objection.

(5) Any amount of tax in excess of the amount found to be payable upon calculation by the Commissioner under subrules (3) and (4) shall be refunded to the payee.

8. Payment of withholding tax

(1) On or before the twentieth day of the month following the month in which the deduction is made or before such other day as may be notified to him by the Commissioner, a person shall, subject to subparagraph (3), pay to the Commissioner or to such other person as the Commissioner may direct, all amounts of tax deducted in accordance with the Act and these Rules.

(2) The tax remitted shall be accompanied by an appropriate return showing the name of the payee, the gross amount of payment, the amount of tax deducted and such other information as the Commissioner may specify.

(3) Where no withholding tax is deducted, a person shall furnish the Commissioner with a certificate, in such form as the Commissioner may prescribe, showing that no tax was deducted in that month.

(4) A person whom the Commissioner has, under paragraph (1), directed to receive withholding tax on his behalf shall keep a record of payment in such form as the Commissioner may direct and shall enter therein particulars of all tax paid to him.

[Subsidiary]

(5) A person who, having deducted tax under these Rules, fails to remit tax within the time prescribed under this rule, account for such tax deducted or who fails to comply with subrule (2), commits an offence.

9. Person failing to pay tax or provide required certificate

(1) If, on the twentieth day following the month in which the deduction is made or before such later day as may have been notified to him by the Commissioner, a person has paid no tax under rule 8(1) for that month and the Commissioner is unaware of the amount, if any, which the person is liable to pay, or the person has failed to provide the certificate mentioned in paragraph (3) of that rule, the Commissioner may give notice to the person requiring him to render within the time specified in the notice, a return showing the name of every person to whom he made any payment which is subject to withholding tax in the period stated in the notice, together with particulars with regard to each person that notice may require, being particulars of—

- (a) a calculation of tax under rule 4 appropriate to each person's case;
- (b) the payment of amounts subject to withholding tax made to that other person during that period; and
- (c) any other matter affecting the calculation of the tax which the person was liable under these Rules to deduct from the payments subject to withholding tax during that period.

(2) The Commissioner shall ascertain and certify to the best of his knowledge and belief the amount of tax which the person would have been liable to pay under rule 8 in respect of that period in question had he complied with the provisions of these Rules.

(3) The production of the return made by the person under paragraph (1), and of the certificate of the Commissioner under paragraph (2), shall be sufficient evidence that the amount shown in the certificate is the amount of tax which the person would have been liable to pay under rule 8 in respect of the period in question had he complied with the provisions of these Rules and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

(4) Where a notice given by the Commissioner under paragraph (1) extends to two or more consecutive months, these Rules shall have effect as if those consecutive months were one month.

(5) If the Commissioner is not satisfied that the amount of tax paid in respect of a period is the full amount which the person would have been liable to pay under rule 8 had he complied with these Rules, he may notwithstanding that an amount of tax has been paid by the person under that rule in respect of that period give a notice under paragraph (1) of this rule and thereupon this rule shall have effect in the subsequent periods.

10. Recovery of tax

For the purpose of the recovery of tax which a person would have been liable to pay under rule 8 had he complied with the provisions of these Rules, that person shall be deemed to have been appointed an agent of his payee under section 96 of the Act.

11. Withholding return at end of each year

(1) Not later than two months after the end of each year, a person shall render to the Commissioner a statement and declaration in the form that the Commissioner may provide or authorise in respect of each person to whom payment is made at any time during the year, showing such particulars as the Commissioner may require.

(2) Where a person ceases to carry on business before the end of any year of income, he shall carry out the requirements of this rule within one month of cessation.

[Subsidiary]

(3) Any person who fails to render a return to the Commissioner within two months after the end of a year as required under subrule (1), commits an offence.

12. Inspection of personal records

(1) A person liable to pay withholding tax shall, when called upon to do so by the Commissioner, shall produce for inspection at his premises or at any place the Commissioner may require—

- (a) all accounts, books of accounts, documents and other records relating to the calculation of, and on account of payments which are subject to withholding tax in respect of the period which may be specified by the Commissioner; and
- (b) any other books, documents and records which may be specified by the Commissioner, which shall be written in English or such other language which the Commissioner may allow.

(2) The Commissioner may, on the occasion of an inspection under this rule, prepare a certificate, base on the information obtained from the inspection, showing—

- (a) the tax which it appears from the documents and records produced that the person would have been liable to pay under rule 8 for the period covered by the inspection had he complied with the provisions of these Rules;
- (b) the tax which, to the best of his knowledge and belief, has not been paid as the Commissioner had directed.

(3) The production of the certificate referred to in paragraph (2) shall be sufficient evidence that the person is liable to pay, in respect of the period mentioned in the certificate, the amount shown therein pursuant to paragraph (2)(b), and a document purporting to be such certificate shall be deemed to be such certificate until the contrary is proved.

[L.N. 96/2002, s. 2.]

13. Death of an individual

If an individual dies, anything which he would have been liable to do under these Rules shall be done by his personal representatives, or, in the case of an individual who made payments on behalf of another person, by the person succeeding him, or if no person succeeds him, by the person on whose behalf he made those payments.

14. Change in circumstances of a person

Where there has been a change in the payer, the payer after the change shall in relation to a matter arising after such change, be liable to do anything which the payer before the change would have been liable to do under these Rules if the change had not taken place.

14A. Penalty for failure to deduct or remit withholding tax

For the purposes of section 35(6) of the Act, where a person, when under obligation to do so, fails—

- (a) to make a deduction described in section 35(6)(a) of the Act, in accordance with rule 4; or
- (b) to remit an amount of tax deducted, as described in section 35(6)(b) of the Act, in accordance with rule 8,

the Commissioner may impose a penalty equal to ten per cent of the amount of the tax involved, subject to a maximum penalty of one million shillings.

[L.N. 54/2004, s. 2.]

[Subsidiary]

15. General penalty

A person convicted of an offence under these Rules shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

INCOME TAX (LEASING) RULES, 2002

ARRANGEMENT OF RULES

Rule

1. Citation.
 2. Interpretation.
 3. Income chargeable to tax.
 4. Deduction.
 5. Capitalisation of assets.
 6. Register.
 7. *Deleted.*
 8. Where lease is terminated.
 9. *Deleted.*
 10. Cross-border lease.
-

[Subsidiary]

INCOME TAX (LEASING) RULES, 2002

[L.N. 52/2002, L.N. 69/2006, L.N. 83/2007, L.N. 81/2008, L.N. 91/2009.]

1. Citation

These Rules may be referred to as the Income Tax (Leasing) Rules, 2002.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**asset**” includes equipment, but excludes land and buildings;

“**Commissioner**” includes an officer authorized in writing by the Commissioner to exercise the powers or to perform functions conferred upon the Commissioner under these Rules;

“**cross-border lease**” means a leasing contract entered into between a person resident in Kenya and another person resident in a different tax jurisdiction;

“**finance lease**” means a contract which the lessor agrees to lease assets to the lessee for a specified period of time where the risks and rewards associated with ownership of the assets are substantially transferred from the lessor to the lessee, but with the title to the assets always remaining with the lessor;

“**hire purchase**” means a contract under which the lessor agrees to lease the assets to the lessee for a specified period of time, with the intention of transferring ownership on the expiry of the lease;

“**lease**” means a contract by which a person owning assets grants to a lessee the right to possess, use and enjoy such assets for a specified period of time in exchange for periodic payments:

Provided that any contract whose term is less than six months shall not be deemed to be a lease;

“**lessee**” means a person who leases from the owner or lessor of the assets and in return for use of such assets pays periodic payments to the lessor;

“**lessor**” means a person who leases an asset to a lessee;

“**operating lease**” means a contract under which the lessor agrees to lease the assets to the lessee for specified periodical payments where the title to the assets and the risks and rewards associated with ownership substantially remain with the lessor.

[L.N. 83/2007, s. 2, L.N. 81/2008, s. 2.]

3. Income chargeable to tax

(1) All income accruing to a lessor from payments made in respect of an operating or finance lease shall be chargeable to tax in accordance with the provisions of the Act.

(2) All income accruing under paragraph (1) shall be subject to withholding tax at the rates applicable to resident or non-resident persons under the Act.

[L.N. 69/2006, s. 2.]

4. Deduction

Notwithstanding paragraph 3—

(a) a lessor shall be entitled to claim a deduction—

(i) for the wear and tear of the leased assets in accordance with paragraph 9 of the Second Schedule to the Act; and

[Subsidiary]

- (ii) in respect of all other expenditure incurred wholly and exclusively in the production of the income in accordance with section 15 of the Act;
- (b) a lessee shall take as a deduction the full amount of the payments made to the lessor:

Provided that a deduction under these Rules shall be granted where the Commissioner is satisfied—

- (i) in the case of a lessor, that the expenditure in respect which the deduction is sought is incurred by the lessee wholly and exclusively in the production of income chargeable to tax; and
- (ii) in the case of a lessee, that the sole consideration for payment in respect of which the deduction is sought is the use of, or the right to use, an asset.

5. Capitalisation of assets

(1) For the purposes of these Rules, assets to which these Rules relate shall be capitalized in the books of the lessor, and where the same are sold off upon expiration of the lease, the difference between the sale price and book value shall be deemed to be a gain or loss to the lessor, as the case may be, for purposes of assessment.

(2) Assets leased under these Rules shall not be capitalized the books of the lessee.

[L.N. 83/2007, s. 3.]

6. Register

The lessor shall maintain a separate register for all lease assets.

7. Deleted by L.N. 81/2008, s. 3.

8. Where lease is terminated

(1) Where, upon termination of a lease in respect of which the lessee is entitled to any tax deduction, and with the express or implied consent or acquiescence of the lessor the lessee is allowed to use, enjoy or deal with the asset as the lessee may deem fit—

- (a) without the payment of any consideration; or
- (b) subject to the payment of any consideration which is nominal in relation to the fair market value of the asset; or
- (c) if the asset is transferred to the lessee passes for an amount less than the market value,

the lessee shall be deemed to have acquired the asset and the Commissioner shall recover the deductions previously enjoyed by the lessee in respect of such assets with effect from the date of the commencement of the lease and appropriate adjustments made for each year of income when the lease payments were claimed.

(2) Where an acquisition is deemed under paragraph (1) the lessee shall be allowed to depreciate the amount recovered based on the wear and tear deduction applicable to the class of asset which shall be computed on the total lease payments recovered under paragraph (1), with effect from the year of income in which the lease commenced.

(3) Where a lessee is allowed wear and tear as computed under paragraph (2), similar adjustments shall be made in the tax computation of the lessor to bring to charge the wear and tear previously claimed by the lessor.

[L.N. 91/2009, s. 2.]

9. Deleted by L.N. 81/2008, s. 4.

[Subsidiary]

10. Cross border lease

(1) Where a lessor in Kenya enters a cross-border lease, the gross lease payments made to the lessor shall be deemed to be income chargeable to tax.

(2) Where a lessee in Kenya enters into a cross-border lease, the gross lease payments made by such lessee shall be deemed to be income derived from Kenya and shall be subject to withholding tax in accordance with the Act.

INCOME TAX (NATIONAL SOCIAL SECURITY FUND) (EXEMPTION) RULES, 2002

ARRANGEMENT OF RULES

Rule

1. Citation and commencement.
 2. Interpretation.
 3. Conditions for Exemption.
 4. Commissioner to report to Minister.
 5. Penalty.
-

[Subsidiary]

INCOME TAX (NATIONAL SOCIAL SECURITY FUND) (EXEMPTION) RULES, 2002

[L.N. 97/2002.]

1. Citation and commencement

These Rules may be cited as the Income Tax (National Social Security Fund) (Exemption) Rules, 2002 and shall come into operation on the 1st July, 2002.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**Board of Trustees**” means the National Social Security Fund Board of Trustees constituted under section 4 of the National Social Security Fund Act (Cap. 258);

“**accounting period**” has the meaning assigned to it in section 2 of the Act;

“**Commissioner**” means the Commissioner of Income Tax;

“**National Social Security Fund**” means the National Social Security Fund established under section 3 of the National Social Security Fund Act (Cap. 258) and

“**Fund**” shall be construed accordingly.

3. Conditions for Exemption

The income of the National Social Security Fund shall be exempt from income tax subject to the following conditions being complied with by the National Social Security Fund Board of Trustees—

- (a) the Board of Trustees shall cause the accounts of the Fund to be audited every year;
- (b) the Board of Trustees shall ensure that the annual audit includes—
 - (i) the determination of the market value of the assets of the Fund;
 - (ii) the determination of the surplus amount of the market value, not allocated to the account of a member of the Fund, excluding the reserve fund that does not exceed ten per cent of the market value of the Fund in the year of audit.
- (c) the Board of Trustees shall allocate the surplus amount to the respective accounts of individual members in proportion to the value of the amounts allocated to the accounts of all members of the Fund from time to time.
- (d) the Board of Trustees shall cause the audit report to be published, in the *Gazette* and in at least two newspapers of national circulation within nine months of the end of the accounting period of the Fund and shall include a full listing of the assets of the Fund at book and market values;
- (e) the Board of Trustees shall submit the annual audit report to the Commissioner within nine months of the end of the accounting period to which the audit report relates.

4. Commissioner to report to Minister

The Commissioner shall, within twelve months of the receipt of the Audit report under rule 3(e), send a report in writing to the Minister on the level of compliance with the conditions laid down in regulation 3 by the Board of Trustees.

5. Penalty

Failure by the Board of Trustees to comply with the conditions of rule 3 shall cause the Board of Trustees to be liable to a penalty not exceeding ten thousand shillings for every such failure.

INCOME TAX (REGISTERED UNIT TRUSTS/COLLECTIVE INVESTMENT SCHEMES) RULES, 2003

[L.N. 40/2003.]

1. These Rules may be cited as the Income Tax (Registered Unit Trusts/Collective Investment Schemes) Rules, 2003.
2. A unit trust or collective investment scheme shall, upon application being made under rule 3, be registered by the commissioner for the purposes of section 20 of the Act if he is satisfied that—
 - (a) the unit trust or collective investment scheme shall undertake portfolio investment in accordance with the policies and guidelines under the Capital Markets Act (Cap. 485A);
 - (b) the sole purpose of the unit trust or collective investment scheme is to carry on investments on behalf of the unit holders or shareholders;
 - (c) after six months of commencement of the unit trust or collective investment scheme no unit holder or shareholder shall own or be capable of holding more than twelve and one-half per cent (12½ %) of the units or shares in any one unit trust or collective investment scheme; and
 - (d) it will, within six months of its commencement and thereafter, maintain at least twenty-five unit holders or shareholders.
3. (1) Application for the registration of a unit trust or collective investment scheme shall be made by the manager or trustee of the unit trust or collective investment scheme to the Commissioner in writing and shall be accompanied by two copies of the trust deed and a copy of the licence issued under Capital Markets Act (Cap. 485A).

(2) The Commissioner shall, as soon as practicable after considering the application, register the unit trust or collective investment scheme and notify the manager or trustee in writing the year of income in respect of which the registration is to take effect.
4. Where unit holders or shareholders in any unit trust or collective investment scheme are exempt persons under the First Schedule to the Act, the manager or trustee of the unit trust or collective investment scheme shall maintain separate but identifiable account of the funds of such persons.
5. The Income Tax (Registered Unit Trusts) Rules, 1990 (L.N. 215/1990), are revoked.

**DOUBLE TAXATION RELIEF (THE UNITED REPUBLIC OF TANZANIA AND THE
REPUBLIC OF UGANDA) NOTICE, 1999**

[L.N. 45/1999.]

IN EXERCISE of the powers conferred by section 41 of the Income tax Act, the Minister of finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the government of the republic of Kenya, the United Republic of Tanzania and the Republic of Uganda in articles of agreements signed on 28th April, 1997, with a view to affording relief from double taxation in relation to income tax under the Income Tax Act and any taxes of similar character imposed by the laws of the United Republic of Tanzania and the Republic of Uganda shall notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Governments of the Republic of Kenya, the United republic of Tanzania and the Republic of Uganda, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

ARTICLE 1 – *Personal Scope*

The agreement shall apply to persons who are residents of on or any of the other Contracting States.

ARTICLE 2 – *Taxes Covered*

1. This agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wags or salaries paid by enterprises.
3. The existing taxes to which this agreement shall apply are—
 - (a) in Kenya the income tax chargeable in accordance with the provisions of the Income Tax Act (Cap. 470)
 - (b) in Tanzania the tax on income chargeable under the Income Tax Act 1973 (Act 33 of 1973); and
 - (c) in Uganda the tax on income chargeable under the Income Tax Decree of 1974 (Decree 1 of 1974).
4. This agreement shall apply to any other taxes of identical or substantially similar character which are imposed by any of the contracting States after the date of signature of this agreement in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article, of this agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of exchange of notes.

[Subsidiary]

ARTICLE 3 – *General Definitions*

In this agreement, unless the context otherwise requires.

1. (a) The term “**Company**” means any body corporate or any entity which is treated as a company or body corporate for tax purposes.

(b) the term “**competent authority**” means—

- (i) in Kenya, the Minister for the time being responsible for finance or his authorised representative;
- (i) in Tanzania, the Minister for the time being responsible for finance or his authorized representative; and
- (i) in Uganda, the Minister for the time being responsible for finance or his authorized representative.

(c) The term “**international traffic**” means any transport by sea or air, operated by an enterprise which has its place of effective management in a Contracting State, except when the transport is operated solely between places within a Contracting State.

(d) The term “**national**” means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State.

(e) The term “person” includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.

2. In the application of the provisions of this agreement by a contracting State, any term not otherwise defined, shall, unless the context otherwise requires, have the meaning which it has under the laws of that State in relation to the taxes which are the subject of this agreement.

ARTICLE 4 – *Resident*

1. For the purposes of this agreement, the term – “**resident of a Contracting State**” - means any person who under the laws of that state, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature. this term does not include any person who is liable to tax in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of more than one of the contracting States, then his status shall be deemed in accordance with the following rules—

- (a) he shall be deemed to be a resident of the state in which he has a permanent home available to him in two or more states, he shall be deemed to be a resident of the state with which his personal and economic relations are closer (centre of vital interest);
- (b) if the state in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in any of the contracting states, he shall be deemed to be a resident of the state in which he has an habitual abode;
- (c) if he has an habitual abode in two or more States or none of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of two or more States or of none of them the competent authorities of the Contracting States shall settle the question by mutual agreement.

[Subsidiary]

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of two or more Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5 – *Permanent Establishment*

1. For the purpose of this agreement, the term “**permanent establishment**” means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term “permanent establishment” shall include—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (h) an installation or structure used for the exploration of natural resources.

3. The term “permanent establishment” likewise encompasses—

- (a) a building suite or a construction, installation or assembly project or supervisory activities in connection therewith only if the site, project or activity lasts for more than 6 months;
- (b) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating more than 6 months within any 12 months period.

4. Notwithstanding the preceding provisions of this article, the term “**permanent establishment**” - shall be deemed not to include—

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise; or for collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose for carrying on, for the enterprise any other activity of a preparatory or auxiliary character; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

[Subsidiary]

5. Notwithstanding the provisions of paragraph 1 and 2 of this Article, a person acting in a Contracting state on behalf of an enterprise of any of the other Contracting States (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first mentioned State shall be deemed to have a permanent establishment in that State if—

- (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of any of the other Contracting States, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.

2. The term “**immovable property**” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions for general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed; payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

4. Notwithstanding the preceding provisions of this Article, the term “**permanent establishment**” shall be deemed not to include—

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise; or for collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and

[Subsidiary]

- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraph 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of any of the other Contracting States (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if, from the direct use, letting or use in any other form of movable property and to income from the alienation of such property.

6. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7 – Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in any of the other Contracting States through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributed to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in any of the other Contracting States through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment—

- (a) there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State; and
- (b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprises or any of its other offices, by way of royalties, fees or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the results shall be in accordance with the principles contained in this Article.

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5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other articles of this agreement, then the provisions of those articles shall not be affected by the provisions of this Article.

ARTICLE 8 – Shipping and Air Transport

1. Profits of an enterprise from the operation or rental of ships or aircraft in international traffic and the rental of container and related equipment which is incidental to the operations of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
3. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 – Associated Enterprises

(1) Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income which would, but for those conditions have accrued to one of the enterprises, but, by reason of those conditions, not so accrued, may be included in the income of that enterprise and taxed accordingly.

(2) Where a contracting State includes in the income of an enterprise of that State and taxes accordingly - profits on which an enterprise of any of the other Contracting States has been charged to tax in that State and the profits so included are income which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those income. In determining such adjustment, due regard shall be had to the other provisions of this agreement and the competent authorities of the Contracting State shall if necessary consult each other.

(3) A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.

(4) The provisions of paragraph 3 of this Article shall not apply in the case of fraud, wilful default or neglect.

ARTICLE 10 – *Dividends*

1. Dividends paid by a company which is a resident of a Contracting State to a resident of any of the other Contracting States may be taxed in that other State.

2. However such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged to the beneficial owner shall not exceed 15 per cent of the gross amounts of the dividends. The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “**dividends**” as used in this Article means income from shares or other rights, not being debt claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from the shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraph 1 and 11 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in any of the other Contracting States of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in any of the other states independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where the company which is a resident of a Contracting State derives profits or income from any of the other Contracting States, no tax may be imposed on the beneficial owner in that other state on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, not subject to the company - s undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 – *Interest*

(1) Interest arising in a Contracting State and paid to a resident of any of the other Contracting States may be taxed in that other Contracting State.

(2) However, Subject to the provisions of paragraph 3 of this Article such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 20 per cent of the gross amount of the interest.

(3) Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by—

- (i) the Government, a political subdivision or a local authority of the other Contracting State; or
- (ii) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.

(4) The term “**interest**” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor - s profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. The term - interest - shall not include any item which is treated as a dividend under the provisions of Article 10 of this agreement.

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(5) The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting state, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other state independent personal services from a fixed base situated therein, and debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 of Article 15, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base, is situated.

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of the m and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this agreement.

ARTICLE 12 – *Royalties*

1. Royalties arising in Contracting State and paid to a resident of any of the other Contracting States may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 20 per cent of the gross amount of the royalties.

3. The term - royalties - as used in this Article means payments of any fund received as a consideration of the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph - and films, tapes or discs for radio or television broadcasting), any content, trade mark, design or model, computer programme, plan, secret formula or process or for the use of, or the right to use industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State carries on business in the Contracting State in which the royalties arise through a permanent establishment situated therein or performs in that other state independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to rise in a Contracting State when the payer is that state itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only in the last mentioned amount. In such a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provision of this agreement.

ARTICLE 13 – *Management or Professional Fees*

1. Management or professional fees arising in a Contracting State which are derived by a resident of any of the other Contracting States may be taxed in that other State.

2. However, such management or professional fees may also be taxed in the Contracting State in which they arise, and according to the law of that state, but where the beneficial owner of such management or professional fees is a resident of the other Contracting State, the tax so charged shall not exceed 20 per cent of the gross amount of the management or professional fees.

3. The term “**management or professional fees**” as used in this article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration of any services of a technical, managerial, professional or consultancy nature not covered under any other Article of the agreement.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the management or professional fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management or professional fees arise through permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the management and professional fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, shall apply.

5. Management or professional fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the management or professional fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the management or professional fees was incurred, and such management or professional fees are borne by that permanent establishment or fixed base, then such management or professional fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the management or professional fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each contracting State, due regard being had to the other provisions of this agreement.

ARTICLE 14 – *Capital Gains*

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in any of the contracting States may be taxed in that other Contracting State.

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2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other contracting State or of movable property pertaining to a fixed base available to a resident of Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 – Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in any of the other Contracting States for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State says in any of the other Contracting States for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for periods exceeding in aggregate more than 122 days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.
2. The term “**professional services**” includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants and economists.

ARTICLE 16 – Dependent Personal Services

- (1) Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in any of the other contracting States. If the employment is exercised, such remuneration as derived therefrom may be taxed in the State in which the employment is exercised.
- (2) Notwithstanding the; provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in any of the other Contracting States shall be taxable only in the first-mentioned State if –
 - (a) the recipient is present in the other for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
 - (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State, and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
- (3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised abroad a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 17 – *Directors - Fees*

Directors fees and other similar payment derived by a resident of Contracting State in his capacity as a member of the board of directors of a company which is a resident of any of the other Contracting States may be taxed in the State in which the company is resident.

ARTICLE 18 – *Entertainers and Sportsmen*

1. Notwithstanding the provisions of Article 7, 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television article, or a musician, or as a sportsman, from his personal activities as such, may be taxed in the contracting State in which these activities are exercised.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16 be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer nor the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the contracting states shall be exempt from tax in the Contracting state in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of any of the Contracting States or local authority.

ARTICLE 19 – *Pensions, Annuities and Social Security Payments*

1. Subject to the provision of paragraph 2 of Article 20, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of any of the other Contracting States, shall be taxable only in the Contracting State in which the payments arise.

2. However, such pensions and other remuneration may also be taxed in any of the other contracting States, or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

ARTICLE 20 – *Remuneration and Pension in Respect of Government Service*

1. Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a political subdivision, local authority or statutory body thereof in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in any of the other Contracting States creating the funds if the services are rendered in that other State and the individual is a resident of that State and;

- (a) is a national of that State; or
- (b) did not become a resident solely for the purpose of rendering the services.

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4. Any person paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body in the discharge of governmental functions shall be taxable only in that State.

5. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political subdivision, local authority or statutory body thereof.

ARTICLE 21 – Professors and Teachers

1. Notwithstanding the provisions of Article 16, a professor or teacher who makes a temporary visit to any one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

ARTICLE 22 – Student's and Business Apprentices

1. A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training or who is, or immediately before being so present was, a resident of any of the other Contracting States shall be exempt from tax in the (first-mentioned State) on payments received from outside that first, mentioned State for purpose of his maintenance, education and training.

ARTICLE 23 – Other Income

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this agreement in respect of which he is subject to tax in that State, shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting States, carries on business in any of the other Contracting States through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed based situated therein, and the right or property in respect of which the income paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

ARTICLE 24 – Elimination of Double Taxation

1. Where a resident of any of the Contracting States derives income which in accordance with the provisions of this agreement may be taxed in the other Contracting States the first mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Provided that such deduction shall not exceed that part of the income tax as computed before deduction is given, which is attributable as the case may be to the income which may be taxed in that other State.

2. Where in accordance with any provision of this agreement income derived by a resident of a Contracting State is exempt from tax in that State such State may nevertheless, in calculating the amount of tax on the remaining income of such resident take into account the exempted.

ARTICLE 25 – *Non-Discrimination*

1. The nationals of a Contracting State shall not be subjected in any other Contracting States to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the other States in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in any of the other Contracting States shall not be less favourably levied in that other State than the taxation levied on enterprises of any of the other States carrying on the activities.
3. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of any of the other Contracting States, shall not be subjected in the first mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
4. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of any of the contracting States any personal allowances, reliefs and deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
5. In this article the term “**taxation**” means taxes which are the subject of this agreement.

ARTICLE 26 – *Mutual Agreement Procedure*

1. Where a person considers that the actions of one or more of the Contracting States results or will result for him in taxation not in accordance with this agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of any of the other Contracting States, with a view to the avoidance of taxation which is not in accordance with the agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this agreement.
4. The competent authorities of the Contracting States may through consultations develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate procedures, conditions, methods and techniques to facilitate the above mentioned actions and the implementation of the mutual agreement procedure.

ARTICLE 27 – *Exchange of Information*

1. The competent authorities of Contracting States shall exchange such information as is necessary for carrying out the provisions for this agreement or of the domestic law of

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the Contracting States concerning taxes covered by this agreement so far as the taxation thereunder is not contrary to the agreement in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts or administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligations—

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of any of the other Contracting States;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of any other Contracting States;
- (c) to supply information which would disclose any trade, business, industrial, commercial or information, the disclosure of which would be contrary to public policy.

ARTICLE 28 – Diplomatic Agents and Consular Officers

Nothing in this agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 – Entry into the Force

1. The Contracting States shall notify each other of the completion of the procedures required by their laws for entry into the force of this agreement. The agreement shall enter into force on the date of the last of these notifications.

2. The provisions of this agreement shall apply to income for any year of income beginning on or after the first day of January next following the date upon which this agreement enters into force.

ARTICLE 30 – Termination

1. This agreement shall remain in force indefinitely but any of the contracting states may terminate the agreement through diplomatic channels, by giving to other Contracting States written notice of termination not later than 30th June of any calendar year starting five years after the year in which the agreement entered into force.

2. In such event the agreement shall cease to have effect on income for any year of income beginning on or after the first day of January next following the calendar year in which such notice is given.

PRESCRIBED LIMIT OF MEDICAL BENEFIT

[L.N. 53/2005.]

In Exercise of the powers conferred by section 5(4)(b) of the Income Tax Act, the Minister for Finance prescribes the sum of one million shillings to be the maximum limit for the purposes of that paragraph.

This Notice shall come into effect on the 1st January, 2006.

INCOME TAX (TURNOVER TAX) RULES, 2007

ARRANGEMENT OF RULES

Rule

1. Citation and commencement.
 2. Interpretation.
 3. Persons liable to turnover tax.
 4. Election to be excluded from turnover tax.
 5. Turnover tax as a final tax.
 6. Registration.
 7. Change of status.
 8. Keeping of records.
 9. Submission of returns and payment of tax.
 10. Penalties and interest.
 11. Inspection of records.
 12. Appointment of agents.
 13. Capital allowances.
 14. Dispute Resolution.
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[Subsidiary]

INCOME TAX (TURNOVER TAX) RULES, 2007

[L.N. 5/2008]

1. Citation and commencement

These Rules may be cited as the Income Tax (Turnover Tax) Rules, 2007 and shall come into operation on the first of January, 2008.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**income from business**” includes gross receipts, gross earnings, revenue, takings, yield, proceeds or other income chargeable to tax under section 12C;

“**person**” includes partnership;

“**return of income**” means a return of income furnished by a person under rule 9;

“**tax period**” means every three calendar months commencing 1st January every year;

“**turnover tax**” means tax payable under section 12C of the Act.

3. Persons liable to turnover tax

(1) Any person whose income from business exceeds five hundred thousands shillings and does not exceed five million shillings in a year of income shall be liable to pay turnover tax.

(2) Paragraph (1) of this rule shall not apply to—

- (a) any person whose annual income from business does not exceed five hundred thousand shillings per year;
- (b) any person whose income is exempt from tax under the First Schedule to the Act;
- (c) any person whose income is subject to withholding tax as a final tax.

4. Election to be excluded from turnover tax

(1) A person may elect to be exempt from the provisions of section 12C of this Act.

(2) A person who elects to be exempted shall make an application for exemption in writing to the Commissioner.

(3) Where the Commissioner approves the application for exemption under subrule (2), a person who has been exempted shall be subject to section 3 of the Act.

(4) The exemption approved by the Commissioner shall take effect in the subsequent year of income.

5. Turnover tax as a final tax

Any income from a business that is subject to turnover tax shall not be liable to any other tax under this Act.

6. Registration

(1) A person whose income from business does not exceed or is not expected to exceed five million shillings per annum shall be required to apply for turnover tax registration in the prescribed form.

[Subsidiary]

(2) Notwithstanding paragraph (1), a person whose income from business does not exceed five hundred thousand shillings per annum shall not apply for registration.

(3) Where the Commissioner is satisfied that a person is required to be registered, the Commissioner shall issue a certificate of registration in the prescribed form.

(4) A person whose income from business falls below five hundred thousand shillings in any year of income shall apply to the Commissioner for deregistration.

(5) Where the Commissioner is satisfied that the income of an applicant has fallen below five hundred thousand shillings, the Commissioner shall deregister that person.

7. Change of status

(1) Where the income from the business of a person registered under rule 6 exceeds five million shillings during a year of income, that person shall notify the Commissioner of the change of status.

(2) Where the Commissioner is satisfied by the notification under paragraph (1), the Commissioner shall grant approval for the change.

(3) The approval granted by the Commissioner under paragraph (2) shall be effected in the subsequent year of income.

8. Keeping of records

(1) A person registered under rule 6 shall be required to keep records necessary for the determination and ascertainment of tax, including a daily sales summary in a prescribed form and any other document or record that the Commissioner may from time to time direct to be maintained having regard to the type and nature of the business being undertaken.

(2) Notwithstanding paragraph (1), where a business is in possession of an electronic tax register records as provided under the Value Added Tax Act (Cap. 476) (Electronic Tax Register) Regulations, 2004, the records shall be sufficient.

9. Submission of returns and payment of tax

(1) A person subject to turnover shall calculate the tax due, remit the tax due to the Commissioner by cash or bank guaranteed cheques or electronic fund transfers and submit a return in the prescribed form, in each tax period, to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(2) A person may remit the tax due on a monthly basis and offset the tax paid in the tax return.

(3) Where a business does not have income chargeable to turnover tax in any tax period, the business shall submit a nil return.

10. Penalties and interest

(1) Any person who fails to submit a tax return under regulation (9) is liable to a default penalty of two thousand shillings.

(2) Any person who submits a return within the required period, but fails to pay the tax due is liable to a default penalty of two thousand shillings.

(3) Any person who fails to pay tax due, or part thereof, under rule 9 is liable to pay interest at the rate of two per centum per month, on the unpaid tax.

(4) The Commissioner—

- (a) may remit whole or part of any penalty or late payment interest in accordance with the provisions of section 94 of this Act;

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- (b) shall have the powers conferred under section 123 of the Act, to refrain from assessing to tax or recovering tax from any person liable to turnover tax.

11. Inspection of records

For purposes of obtaining full information in respect of accounting for turnover tax, the Commissioner may by notice require any person to—

- (a) produce books and records relating to the calculation of turnover tax;
- (b) appear at such time and place as may be specified in the notice.

12. Appointment of agents

For purposes of collection, recovery and enforcement of tax, the Commissioner may appoint any person under section 96 of the Act to be an agent.

13. Capital allowances

No expenditure or capital allowances shall be granted against the turnover tax.

14. Dispute Resolution

Any dispute arising from the administration of these Rules as regards any assessment to tax shall be dealt with in accordance with the provision of section 84 of the Act.

DECLARATION OF SPECIAL ARRANGEMENTS FOR RELIEF FROM DOUBLE TAXATION

[L.N. 139/2009.]

IN EXERCISE of the powers conferred by section 41 of the Income Tax Act, the Deputy Prime Minister and Minister for Finance declares that the arrangements specified in the agreement set out in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the French Republic for the Avoidance of Double Taxation with respect to air transport in international traffic, entered into on the 12th January, 1996, shall, notwithstanding anything to the contrary in the Income Tax Act or in any other written law, have effect in relation to income tax.

SCHEDULE

The Government of the French Republic and the Government of the Republic of Kenya, desiring to conclude an Agreement for the avoidance of double taxation with respect to air transport in international traffic,

Have agreed as follows:

ARTICLE 1

1. For the purpose of this Agreement, unless the context otherwise requires—
 - (a) The term “**person**” include an individual, a company and any other body of persons;
 - (b) The term “**company**” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (c) The term “**enterprise of a Contracting State**” and “**enterprise of the other Contracting State**” means respectively an enterprise carried on by a resident of a contracting State and an enterprise carried on by a resident of the other Contracting State”;
 - (d) The term “**competent authority**” means—
 - (i) in the case of the Republic of Kenya, the Minister responsible for Finance or his authorized representative;
 - (ii) in the case of the French Republic, the Minister in charge of the Budget or his authorized representative.
2. As regards the application of this Agreement by a contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 2

This Agreement shall apply to enterprises operating aircraft in international traffic and to employees of such enterprises, where such enterprises or employees are residents of one or both of the Contracting States.

ARTICLE 3

1. This Agreement shall apply to taxes on income imposed on behalf of the Contracting State or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of property, as well as taxes on capital appreciation.

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ARTICLE 4

1. For the purpose of this Agreement, the term “**resident of a Contracting State**” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows—
 - (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are close (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 4 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be resident of the State in which its place of effective management is situated.

ARTICLE 5

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic, including income from activities which are incidental of such operation, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. The provisions of paragraph 1 of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.
3. For the purpose of paragraph 1, interest on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft.
4. Gains from the alienation of aircraft operated in international traffic or movable property pertaining to the operation of such aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 6

Remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard an aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 7

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or for preventing fiscal fraud or

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evasion concerning taxes covered by the Agreement in so far as the taxation there under is in accordance with the Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to any persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the taxes which are subject of this Agreement.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation—

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 8

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date on which the later of those notifications has been received and shall have effect for income (including profits and gains) relating to taxable periods beginning on or after the first day of January following the year in which all formalities have been completed.

2. The Agreement shall remain in force indefinitely, but either of the Contracting States may, on or before 30th June in any calendar year from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event the Agreement shall cease to have effect for income (including profits and gains) relating to taxable periods beginning on or after the first day of January in the calendar year next following that in which notice of termination is given.

3. This Agreement may be amended by mutual consent of both parties.

4. Any dispute which might arise in connection with the implementation or interpretation of this Agreement shall be settled through diplomatic channels, or by mutual agreement of the competent authorities who may communicate with each other directly for that purpose.

DECLARATION OF SPECIAL ARRANGEMENTS FOR RELIEF FROM DOUBLE TAXATION

[L.N. 140/2009.]

IN EXERCISE of the powers conferred by section 41 of the Income Tax Act, the Deputy Prime Minister and Minister for Finance declares that the arrangements specified in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal evasion with Respect to Taxes on Income, entered into on the 4th December, 2007, shall, notwithstanding anything to the contrary in the Income Tax Act or in any other written law, have effect in relation to income tax.

SCHEDULE

The Government of the French Republic and the Government of the Republic of Kenya, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income:

Have agreed as follows:

ARTICLE 1 – Personal Scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 – Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular—

(a) in the case of France—

- (i) the income tax (“l’impôt sur le revenu”);
- (ii) the widespread security contributions (CSG);
- (iii) the reimbursement of the debt of social security contributions (CRDS);
- (iv) the corporation tax (“l’impôt sur les sociétés”);
- (v) the tax on salaries (“la taxe sur les salaires”);

including any withholding tax, prepayment (précompte) or advance payment with respect to the aforesaid taxes;

(hereinafter referred to as “French tax”);

(b) In the case of Kenya, taxes on income chargeable under the Income Tax Act (Cap. 470);

(hereinafter referred to as “Kenyan tax”)

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the

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existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

ARTICLE 3 – General Definitions

1. For the purposes of this Convention, unless the context otherwise requires

- (a) the terms “**Contracting State**” and “**other Contracting State**” mean France or Kenya, as the context requires;
- (b) the term “**France**” means the European and overseas departments (“*departements d’Outre-mer*”) of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;
- (c) the term “**Kenya**” means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
- (d) the term “**person**” includes an individual, a company and any other body of persons;
- (e) the term “**company**” means any body corporate, or any entity which is treated, for tax purposes, as a body corporate;
- (f) the terms “**enterprise of a Contracting State**” and “**enterprise of the other Contracting State**” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term “**international traffic**” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term “**competent authority**” means—
 - (i) in the case of France, the Minister in charge of the budget or his authorised representative;
 - (ii) in the case of Kenya, the Minister for Finance or his authorised representative;
- (i) the term “**national**” means—
 - (ii) any individual possessing the nationality of a Contracting State;
 - (iii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies. The meaning of a term under the applicable tax laws of that State shall have priority over a meaning given to the term under other laws of that State.

ARTICLE 4 – Resident

1. For the purposes of this Convention, the term “**resident of a Contracting State**” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and

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also includes that State and any local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows—

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

4. The term “resident of a Contracting State” shall include any partnership or group of persons which has its place of effective management in a Contracting State and all the shareholders, associates or other members of which are personally liable to tax therein in respect of their part of the profits according to the laws of that State.

ARTICLE 5 – *Permanent Establishment*

1. For the purposes of this Convention, the term “**permanent establishment**” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or assembly project constitutes a permanent establishment only if it lasts more than six months.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include—

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

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- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – Income from Immovable Property

1. Income from immovable property (including income from agriculture or forestry) may be taxed in the Contracting State in which such immovable property is situated.

2. For the purposes of this Convention, the term “**immovable property**” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated; the term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.
5. Where shares or other rights in a company, trust or comparable institution entitled to the enjoyment of immovable property situated in a Contracting State and held by that company, trust or comparable institution, income derived from the direct use, letting or use in any other form of that right of enjoyment may be taxed in that State notwithstanding the provisions of Articles 7 and 14.

ARTICLE 7 – Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. (a) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(b) Unless it can be demonstrated that another method is more appropriate, the executive and general administrative expenses shall be determined by applying a ratio of turnover or gross profits of a permanent establishment as related to that of the enterprise as a whole.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.
6. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

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ARTICLE 8 – *Shipping and Air Transport*

1. Profits of an enterprise of a Contracting State from the operation of aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Provided that where such an enterprise derives profits from such operation in the other Contracting State—

- (a) Such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and
- (b) The tax chargeable in that other state shall be reduced by an amount equal to fifty per cent thereof.

1. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or the boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or the boat is a resident.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. The provisions of the agreement between the Government of the French Republic and the Government of the Republic of Kenya for the avoidance of double taxation with respect to air transport in international traffic, signed on January, 12th, 1996 shall remain in force but its provisions shall apply only to cases not covered by nor subject to the provisions of this Convention.

ARTICLE 9 – *Associated Enterprises*

1. Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 – *Dividends*

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. (a) Dividends mentioned in paragraph 1 may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.
(b) This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. A resident of Kenya who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (*précompte*) to the extent that it was effectively paid by the company in respect of such dividends. The gross amount of the prepayment (*précompte*) refunded shall be deemed to be a dividend for the purposes of the Convention. It shall be taxable in France according to the provisions of paragraph 2. The provisions of paragraph 2 shall apply to such gross amount.
4. The term “**dividend**” means income from shares, “**jouissance**” shares or “**jouissance**” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income treated as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident. It is understood that the term “dividend” does not include income mentioned in Article 16.
5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 11 – *Interest*

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 12 per cent of the gross amount of the interest.

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3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the recipient of the interest is a resident, if such recipient is the beneficial owner of such interest and if one of the following conditions is met—

- (a) such recipient is a Contracting State, a local authority or a statutory body thereof, including the Central Bank of that State; or such interest is paid by one of those States, local authorities or statutory bodies;
- (b) such interest is paid in respect of a debt-claim or of a loan directly or indirectly guaranteed or insured or subsidised by a Contracting State or by any other person sponsored or directly or indirectly controlled by a Contracting State.

4. The term “**interest**” means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12 – *Royalties*

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, if such resident is the beneficial owner of the royalties.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.

[Subsidiary]

3. The term “**royalties**” as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the obligation to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.
7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13 – *Capital Gains*

1. (a) Gains derived from the alienation of immovable property referred to in Article 6 may be taxed in the Contracting State where such immovable property is situated.
- (b) Gains from the alienation of shares or other rights in a company, a trust or a comparable institution, the assets or property of which consist for more than 50 per cent of their value of, or derive more than 50 per cent of their value, directly or indirectly through the interposition of one or more other companies, trusts or comparable institutions, from immovable property referred to in Article 6 and situated in a Contracting State or of rights connected with such immovable property may be taxed in that State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or to the performance of its independent personal services shall not be taken into account.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

[Subsidiary]

3. Gains from the alienation of property forming part of the business property of an enterprise and consisting of ships or aircraft operated by such enterprise in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 – Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State—

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15 – Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if—

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any period of twelve consecutive months commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 16 – Director’s Fees

1. Director’s fees and other similar payments derived by a resident of a Contracting State in the capacity of a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

[Subsidiary]

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 – Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, whether a resident of a Contracting State or not, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to personal activities exercised by entertainers and athletes if those activities are supported wholly or substantially from public funds of one Contracting State, its local authorities or by one of their statutory bodies; in that case, income derived from such activities by entertainers and athletes shall be taxable only in that State.

ARTICLE 18 – Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State shall be taxable only in that State.

ARTICLE 19 – Public Remuneration

- (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a local authority thereof, or by one of their statutory bodies of either to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.

2 (a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof or by one of their statutory bodies of either to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.

3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and other similar remuneration, and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof, or by one of their statutory bodies.

ARTICLE 20 – Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxable in that State, provided that such payments arise from sources outside that State.

[Subsidiary]

ARTICLE 21 – *Other Income*

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Where, by reason of a special relationship between the person referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in paragraph 1 exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.
4. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.
5. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 22 – *Elimination of Double Taxation*

1. In the case of France, double taxation shall be avoided in the following manner—
 - (a) Notwithstanding any other provision of this Convention, income which may be taxed or shall be taxable only in Kenya in accordance with the provisions of the Convention shall be taken into account for the computation of the French tax where such income is not exempted from corporation tax according to French domestic law. In that case, the Kenyan tax shall not be deductible from such income, but the resident of France shall, subject to the conditions and limits provided for in sub-paragraphs (i) and (ii), be entitled to a tax credit against French tax. Such tax credit shall be equal—
 - (i) in the case of income other than that mentioned in sub-paragraph (ii), to the amount of French tax attributable to such income provided that the resident of France is subject to Kenyan tax in respect of such income;
 - (ii) in the case of income subject to the corporation tax referred to in Article 7, paragraph 2 of article 13 and in article 21, and in the case of income referred to in Article 10, Article 11, Article 12, paragraph 1 of Article 13, Article 16, paragraphs 1 and 2 of Article 17 and article 21, the amount of tax paid in Kenya in accordance with the provisions of those Articles; however, such tax credit shall not exceed the amount of French tax attributable to such income.

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- (b) (i) It is understood that the term “**amount of French tax attributable to such income**” as used in sub-paragraph a) means—
- where the tax on such income is computed by applying a proportional rate, the amount of the net income concerned multiplied by the rate which actually applies to that income;
 - where the tax on such income is computed by applying a progressive scale, the amount of the net income concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income taxable in accordance with French law to the amount of that total net income.
- (ii) It is understood that the term “**amount of tax paid in Kenya**” as used in sub-paragraph a) means the amount of Kenyan tax effectively and definitively borne in respect of the items of income concerned, in accordance with the provisions of the Convention, by a resident of France who is taxed on those items of income according to the French law.

2. In the case of Kenya, double taxation shall be avoided in the following manner—

- (a) where a resident of Kenya receives income derived from sources within France, which, in accordance with the provisions of this Convention, shall be taxable only in France and is exempt from Kenyan tax, then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from the sources within France had been not exempted;
- (b) where a resident of Kenya receives income derived from sources within France, which, in accordance with the provisions of this Convention may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in France. Such a deduction, however, shall not exceed that part of the Kenyan tax as computed before the deduction is given, which is appropriate to the income derived from France.

3. Each of the Contracting States shall keep the right of taxing in accordance with its domestic law any income of its residents, the taxation of which is attributed to the other Contracting State, but which is not taken into account in the tax base in that State, in cases where such double exemption results from a divergent qualification of the income concerned.

ARTICLE 23 – *Non-Discrimination*

1. (a) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

(b) For the purposes of sub-paragraph (a), it is understood that an individual, legal person, partnership or association who or which is a resident of a Contracting State is not placed in the same circumstances as an individual, legal person, partnership or association who or which is not a resident of that State; this shall apply whatever the definition of nationality, even if legal persons, partnerships or associations are deemed to be nationals of the Contracting State of which they are residents.

2. The taxation of a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or of a fixed base that a resident of one Contracting

[Subsidiary]

State has available in the other Contracting State for the purpose of performing independent personal services, shall not be less favorably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 5 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall be deductible, for the purpose of determining the taxable profits of that enterprise, under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of that enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The exemptions and other advantages provided by the tax laws of a Contracting State for the benefit of that State or local authorities or of their statutory bodies of either which carry on a non-business activity shall apply under the same conditions respectively to the other Contracting State or local authorities or to their statutory bodies which carry on the same or similar activity. Notwithstanding the provisions of paragraph 7, the provisions of this paragraph shall not apply to taxes or duties payable in consideration for services rendered.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

7. If any bilateral treaty or agreement between the Contracting States, other than this Convention, includes a non-discrimination clause or a most-favoured nation clause, it is understood that such clauses shall not apply in tax matters.

ARTICLE 24 – *Mutual Agreement Procedure*

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

[Subsidiary]

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or the application of the Convention. In particular, they may consult together to endeavour to agree to the same allocation of income between associated enterprises mentioned in Article 9. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

5. Notwithstanding any other bilateral treaty, agreement or Convention to which the Contracting States are parties, the tax issues between the Contracting States (including a dispute on whether this Convention applies) shall be settled only under this Article unless the competent authorities agree otherwise.

ARTICLE 25 – *Exchange of Information*

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use information only for such purposes. They may disclose the information in public court proceeding or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation—

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (order public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person.

[Subsidiary]

ARTICLE 26 – *Diplomatic Agents and Consular Officers*

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions, of members of consular posts, and of members of permanent missions to international organizations under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total income and capital as are residents of that State.

3. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not liable in one of the Contracting State to the same obligations in relation to tax on their total income and capital as are residents of that State.

ARTICLE 27 – *Mode of Application*

1. The competent authorities of the Contracting States may settle jointly or separately the mode of application of the Convention.

2. In particular, in order to obtain, in a Contracting State, the benefits provided for in Articles 10, 11 and 12, the residents of the other Contracting State shall, unless otherwise settled by the competent authorities, present a form of certification of residence providing in particular the nature and the amount or value of the income concerned, and including the certification of the tax administration of that other State.

ARTICLE 28 – *Miscellaneous*

If any Agreement or Convention between Kenya and a member State of the Organization for Economic Co-operation and Development entering into force after the date of entry into force of this Convention provides that Kenya shall exempt from tax dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) arising in Kenya, or limit the tax charged in Kenya on such dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) to a rate lower than that provided for in paragraph 2 of Article 10, paragraph 2 of Article 11 or paragraph 2 of Article 12 of this Convention, such exemption or lower rate shall automatically apply to dividends, interest or royalties (either generally or in respect of those specific categories of dividends, interest or royalties) arising in Kenya and beneficially owned by a resident of France dividends, interest or royalties arising in France and beneficially owned by a resident of Kenya under the same conditions as if such exemptions or lower rate had been specified in those paragraphs. The competent authority of Kenya shall inform the competent authority of France without delay that conditions for application of this paragraph have been met.

ARTICLE 29 – *Entry Into Force*

1. Each of the Contracting States shall notify to the other the completion of the procedures required as far as it is concerned for the bringing into force of this Convention. The Convention shall enter into force on the first day of the second month following the day when the latter of these notifications has been received.

2. The provisions of the Convention shall have effect—

- (a) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the Convention enters into force;

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- (b) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the Convention enters into force;
- (c) in respect of the other taxes, for taxation the taxable event of which will occur after the calendar year in which the Convention enters into force.

ARTICLE 30 – *Termination*

This Convention shall continue in effect indefinitely but either of the Contracting States may on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, the Convention shall cease to have effect—

- (a) In Kenya—
 - (i) in respect of taxes withheld at source, on amounts paid or credited to non-residents on or after the 1st day of January, in the calendar year next following that in which the notice is given.
 - (ii) in respect of other taxes on income arising for the year of income next following that in which the notice of termination is given, and subsequent years.
- (b) In France—
 - (i) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the notice of termination is given;
 - (ii) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the notice of termination is given;
 - (iii) in respect of the other taxes, for taxation the taxable event of which will occur after the calendar year in which the notice of termination is given.

PROTOCOL

The Government of the French Republic and the Government of the Republic of Kenya on signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have agreed on the following provisions which shall form an integral part of the Convention.

1. In respect of subparagraph (a) of paragraph 3 of Article 2, the tax on salaries is regulated by the provisions of the Convention applicable, as the case may be, to business profits or income from independent personal services.
2. In respect of subparagraph (b) of paragraph 1 of Article 3, it is understood that the French overseas departments (“departements d’Outre-mer”) are: Guadeloupe, Martinique, Guyane and La Reunion.
3. In relation to article 7(1), it is agreed that, if an enterprise of a Contracting State sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or carries out business activities of the same or similar kind as those carried out by the permanent establishment, the profits of such sales or activities may be attributed to the permanent establishment if it is demonstrated that these profits are related to the activities of the permanent establishment.
4. In respect of paragraph 3 of Article 7, it is considered that the amount of expenses to be taken into account as incurred for the purposes of the permanent establishment should be the actual one so incurred and supported by documents. Subject to this, it is agreed

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that, in the case of general administrative expenses incurred at the head office of the enterprise, it is appropriate to take into account a proportionate part based on the ratio that the permanent establishment's turnover bears to that of the enterprise as a whole.

5. The provisions of the Convention shall not prevent the Contracting States from applying the provisions relating to thin capitalisation in accordance with their domestic laws.

6. Each of the Contracting States shall keep the right of taxing in accordance with its domestic law any income of its residents, the taxation of which is attributed to the other Contracting State, but which is not taken into account in the tax base in that State, in cases where such double exemption results from a divergent qualification of the income concerned.

INCOME TAX (TRANSFER PRICING) RULES, 2006

ARRANGEMENT OF RULES

Rule

1. Citation and commencement.
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[Subsidiary]

INCOME TAX (TRANSFER PRICING) RULES, 2006

[L.N. 67/2006, L.N. 52/2011, L.N. 54/2012.]

1. Citation and commencement

These Rules may be cited as the Income Tax (Transfer Pricing) Rules, and shall come into operation on the 1st July, 2006.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**arm’s length price**” means the price payable in a transaction between independent enterprises;

“**comparable transactions**” means transactions between which there are no material differences, or in which reasonably accurate adjustments can be made to eliminate material differences;

“**controlled transaction**” means a transaction which is monitored to ensure payment of an arm’s length price for goods or services;

“**related enterprises**” means one or more enterprises whereby—

- (a) one of the enterprises participates directly or indirectly in the management, control or capital of the other; or
- (b) a third person participates directly or indirectly in the management, control or, capital or both.

3. Purpose of Rules

The purposes of these Rules are—

- (a) to provide guidelines to be applied by related enterprises, in determining the arm’s length prices of goods and services in transactions involving them, and
- (b) to provide administrative regulations, including the types of records and documentation to be submitted to the Commissioner by a person involved in transfer pricing arrangements.

4. Person to choose method

The taxpayer may choose a method to employ in determining the arm’s length price from among the methods set out in rule 7.

5. Scope of guidelines

The guidelines referred to in rule 3 shall apply to—

- (a) transactions between related enterprises within a multinational company, where one enterprise is located in, and is subject to tax in, Kenya, and the other is located outside Kenya;
- (b) transactions between a permanent establishment and its head office or other related branches, in which case the permanent establishment shall be treated as a distinct and separate enterprise from its head office and related branches.

[L.N. 52/2011, s. 2.]

6. Transactions subject to Rules

The transactions subject to adjustment of prices under these Rules shall include—

- (a) the sale or purchase of goods;
- (b) the sale, purchase or lease of tangible assets;
- (c) the transfer, purchase or use of intangible assets;
- (d) the provision of services;
- (e) the lending or borrowing of money; and
- (f) any other transactions which may affect the profit or loss of the enterprise involved.

7. Methods

The methods referred to in rule 4 are the following—

- (a) the comparable uncontrolled price (CUP) method, in which the transfer price in a controlled transaction is compared with the prices in an uncontrolled transaction and accurate adjustments made to eliminate material price differences;
- (b) the resale price method, in which the transfer price of the produce is compared with the resale price at which the product is sold to an independent enterprise:
Provided that in the application of this method the resale price shall be reduced by the resale price margin (the profit margin indicated by the reseller);
- (c) the cost plus method, in which costs are assessed using the costs incurred by the supplier of a product in a controlled transaction, with a mark-up added to make an appropriate profit in light of the functions performed, and the assets used and risks assumed by the supplier;
- (d) the profit split method, in which the profits earned in very closely interrelated controlled transactions are split among the related enterprises depending on the functions performed by each enterprise in relation to the transaction, and compared with a profit split among independent enterprises in a joint venture;
- (e) the transactional net margin method, in which the net profit margin attained by a multinational enterprise in a controlled transaction is compared to the net profit margin that would have been earned in comparable transactions by an independent enterprise; and
- (f) such other method as may be prescribed by the Commissioner from time to time, where in his opinion and in view of the nature of the transactions, the arm's length price cannot be determined using any of the methods contained in these guidelines.

8. Application of methods

(1) The methods set out in rule 7 shall be applied in determining the price payable for goods and services in transactions between related enterprises for the purposes of section 18(3) of the Act.

(2) A person shall apply the method most appropriate for his enterprise, having regard to the nature of the transaction, or class of transaction, or class of related persons or function performed by such persons in relation to the transaction.

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(3) The Commissioner may issue guidelines specifying conditions and procedures to guide the application of the methods set out in rule 7.

[L.N. 54/2012, s. 2.]

9. Power of Commissioner to request for information

(1) The Commissioner may, where necessary, request a person to whom these Rules apply for information, including books of accounts and other documents relating to transactions where the transfer pricing is applied.

(2) The documents referred to in paragraph (1) shall include documents relating to—

- (a) the selection of the transfer pricing method and the reasons for the selection;
- (b) the application of the method, including the calculations made and price adjustment factors considered;
- (c) the global organization structure of the enterprise;
- (d) the details of the transaction under consideration;
- (e) the assumptions, strategies, and policies applied in selecting the method; and
- (f) such other background information as may be necessary regarding the transaction.

(3) The books of accounts and other documents shall be prepared in, or be translated into, the English language, at the time the transfer price is arrived at.

10. Application of arm's length pricing

Where a person avers the application of arm's length pricing, such person shall—

- (a) develop an appropriate transfer pricing policy;
- (b) determine the arm's length price as prescribed under the guidelines provided under these Rules; and
- (c) avail documentation to evidence their analysis upon request by the Commissioner.

11. Certain provisions of Act to apply

The provisions of the Act relating to fraud, failure to furnish returns and underpayment of tax shall apply with respect to transfer pricing.

12. Unpaid tax to be deemed additional tax

Any tax due and unpaid in a transfer pricing arrangement shall be deemed to be additional tax for purposes of sections 94 and 95 of the Act.

INCOME TAX (CHARITABLE DONATIONS) REGULATIONS, 2007

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Proof of donation.
 4. Donations generally.
 5. Contents of receipt of proof.
-

[Subsidiary]

INCOME TAX (CHARITABLE DONATIONS) REGULATIONS, 2007

[L.N. 100A/2007, Corr. No. 37/2007.]

1. Citation

These Regulations may be cited as the Income Tax (Charitable Donations) Regulations, 2007, and shall be deemed to have come into force on 1st January, 2007.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**approved project**” means a project approved by the Minister;

“**cash donation**” includes a donation given in the form of a cheque; and

“**charitable organization**” means a non-profit making organisation established in Kenya and which—

- (a) is of a public character; and
- (b) has been established for purposes of the relief of poverty or distress of the public, or advancement of education.

3. Proof of donation

(1) A person who makes a claim for a donation to be allowed under section 15(2)(w) of the Act shall provide proof of the donation to the Commissioner.

(2) The proof of the donation required in accordance with paragraph (1) shall be in the form of a receipt issued and certified by the recipient of the donation and shall be accompanied by—

- (a) a copy of the exemption certificate issued by the Commissioner to the charitable organization, or the Minister's approval of the project to which the donation is made;
- (b) a declaration from the donee that the donation shall be used exclusively for the objects of charity.

4. Donations generally

For purposes of these Regulations, donations made shall—

- (a) be in cash and shall not be repayable or refundable to the donor under any circumstance;
- (b) not confer any direct or indirect benefit to the donor or any person associated to the donor;
- (c) under no circumstances be revoked once conferred upon a charitable organization, unless there is approval by the Commissioner in which case the tax arising shall be due and payable.

5. Contents of receipt of proof

The receipt produced as proof of a donation shall have the following details—

- (a) the full names and address of the donee;
 - (b) the Personal Identification Number (PIN) of the donee;
 - (c) date of donation;
 - (d) purpose for which the donation was made;
 - (e) amount of donation.
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INCOME TAX (INVESTMENT DUTY SET OFF) REVOCATION RULES, 2009

[L.N. 92/2009.]

1. These Rules may be referred to as the Income Tax (Investment Duty Set-off) (Revocation) Rules, 2009.
 2. The Income Tax (Investment Duty Set Off) Rules, 1996 (L.N. 72/1996), are revoked.
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GUIDELINES ON ALLOWABILITY OF BAD DEBTS

[L.N. 37/2011.]

PURSUANT to section 15(2)(a) of the Income Tax Act, the Commissioner-General issues the guidelines set out in the Schedule hereto on allowability of bad debts for tax purposes.

SCHEDULE

1. A debt shall be considered to have become bad if it is proved to the satisfaction of the Commissioner to have become uncollectable after all reasonable steps have been taken to collect it.
 2. A debt shall be deemed to have become uncollectable under paragraph (1) where—
 - (a) the creditor loses the contractual right that comprises the debt through a court order;
 - (b) no form of security or collateral is realisable whether partially or in full;
 - (c) the securities or collateral have been realized but the proceeds fail to cover the entire debt;
 - (d) the debtor is adjudged insolvent or bankrupt by a court of law;
 - (e) the costs of recovering the debt exceeds the debt itself; or
 - (f) efforts to collect the debt are abandoned for another reasonable cause.
 3. A bad debt shall be a deductible expense only if it is wholly and exclusively incurred in the normal course of business.
 4. For the purposes of these guidelines, a bad debt which is of a capital nature shall not be an allowable expense.
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INCOME TAX (ADVANCE TAX) (CONDITIONS AND PROCEDURES) RULES, 2012

ARRANGEMENT OF RULES

Rule

1. Citation.
 2. Interpretation.
 3. Payment of advance tax.
 4. Maintenance of records.
 5. Filing of returns.
 6. Licensing and inspection.
 7. Dispute in calculation of advance.
 8. Inspection of records.
 9. Penalties and interest.
-

[Subsidiary]

INCOME TAX (ADVANCE TAX) (CONDITIONS AND PROCEDURES) RULES, 2012

[L.N. 52/2012.]

1. Citation

The Rules may be cited as Income Tax (Advance Tax) (Conditions and Procedures) Rules, 2012.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**advance tax**” means tax payable under section 12A of this Act;

“**owner of a commercial vehicle**” means the registered owner as indicated in the registration certificate issued by the Registrar of motor vehicles.

3. Payment of advance tax

(1) Any person who owns a commercial vehicle shall be liable to pay advance tax.

(2) Advance tax shall be payable for each year of income at the rates specified under paragraph 8 of the Third Schedule to the Act.

(3) Advance tax shall be due and payable to the Commissioner on or before the twentieth day of the first month of the year of income, or in cases of transfer of ownership of the commercial vehicle, before the new owner is registered as such.

(4) The Commissioner shall assess the amount of advance tax payable under these Rules in accordance with paragraph 8 of the Third Schedule to the Act.

(5) A person liable to pay advance tax shall submit to the Commissioner the payment accompanied by the prescribed form.

(6) The Commissioner shall issue, to every person who pays advance tax under these Rules, a receipt which shall be the proof of payment of advance tax.

4. Maintenance of records

Any person who is liable to pay advance tax shall keep records necessary for the determining and ascertaining advance tax, including registration certificates, vehicle inspection reports, previous advance tax receipts and such other document or record as the Commissioner may from time to time direct.

5. Filing of returns

(1) A person who pays advance tax shall submit to the Commissioner a return of income in accordance with section 52B of the Act.

(2) A person who fails to file a return of income in accordance with paragraph (1) shall be liable to pay additional tax as provided under section 72 of the Act.

6. Licensing and inspection

A Government agency shall for the purposes of the registration or transfer of ownership, licensing or inspection of a commercial vehicle, require the owner of the commercial vehicle to furnish such agency with evidence of payment of advance tax or income tax exemption certificate, where applicable.

7. Dispute in calculation of advance

Any dispute arising from the administration of these Rules relating to the assessment to tax shall be dealt with in accordance with section 84 of the Act.

8. Inspection of records

(1) For purposes of obtaining information necessary for the verification of advance tax paid, the Commissioner may by notice require a person liable to pay advance tax to—

- (a) produce all accounts, books of accounts, documents and other records relating to the payment of advance tax in respect of such period as may be specified by the Commissioner;
- (b) produce the commercial vehicle or a Vehicle Inspection Report prepared by a recognized Government agency or agent; or
- (c) avail themselves for interview at such time and place as may be specified in the notice.

(2) The Commissioner may, upon undertaking an inspection under this rule, demand from the person, based on the information obtained from the inspection—

- (a) the tax which appears from the documents and records produced by that person, would have been payable under rule 3 for the period covered by the inspection had that person complied with these Rules; or
- (b) the outstanding tax and penalties.

9. Penalties and interest

(1) Any person who fails to pay the advance tax due shall, in addition to the payment of the unpaid tax, be liable to pay a penalty and interest on the unpaid tax in accordance with section 72D and section 94 of this Act respectively.

(2) The provisions of the Act that relate to collection and recovery of tax shall apply for the purposes of collection and recovery of unpaid advance tax.
