

CHAPTER 470
THE INCOME TAX ACT
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CHAPTER 470

THE INCOME TAX ACT

Commencement: 1st January, 1974

16 of 1973,
2 of 1975,
13 of 1975,
7 of 1976,
11 of 1976,
L.N.123/1976,
L.N.189/1977,
12 of 1977,
16 of 1977,
8 of 1978,
13 of 1978,
13 of 1979,
18 of 1979,
10 of 1980,
12 of 1980,
6 of 1981,
1 of 1982,
14 of 1982,
8 of 1983,
13, of 1984,
18, of 1984,
8 of 1985,
10 of 1986,
10 of 1987,
3 of 1988,
10 of 1988,
9 of 1989,
20 of 1989.

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

PART 1 – PRELIMINARY

Short title and commencement

1 This Act may be cited as the Income Tax Act 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.

Interpretation
7 of 1976 s.2,
12 of 1977 s.5,
8 of 1978 s.9,
12 of 1980 s.3
14 of 1982 s.16
10 of 1987 s.31,
10 of 1988 s.28.
13 of 1995 S.73

2(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;

9 of 2000 s.40

“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 of 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;

8 of 1991 s.52

"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;

Cap.488

"bank" means a bank or financial institution licensed under the Banking Act;

8 of 1996 s.27

"bearer" means the person in possession of a bearer instrument;

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

Cap.489

"building society" means a building society registered under the Building Societies Act

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

"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

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Cap.403 (b) a motor omnibus within the meaning of that term in the Traffic Act;
or

(c) used for the carriage of members of the public for hire or reward;

"Commissioner" means the Commissioner of Income Tax appointed under section 122;

"company" means a company incorporated or registered under any Law in force in Kenya or elsewhere;

9 of 1992 s.35 "compensating tax" means the addition to tax imposed under section 7A;

9 of 2000 s.40 "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:

"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 debenture stock, a 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), includes a loan or loan stock, whether secured or unsecured;

8 of 1991 s.52 "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",

8 of 1991 s.52 "defined benefit registered fund" means a registered fund that contains a defined benefit provision, whether or not it also contains a defined contribution provision;

8 of 1991 s.52 "defined contribution provision", in respect of a registered fund, means terms of the fund –

- (a) which provide for 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;

8 of 1991 s.52 "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 members themselves, a member of the body corporate, and includes any person in accordance with whose directions and instructions those persons are accustomed to act;

6 of 1994 s.33 "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 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 tax is due and payable under this Act or pursuant to a notice issued under this Act;

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

*10 of 1990 s.38
Cap.517*

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

"farmer" means a person who carries on pastoral, agricultural or other similar operations;

"foreign tax", in relation to income charged to tax in Kenya, means income tax or 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, or a 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;

8 of 1991 s.52

"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;

"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 a premium or discount by way of interest and commitment or service fee paid in respect of any loan or credit;

Cap.312

"Kenya" includes the continental shelf and any installation thereon as defined in the Continental Shelf Act;

"local committee" means a local committee established under section 82;

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

E.A.Cap.24

"Management Act" means the East African Income Tax Management Act;

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

Cap 258
8 of 1996 s.27

"National Social Security Fund" means the National Social Security Fund established under Section 3 of the National Social Security Fund Act;

"non-resident rate" means an 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);

8 of 1991 s.52

"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 person in the service of the Government who is appointed to an office in the Income Tax Department under section 122;

6 of 1994 s.33

"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, 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;

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

"pensionable income" means-

- 8 of 1991 s.52*
- (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;
- 9 of 1992 s.35*
- (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 those 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 a 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 a 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, together with any documents required to be furnished therewith;

9 of 1992 s.35 "public pension scheme" means a pension scheme that pays pensions or lump sums out of the Consolidated Fund;

8 of 1991 s.52 "qualifying assets", in respect of a registered individual retirement fund, means time deposits, treasury bills, treasury bonds, Nairobi Stock Exchange securities and any other prescribed assets;

10 of 1990 s.38
9 of 1992 s.35 "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 co-operative society subject to tax under section 19A(2) or 19A(3);

8 of 1991 s.52 "qualifying institution" means a bank licensed under the Banking Act, 1989 or an insurer registered under the Insurance Act;

9 of 1992 s.35 "qualifying dividend rate of tax" means the resident withholding tax rate in respect of a qualifying dividend specified paragraph 5 of the Third Schedule.

8 of 1996 s.27
4 of 1999 s.32 "qualifying interest" means the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income from –

Cap 488

- (i) a bank or financial institution licensed under the Banking Act,
or

Cap 489

- (ii) a Building Society registered under the Building Societies Act 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 rate of tax" means the resident withholding tax rate in respect of interest specified in paragraph 5 of the Third Schedule;

8 of 1991 s.52

"registered fund" means a registered pension fund or a registered provident fund;

13 of 1995 s.73

"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;

8 of 1997 s.27

"registered unit trust" means a unit trust registered by the Commissioner in such a 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 a 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;

"return of income" means a return of income furnished by a person consequent upon a notice served by the Commissioner under section 52, together with the documents required to be furnished therewith;

"retirement annuity" means a retirement annuity payable under a registered annuity contract;

"royalty" means a payment made as a consideration for the use of or the right to use -

(a) the copyright of a literary, artistic or scientific work; or

- (b) a cinematograph film, including film or tape for radio or television broadcasting; or
- (c) a 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 gains derived from the sale or exchange of any right or property giving rise to that royalty;

*8 of 1997 s.27
Cap.485A.*

"securities exchange" has the meaning assigned to it in section 2 of the Capital Markets Authority Act;

"specified arrangement" means an arrangement for relief from double taxation having effect under section 41;

"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;

"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;

"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, that interest being expressed in the number of units of which he is the owner;

*8 of 1997 s.27
Cap 521*

"unit trust" means a unit trust registered and licensed under the Unit Trust Act;

"venture company" means a company incorporated in Kenya in which a venture capital 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.

9 of 1992 s.35

"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 that 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 that 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 employment income rate" means the wife's employment income rate specified in paragraph 1A of Head B of the Third Schedule;

"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;

6 of 1994 s.33

"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), 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 percent, 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;

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

Cap.415

(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 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.

PART II - IMPOSITION OF INCOME TAX

*Charge of tax
13 of 1975, s.2,
8 of 1978, s.9,
8 of 1978, s.9,
14 of 1982, s.17.*

3(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) a business, for whatever period of time carried on;
 - (ii) employment or services rendered
 - (iii) a right granted to another person for use or occupation of property;
- (b) dividends or interest;
- (c) (i) a pension, charge or annuity; and

4 of 1993 s..35

4 of 1993 s..35

13 of 1995 s.74

- (ii) any withdrawal 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 registered home ownership savings plan.
- (d) (Deleted by 14 of 1982, s.17);
- (e) an amount deemed to be the income of a 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 co-operative society, as defined under section 19A, shall be deemed to be a dividend.

*Income from
businesses
18 of 1984 s.2*

- 4.** 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 that business shall be deemed to have accrued in or to have been derived from Kenya;
 - (b) the gains or profits of a partnership shall be the sum of -
 - (i) remuneration payable to him by the partnership together with interest on capital so payable, less 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;

- (c) a sum received under an 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 respect of which it is received;
- (d) where in computing gains or profits for a 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 that expenditure or loss is recovered, or the whole or part of that liability is released, or the retention in whole or in part of that 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 as 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 that person for the year of income in respect which the 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 a petroleum service subcontractor, as those expressions are defined in the Ninth Schedule, the provisions of that Schedule shall apply.

Income from
businesses where
foreign exchange
gain or loss is
realized

4A. (1) A foreign exchange gain or loss realized on or after 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:

10 of 1988, s.29

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 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.

(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 -

"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;

"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

Export processing zone enterprise.

4B. Where a business is carried on by an export processing zone enterprise, the provisions of the Eleventh Schedule shall apply.

Income from Employment etc.
8 of 1978, s.9
13 of 1979, s.5
10 of 1987, s.32
9 of 1989, s.17

5.(1) For the purposes of section 3(2)(a)(ii), 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) 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 such an 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; 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;
- 6 of 2001, s.43*
- (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 twelve thousand shillings, granted in respect of employment or services rendered;
 - (c) an amount received as compensation for the termination of a contract of employment or service, whether or not provision is made in the contract for the payment of that compensation:

Provided that, except in the case of a director, other than a whole time service director, of a company the directors whereof have a controlling interest therein -

- (i) where the contract is for a specified term, the amount included in gains or profits under this subparagraph shall not exceed the amount which would have been received in respect of the unexpired period of the contract and shall be deemed to have accrued evenly in the unexpired period;

- (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 unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination thereof 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, but the amount so included in gains or profits shall not exceed the amount of three years' remuneration at those rates;
- (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 or provident fund;

6 of 1994 s.34
8 of 1996 s.28

(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 director or his employment or the employment of 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 -

"employee" means any person who is not a beneficial owner of or able either directly or indirectly 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 that company.

"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;
- (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.

5 of 1998 s.30

"relative of a director or an employee" means-

- (i) his spouse;
- (ii) his son, daughter, brother, sister, uncle, aunt, nephew, niece, step-father, step-mother, step-child, or in the case of an adopted child his adopter or adopters; or
- (iii) the spouse of any such relative as is mentioned in subparagraph (ii).

13 of 1995s75

(2B)(a) 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 –

- (i) such value as the Commissioner may from time to time determine; and
 - (ii) the prescribed rate of benefit.
- (b) For the purposes of subparagraph (a) -

"prescribed rate of benefit" means the following rates in respect of each month -

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

*13 of 1995s75
5 of 1998 s.30*

(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 fifteen per cent of his total income excluding the value of those premises and income which is chargeable to tax under section 3(2)(f):

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;
- (b) in the case of a whole time service director, an amount equal to fifteen per centum of the gains or profits from his employment, excluding the value of those premises and income which is chargeable to tax under section 3(2)(f).

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:
- (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, subject to a limit of the rent paid by the employer if paid under an agreement made at arm's length with a third party:

Provided that-

- (i) where a person occupies premises for part only of a year of income, the value ascertained under the foregoing provisions shall be reduced by that proportion which is just and reasonable having regard to the period of occupation and the yearly rate of gains or profits from employment;
- (ii) where the employee pays rent to his employer for premises, the value ascertained under the foregoing provisions shall be reduced by the amount of rent;
- (iii) where part only of any premises is so provided, the Commissioner may reduce the value ascertained under the foregoing provisions to the amount which he considers just and reasonable;

- (iv) where the gains or profits from a person's employment, excluding the value of the premises provided by the employer, exceed six hundred thousand shillings in the year, the value of the premises determined under this subsection shall be subject to the limit of-
 - (a) the rent paid by the employer or the fair market rental value of the premises in that year where the premises are provided under an agreement with a third party which is not at arm's length, whichever is the higher; or
 - (b) the fair market rental value of the premises in that year where the premises are owned by the employer.

5 of 1998 s.30

- (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 (which expression does not include a director, other than a whole time service director, of a company) the value of any medical services provided by the employer; and
- (c) an amount paid by the employer as a contribution to a registered or unregistered pension fund, provident fund or scheme;
- (d) education 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.

*8 of 1996 s.28
5 of 1998 s.30*

8 of 1997 S.28

- (5) Notwithstanding any other provision of this Act, the value of the benefit (excluding the value of premises as determined under subsection (3)) for the purposes of this section, shall be the higher of the cost to the employer or such value as the Commissioner may from time to time prescribe.

Income Tax Act Cap. 470

Income from
the use of
property.

6.(1) For the purposes of section 3(2)(a)(iii), "gains or profits" includes a 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.

Income from
dividends.
2 of 1975, s.5
8 of 1978, s.9
9 of 1992 s.38

7(1) For the purposes of section 3(2)(b) -

- (a) (Deleted by 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 realized 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 a company issues debentures or redeemable preference shares to any of its shareholders and receives therefrom no payment, the issue of those 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 the debentures or redeemable preference shares;
- (e) where a 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 those 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.

6 of 1994 s.35 (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 percent of the voting power of the company paying the dividend, shall be deemed not to be income chargeable to tax.

6 of 1994 s.35 (3) A dividend received as income under section 3(2)(a)(i) by a financial institution specified in the Fourth Schedule shall be deemed to be income not chargeable to tax.

Dividend tax account. **7A.** (1) A company resident in Kenya shall establish and maintain a Dividend Tax Account in accordance with this Act.

4 of 1993, s.39 (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.

9 of 2000 s.41 (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 of compensating tax paid by the company, as provided in subsection (5);
- (c) by one shilling for every shilling of import duty set-off as provided in Section 39A;
- (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.

8 of 1997 s.30

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

Income from pensions, etc. 2 of 1975, s.5 8 of 1985, s.11

8. (1) For the purposes of section 3(2)(c), a 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, a 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, a pension received in respect of employment or by 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 non-resident individual if the person making payment of the pension was resident in Kenya.

(4) Notwithstanding section 3(2)(c), the first one hundred and fifty 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.

8 of 1991 s.55

(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 fund, the first three hundred and sixty thousand shillings; or
- (b) in the case of a withdrawal from a registered pension fund upon termination of employment, the lesser of –
 - (i) the first thirty six 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 three hundred and sixty thousand shillings; or

- (c) in the case of a lump sum paid out of a registered provident fund (or 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 two hundred and forty thousand shillings or the first twenty-four 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 such members, the name and address 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; or

8 of 1996 s.29

- (d) in the case of a benefit paid out of the National Social Security Fund, the first three hundred and sixty thousand shillings; and

13 of 1995 s76

- (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 fund or scheme other than an unregistered pension fund or scheme established by a tax exempt person:
 - (i) the contributions to which have not been allowed as a deduction under any other provisions of this Act;
 - (ii) and the income thereof has been taxed.

6 of 1994 s.36

(5A) For the purposes of subsection 8(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.

4 of 1993 s.40

(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 amount 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.

*8 of 1991 s.55.
13 of 1995 s 76*

(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.

13 of 1995.s.76

(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 home 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.

13 of 1995 s76

(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 purpose of this section:-

*9 of 1992 s.40
6 of 2001 s.44*

- (a) pension and lump sums paid from a public pension scheme, shall be deemed to be received from a registered pension fund or 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.

6 of 2001 s.44

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

Income of certain non-resident persons deemed derived from Kenya

9.(1). Where a non-resident person carries on the business of shipowner, charterer or air transport operator and a ship or aircraft owned or chartered by him calls at any port or airport in Kenya, the gains or profits from that business from the carriage of passengers who embark, or cargo or mail which is embarked, in Kenya shall be that percentage of the full amount received on account of the carriage which the Commissioner may determine to be just and reasonable; 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 or by radio communication, then the gains or profits from that business shall be that percentage which the Commissioner may determine to be just and reasonable of the full amount received from the transmission of messages which are transmitted by apparatus established in Kenya whether or not those messages originated in Kenya and those gains or profits shall be deemed to be income derived from Kenya.

Income from management or professional fees, royalties, interest and rents
13 of 1975, s.2

10. 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;
- (b) a royalty;
- (c) interest;
- (d) the use of property in Kenya;
- (e) an appearance at, or performance in, a public or private place 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)

the amount thereof shall be deemed to be income which accrued in 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 connection with a business carried on or to be carried on, in whole or part, in Kenya;
- (ii) this section shall not apply to a payment made, or purported to be made, by the permanent establishment in Kenya of a non-resident person to that non-resident person.

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

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

13 of 1978, St

(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 a person beneficially entitled thereto from a trustee in his capacity as trustee, or paid out of income by the trustee on behalf of that person, shall, subject to this Act, be deemed to be income of that person, 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 that income by the trustee, be equal to the amount received or so paid; and
 - (ii) that has borne tax at that 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 the 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 the annuity.

(4) The trustee, executor or administrator may designate a part or all of the amounts paid by him to a person that is chargeable to tax under subsection (2) to be qualifying dividends or qualifying interest and, in that case, such designated amount shall be deemed to have been already tax paid.

(5) The cumulative totals, at any time, of the amounts designated up to that time by a trustee under subsection (4) as qualifying dividends or qualifying interest shall not exceed the cumulative totals of qualifying dividends or qualifying interest, respectively, received by the trustee, in his capacity as a trustee, after the 31st December, 1990 and up to that time.

Imposition of
Instalment
tax.

10 of 1990s43

12.(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 judgement 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 the to 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 percent.

(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, 35, 37 or 17A 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.

Imposition of
Advance tax.
13 of 1995 s.78
4 of 1999 s.33

12.A.(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.

Imposition of
Fringe benefit
tax.
5 of 1998 s.31

12B.(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 he 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 under 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:

6 of 2001 s.45

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

PART III - EXEMPTION FROM TAX

*Certain
income
exempt from
tax.
8 of 1978, s.9*

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

(3) A notice under subsection (2) 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.

Interest on Government loans, etc. exempt from tax.

14. (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, in so far as that 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.

PART IV - ASCERTAINMENT OF TOTAL INCOME

Deductions allowed
2 of 1975, s.5,
13 of 1975, s.2,
7 of 1976, s.2,
16 of 1977, s.2,
8 of 1978, s.9,
6 of 1981, s.5,
1 of 1982, s.3,
14 of 1982, s.19,
8 of 1983, s.14,
13 of 1984, s.19,
18 of 1984, s.3,
8 of 1985, s.12,
10 of 1986, s.29,
10 of 1988, s.31,
9 of 1989, s.18.

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

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

- (a) bad debts incurred in the production of those 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 that year of income;
- (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) expenditure of a capital nature incurred during that year of income by the owner or occupier of farm land for prevention of soil erosion;
- (d) expenditure of a capital nature incurred in that year of income by a person on legal costs and stamp duties in connection 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 in the purposes of his business;

- (e) expenditure, other than expenditure referred to in paragraph (f), incurred in connection with a business before the date of commencement of that business where the expenditure would have been deductible under this section if incurred after that date, so, however, that the expenditure shall be deemed to have been incurred on the date on which that business commenced;
- (f) in the case of the owner of premises, any sums expended by him during that year of income for structural alterations to the premises where the expenditure is necessary to maintain the existing rent; but no deduction shall be made for the cost of an extension to, or replacement of, those 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) an entrance fee or annual subscription paid during that year of income to a trade association which has made an election under section 21(2);
- (i) in the case of gains or profits of the owner of land from the sale of, or the grant of the right to fell, standing timber which was growing on the land at the time the owner acquired the land –
 - (i) where the 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 the standing timber; or
 - (ii) where no valuable consideration was given for the land, so much of that amount as the Commissioner may determine to be just and reasonable as representing the value of the standing timber at the time the owner acquired the land, as is attributable to the timber sold during that 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 that timber, so much of the price paid for that right as the Commissioner may determine to be just and reasonable as attributable to the timber

- sold during the year of income;
- (k) (Deleted by 8 of 1997 s. 32);
 - (l) expenditure of a capital nature incurred in that year of income by the owner or tenant of agricultural land, as defined in the Second Schedule, on clearing that land, or on clearing and planting thereon permanent or semi-permanent crops;
 - (m) 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) expenditure incurred by a 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 the business belongs; or
 - (iv) a sum paid to a university, college, research institute or other similar institution approved for the purposes of this paragraph by the Commissioner for the scientific research mentioned in subparagraph (iii);
 - (o) any sum contributed in that 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 but excluding the National Social Security Fund;
 - (p) expenditure on advertising in connection with a business to the extent that the Commissioner considers just and reasonable; and for this purpose "expenditure on advertising" includes expenditure intended to advertise or promote, whether directly or indirectly, the sale of the goods or services provided by that business;
 - (q) (Deleted by 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 authorization and issue of shares, debentures or similar securities offered for purchase by the general public;
- 8 of 1997 s.32* (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;
- 8 of 1997 s.32* (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.

(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

8 of 1991 s.58

(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 thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first three 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:

9 of 2000 s.42

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 14 of 1982 s. 19);

(d) in the case of a partner, the amount of excess, if any, of his share of any loss incurred by the partnership, calculated after deducting the total remuneration and interest on capital payable to any partner by the partnership and after adding interest on capital payable by any partner to the partnership, over the sum of that remuneration and interest so payable to him less any interest so payable by him;

(e) (Deleted by 8 of 1978 s. 9);

- (f) the amount of any loss realized in computing, in accordance with paragraph 4(2), or paragraph 16A, 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.

(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 that person for the next succeeding year of income:

Provided that -

- (i) a 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) where the income of a married woman is deemed to be the income of her husband, the amount of a 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 that deficit has not already been deducted, subsequent years of income, to the extent of the amount of her income which is assessed on her husband in those years of income.

(5)(a) A person to whom this subsection applies who has succeeded to a 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 that 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 of them, each 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 of them.

- (6) For the purposes of this section -

- (a) "scientific research" means activities in the fields of natural or applied science for the extension of human knowledge, and when applied to any particular business includes -
 - (i) scientific research which may lead to, or facilitate, an extension of that business or of businesses in that class;
 - (ii) 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 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 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) shall be construed so as to be mutually exclusive;
 - (d) gains chargeable to tax under section 3(2)(f) 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;

6 of 2001 s.46

- (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;
- (iv) agricultural, pastoral, horticultural, forestry or similar activities, not falling within subparagraphs (i) and (ii), of this paragraph;
- (ivA) surplus funds withdrawn 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.

6 of 2001 s.46

(8) In the case of a person whose income includes income chargeable to tax under Section 3(2)(f), only twenty-five per cent of the net chargeable income after deduction of any amount deductible under subsection (3)(f) of this section shall be included in the ascertainment of his total income.

Deductions
not Allowed.
7 of 1976, s.2,
11 of 1976, s.7,
8 of 1978, s.9,
14 of 1982, s.20
10 of 1988, s.32

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

- (a) expenditure or loss which is not wholly and exclusively incurred by him in the production of the income;
- (b) 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) entertainment expenses for personal purposes; or

- (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 low income 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.
- (b) expenditure or loss which is recoverable under any insurance, contract, or indemnity;
 - (c) income tax or tax of a similar nature including compensating tax paid on income; but, 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 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) sums contributed to a registered or unregistered pension, savings, 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) expenditure incurred in the production of income deemed under section 10 to have accrued in or to have been derived from Kenya where that expenditure was incurred by a non-resident person not having a permanent establishment within Kenya;
 - (g) (Deleted by 8 of 1978 s. 9);
 - (h) a loss incurred in a 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 those 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 that business in that 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 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,

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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; and for the purposes of this paragraph "control" shall have the meaning ascribed to it in paragraph 32 (1) of the Second Schedule;

(k) (Deleted by 8 of 1997, s. 33);

6 of 1994 s.37

(l) expenses that would otherwise have been allowable in the absence of section 7(3) for financial institutions specified in the Fourth Schedule, other than insurance companies taxable under section 19 and co-operative societies taxable under section 19(4), where such expenses are determined by the total expenses of the financial institution (excepting interest paid on deposits, bonuses and dividends paid by co-operatives under section 19A(2) and 19A(3) and dividends paid by building societies allowed under section 15(2)(k)) multiplied by the ratio that the dividends

exempted under section 7(3) bear to the total income of the financial institution including such exempt dividends.

6 of 2001 s.47

(3) For the purpose of subsection (2), the expression “low income employee” means an individual whose monthly income does not exceed the monthly tax-free income.

Ascertainment of income of farmers in relation to stock.

17.(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 that business, be taken into account at the value, which 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; but on application in writing by the farmer, the Commissioner may, subject to any adjustment that he may consider appropriate, permit a 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), a 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 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 that stock, whichever is the lesser, so, however, that in no case shall he be charged on less than the amount received for that 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 that change where no deduction is allowable under the Second Schedule in respect of that 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 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) A 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 adjustment referred to in subsection (4) and to such adjustments as the Commissioner would have considered appropriate had an application been received under subsection (2), 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; but where the beneficiary succeeds to that 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 -
 - (i) no amount shall be charged on the executors or administrators in respect of the stock transferred to him;
 - (ii) this section shall be applied to the 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 that price or value had been income of the 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.

Presumptive
income Tax.
9 of 1989, s.19
13 of 1995, s.80
9 of 2000, s.43

17A.(1) An authorized agent shall-

- (a) upon payment to any person for the proceeds of the agricultural produce, other than imported produce, specified in the first column of the Tenth Schedule, deduct a presumptive income tax at the rates in force at the date of payment; or

- (b) upon export by any person of the agricultural produce, other than imported produce, specified in the Tenth Schedule charge and collect a presumptive income tax at the rates in force at the date of export;

(2) Where a limited liability company which is also an authorized agent is engaged in farming business which includes the production of any of the specified produce which it disposes of in whatever manner whether or not such produce has been subjected to a process of manufacture, a presumptive income tax shall be deducted and payable by such company upon the proceeds of sale or disposal provided that the value of such specified produce shall be deemed to be equal to the price paid for similar specified produce purchased from farmers dealing at arms length with the company.

(3) For the purposes of subsection (1), the Commissioner shall be entitled To appoint any other person to be an authorized agent by giving notice to such person not being less than thirty days from the date of service of the notice requiring him to deduct tax in respect of the produce so specified and to pay over such deduction to the Commissioner in the prescribed manner.

(4) A company other than an authorized agent which purchases specified Produce other than from another company or an authorized agent shall be required to report such purchases to the Commissioner within thirty days of making the purchase even though it has not been appointed by the Commissioner to act as an authorized agent.

(5) Where a person fails to report purchases of specified produce as required by subsection (4), then, notwithstanding that he has not yet been appointed by the Commissioner as an authorized agent, the purchases of specified produce so far made shall be deemed to have been made by him as an authorized agent and tax which could have been deducted by him under subsection (1) shall be payable by such a person.

(6) Where an authorized agent deducts tax under this section he shall, within thirty days of making the deduction –

- (a) remit the amount so deducted to the Commissioner together with a return in writing of the amount of the payment, the amount of the tax deducted, the name of the person to whom payment is made and particulars of the consideration in respect of which payment is made; and
- (b) furnish the person to whom payment is made a certificate stating the amount of the payment and the amount of tax deducted.

(7) Where a person who is required under this section 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 within thirty days of the date on which the deduction was made or ought to have been made, the provisions of the Act relating to the collection and recovery of tax, and the payment of interest thereon, shall apply to the collection and recovery of the amount as if it were tax due and payable by that person the due date for the payment of which was the date on which the amount should have been remitted to the Commissioner.

(8) Where an individual computes the gains and profits of a farming business which includes the production and sale of any specified produce which is subject to a deduction of tax under subsection (1), the gains or profits in respect of that produce shall be nil:

Provided that the tax deducted from the payment of agricultural produce under subsection (1) of this section shall not be subject to a set off under section 39.

(9) The Commissioner may exempt from the provisions of this section, any payments or class of payment made by any person or class of persons resident or having a permanent establishment in Kenya.

(10) For the purposes of this section -

"authorized agent" means -

- (a) in respect of sale of the produce specified in the first column of the Tenth Schedule, the corresponding organization specified in the second column of that Schedule; and
- (b) in respect of export of the produce specified in the first column of the Tenth Schedule, the Commissioner of Customs and Excise;

"individual" includes a partnership or a co-operative society registered under the Co-operative Societies Act;

"specified produce" means any of the commodities specified in the first column of the Tenth Schedule.

Ascertainment
of gains or
profits of
business in
relation to
certain
non-resident
persons
*8 of 1978, s.9,
18 of 1984, s,
2 of 1989, s20
13 of 1995 s81*

18.(1) Where a non-resident person carries on a 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, and sells outside, or for delivery outside Kenya, that product or produce, whether or not the contract of sale is made within or without Kenya, or utilizes that product or produce in a business carried on by him outside Kenya, then the gains or profits from that business carried on in Kenya shall be deemed to be income derived from Kenya and to be gains or profits of such amount as would have accrued if that 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 that 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 that resident person from that business shall be deemed to be the amount that 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 a business carried on in Kenya no deductions shall be allowed in respect of 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 percent of the total income of that company, calculated before the deduction of that expenditure, or of twenty-five thousand shillings, whichever is the greater, but no 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 (2), 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; or
- (b) a third person participates directly or indirectly in the management, control or capital of the business or both.

(7) For the purposes of ascertaining the gains or profits of a petroleum company, as defined in the Ninth Schedule, paragraph (b) of subsection (4) shall not apply; but paragraph 5(2)(f) of that Schedule shall apply instead.

Ascertainment
of income of
insurance
companies.

6 of 1994 s.38

19.(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 another 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 a 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 that year of income, the sum of -
 - (i) the amount of the gross premiums from that business (less such premiums returned to the insured and such premiums paid on reinsurance as relate to that business); and

- (ii) the amount of other income from that business, including any commission or expense allowance received or receivable from reinsurers and any income derived from investments held in connection 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) –
 - (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 that year of income in connection with that 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 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

8 of 1997 s.34

(4) The gains of profits for a 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 that year of income, the sum of –

8 of 1997 s.34

- (i) the amount received or receivable in Kenya of the gross premiums from that business (less such premiums returned to the insured and such premiums paid on reinsurance, other than to the head office of the company, as relate to that business); and
 - (ii) the amount of other income from that 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 that 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 that 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 that year of income in connection with that 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.

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 life insurance business of a resident insurance company, whether mutual or proprietary, shall be the sum of the following –

- (a) the amount of the investment income of its insurance fund less the expenses of management (including commissions) referable thereto:

Provided that such management expenses shall exclude:

- (i) expenses relating to a registered annuity contract, registered trust scheme, registered pension scheme, or registered pension or provident fund business; and
 - (ii) that portion of expenses not referable to the registered funds in subparagraph (i) as determined by the ratio of exempt investment income to the sum of investment income and exempt investment income; and
- (b) the amount of interest paid by that company from its annuity fund on surrender of policies or on the return of premiums, other than interest, which relates to premiums paid under a registered annuity contract, registered trust scheme, registered pension scheme or registered pension fund.

8 of 1997 s.34

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

- (a) taking the same proportion of the investment income of its life insurance fund as the life insurance premiums received in Kenya bear to the total life insurance premiums received or, if the Commissioner so determines it to be just and reasonable, as the actuarial liability in respect of its life insurance business (other than its annuity business) in Kenya bears to the actuarial liability in respect of its total life insurance business (other than its annuity business); and
- (b) deducting from the amount arrived at under paragraph (a) the life insurance expenses of agencies in Kenya and such proportion as the Commissioner may determine to be just and reasonable of the life insurance 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; and
- (c) adding thereto the amount of interest paid by that company from its annuity fund on the surrender of policies the premiums in respect of which were received in Kenya or on the return of premiums received in Kenya other than interest which relates to premiums paid under a registered annuity contract, registered trust scheme, registered pension scheme or registered pension fund;

Provided that the Commissioner may, if he determines it to be just and reasonable, substitute some basis other than that set out in paragraph (a) for the purpose of ascertaining the portion of the income from investments to be charged as being income derived from business carried on in Kenya.

(7) In this section -

"annuity fund" means, where an annuity fund is not kept separately from the life insurance fund of the company, that part of the life insurance fund which 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 that part of the life insurance fund as represents the liability of the company under a 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) Where an insurance company conducts life insurance business, the gain or profits from insurance business for a year of income shall be the greater of –

- (a) the gains or profits of such a company as determined under section 19(8); or
- (b) the profits reported by such a company in its accounts required to be furnished in its return of income under section 54, provided the provisions of section 15(4) shall not apply in respect of a loss arising out of life insurance business.

Co-operative societies.

19A.(1) This section shall apply to designated co-operative societies other than -

Cap.490

*13 of 1984, s20
8 of 1985, s13*

- (a) a society which has been exempted from all the provisions of the Co-operatives Societies Act under section 86 of that Act; or
- (b) a society in respect of which the Commissioner is of 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 the 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, but the deduction shall in no case exceed an amount equal to eighty per centum of the total income of the society for that year of income.

(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 –

6 of 2001 s.48

(a) eighty-five per centum of its gross income from dividends and interest (other than interest from its members);

(b) seventy per centum of its gross income from any right granted for the use or occupation of any property, not being a royalty;

(c) gains chargeable to tax under section 3(2)(f);

6 of 2001 s.48

(d) any other income (excluding royalties) chargeable to tax under this Act not falling within subparagraphs- (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 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 assets or class of assets.

(7) In this section -

"bonus" and "dividend" shall, for the purposes of sub-sections (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-operatives Societies Act the membership of which is restricted to individual persons.

Unit trusts.

20.(1) Subject to conditions specified by the Minister under section 130, a unit 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 are not exempt persons under the First Schedule.

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

Members' Clubs and trade associations. *1 of 1982, s.3*

21.(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 the gross receipts, other than gross investment receipts, are received from the members of the club, that body of persons shall not be deemed to be carrying on a business and no part of those 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 a 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 –

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

“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 that 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 that trade association;

“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.

Purchased annuities, other than retirement annuities, etc.

22.(1) Notwithstanding section 3(2)(c), where payment of an annuity to which this section applies is made, that portion of the payment which 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 an 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 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 the payments depends in whole or in part upon the survival of an individual;
 - (c) where the continuation of payments depends in whole or in part upon the survival of an individual –
 - (i) if a 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 that individual before those 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 installments, then the contract shall be deemed for the purpose of determining the expected term thereof to provide for the continuance of 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 the payments commence on the expiry of a term of years or on the death of an individual, 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 an annuity payable under a registered annuity contract or a registered trust scheme; or
- (b) to an annuity purchased under a 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 that will or settlement; or
- (c) to an annuity purchased under a pension scheme or pension fund; or
- (d) to an annuity purchased by a person in recognition of the services or past services of another person.

Deduction in respect of contributions to registered pension or provident funds.

22A.(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 ten thousand shillings (or, where contributions are made to registered funds of the employer in respect of a part year of service of the member, seventeen thousand five hundred shillings per month of service).

*10 of 1990 s.48
8 of 1991 s.60
9 of 2000 s.44*

(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 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; or
- (b) thirty per cent of the member's pensionable income from the employer; or
- (c) two hundred and ten thousand shillings (or, where contributions are made to registered funds of the employer in respect of a part year of service of the member, seventeen 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 ten 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

5 of 1998, s.33

(d) where an employee and the employer agree mutually to transfer funds relating to the existing retirement benefits right of that 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 of 1996 s.32

(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 pension fund.

Deductions in respect of registered individual retirement funds

22B.(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).

*9 of 1992 s.45
9 of 2000 s.45*

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) twenty percent of pensionable income of the individual in that year; or
- (c) two hundred and ten thousand shillings (or, where contributions are made on behalf of the individual by his employer in respect of a part of a year of service of the individual, seventeen thousand five hundred shillings per month of service) reduced by the amount of the contribution 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.

Registered home Ownership savings Plan.

13 of 1995 s.84

22C.(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.

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

(4) Deposits in a registered home ownership savings plan shall be invested in qualifying assets.

(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 a 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, an insurance company licensed under the Insurance Act or a building society registered under the Building Societies Act;

"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" means any securities within the meaning of the Capital Markets Authority Act and includes time deposits, treasury bills or such other assets as may be prescribed;

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

Transactions designed to avoid liability to tax.

23.(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 a 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), 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) A 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.

Avoidance of tax liability by non-distribution of dividends
8 of 1978, s.9

24.(1) Where the Commissioner is of the opinion that a company has not distributed to its shareholders as dividends within a reasonable period, not exceeding twelve months, after the end of its accounting period that 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 a charge is made, the company shall be entitled to recover from the shareholder the amount of tax attributable to the adjustment made in respect of that shareholder; and

(ii) where an adjustment is made under this section relating to the distributable profits of a company and those 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 8 of 1978, s.9)

(4) A 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), and the Commissioner, after calling on the company for any 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) to the other company, the dividend which it is treated as having received shall be deemed to be part of the income of the other company available for distribution by the other company to its shareholders as dividends.

Income settled
on children.

25.(1) Where, under a 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, that income shall be deemed to be income of the settlor for that 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) 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 a 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) tax is charged on and is paid by the person by whom the settlement was made, that person shall be entitled to recover from a 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 a person for a year of income is, by reason of subsection (1), 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 of them, 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 an apportionment to be made under this subsection, that question shall be decided by the Commissioner whose decision thereon shall be final.

(5) 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 a 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 a person by whom the settlement was made or entered into directly or indirectly, and a person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with another person a reciprocal arrangement for that person to make or enter into the settlement;
- (d) references 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.

Income from certain settlements deemed to be income of settlor.

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

(2) All income, which in a 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 that year of income and not income of another person.

(3) Where in a 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 that income or accumulated income so made use of shall be deemed to be income of the settlor for that 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 that 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 that 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 a 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) an 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 a relative referred to in paragraph (b);

"settlement" includes a disposition, trust, covenant, agreement, arrangement, or transfer of assets, other than -

- (a) a settlement made for valuable and sufficient consideration;
- (b) an agreement made by an employer to confer a pension upon an employee in respect of a period after the cessation of employment with that 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 that 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 a 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.

Accounting periods not coinciding with year of income etc. 7 of 1976, s.2 8 of 1996 s.34

27.(1) Where a person usually makes up the accounts of his business for a period of twelve months ending on a day other than 31st December, then, for the purpose of ascertaining his total income for a year of income, the income of an accounting period ending on that 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; and
- (b) in the case of an individual, as regards all income charged under that section other than gains or profits from 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 adjustment 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.

8 of 1996 s.34

(3) The accounting period of a person carrying on any unincorporated Business shall be the period of twelve months ending on 31st December 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.

Income and
Expenditure
after
Cessation of
Business.

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

(2) Where a sum is paid by a person after the cessation of his business which, if it had been paid prior to the cessation, would have been deductible in computing his gains or profits from that business, then, to the extent to which that sum has not already been deducted in computing those 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 the sum or remainder thereof, 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 the business ceased.

PART V - PERSONAL RELIEFS

General.

8 of 1997 s.38

29.(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.

8 of 1997 s.38

(2) On a change of relevant circumstances occurring during a 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 that year of income as -

- (a) the number of full months in that 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 that year of income from the commencement of the month in which he became 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):

(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 that year of income up to and including the month in which he dies or so departs, as the case may be; but where that individual is entitled to leave with pay following cessation of his employment in Kenya and part of that 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 after the beginning of a year of income, he shall, in respect of that year of income, be deemed to have been resident for the number of months in that year of income from and including the month in which he

arrived.

Personal
Relief

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

31. (Repealed by 8 of 1996, s.36)

32. (Deleted by 8 of 1991, s.62)

33. (Repealed by 8 of 1996, s.38)

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

A - Rates of tax

34.(1) Subject to this section -

Rates of tax
*2 of 1975, s.5,
13 of 1975, s.2,
8 of 1978, s.9,
12 of 1980, s.3
6 of 1981, s.5,
10 of 1987, s.33
10 of 1988, s.32
5 of 1998 s.36.*

- (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, and wife's professional income and wife's self employment income 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.

5 of 1998 s.36

(g) tax upon the total fringe benefits provided by an employer shall be charged at the resident corporation 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 the 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 a 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) a payment in respect of an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in a sporting event or otherwise diverting

an audience; or

(h) a payment in respect of an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (g), shall be charged at the appropriate non-resident rate in force at the date of payment of that income and shall not be charged to tax under subsection (1).

(3) (Deleted by 8 of 1978, s.9)

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

34A. (Repealed by 8 of 1978, s.9)

B - Deduction of Tax

Deduction
of tax from
certain
income

*2 of 1975, s.5,
13 of 1975, s.2,
7 of 1976, s.2,
8 of 1978, s.9,
13 of 1979, s.5,
18 of 1979, s.2
10 of 1987, s.34*

6 of 1994 s.42

35.(1) A person shall, upon payment of an amount to a non-resident person not having a permanent establishment in Kenya in respect 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, including interest arising from a discount upon final redemption of a bond, loan, claim, obligation or other evidence of indebtedness measured as the original issue discount;

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; and

- (f) a pension or retirement annuity;
- (g) an appearance at, or performance in, a place (whether public or private) for the purpose of entertaining, instructing, taking part in a sporting event or otherwise diverting an audience; or
- (h) an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (g),
- (i) consultancy, agency or contractual fee, which is chargeable to tax, deduct therefrom tax at the appropriate non-resident rate.

6 of 1994 s.42

(2) (Deleted by 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:

6 of 1994 s.42

Provided that -

- (a) 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
- (b) 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; or
- (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

6 of 2001 s.49

- (ee) surplus funds withdrawn from or paid out of registered pension or provident funds;

9 of 2000s. 46

- (f) (i) consultancy, agency or contractual fee the aggregate value of which is twenty-four thousand shillings or more in a month, and the recipient is an individual other than an individual working under a registered business name or an individual whose Personal Identification Number and the amount payable have been recorded by the payer and submitted to the Commissioner ;

9 of 2000s. 46

- (ii) consultancy, agency or contractual fee the aggregate value of which is two hundred thousand shillings or more in a month and the recipient is a person working under a registered business name and his Personal Identification Number and the amount payable has been recorded by the payer and submitted to the Commissioner.

8 of 1996 s.38

- (g) a royalty;

which is chargeable to tax, deduct therefrom tax at the appropriate resident withholding tax.

(3A) A 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 a resident body of persons in respect of the gross amount or aggregate consideration of a 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;

Provided that this subsection shall not apply to the transfer of investment Shares as defined in Part II of the Eighth Schedule in which event tax shall be deducted in accordance with that Part.

(3B) The provisions of subsection (3A) 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.

6 of 2001 s.49

(3C) For the purpose of paragraph (3)(f), the expression “contractual fees” means payment for work done in respect of building, civil or engineering works;

(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 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 within thirty days of the date on which the deduction was made or ought to have been made,

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 was the date on which the amount should have been remitted to the Commissioner.

(6A) Where a 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 a deduction to the Commissioner within thirty days of the date on which the deduction was made or ought to have been made, no Collector of Stamp Duties appointed under section 4 of the Stamp Duty Act shall stamp the instrument of which the property is the subject matter under the Stamp Duty Act, and no Registrar of Titles or Land Registrar appointed under any written law shall register the property under any written law, until the tax has been duly accounted for; but the transferee of chargeable property may pay the tax and 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.

(7) The Minister may, by notice in the Gazette, exempt from the provisions of subsection (3) 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.

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

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

Provided that –

- (i) no deduction of tax shall be made from that part of an annuity which is paid out of income in respect of which no tax is paid or payable;

- (ii) an annuity directed to be paid free of tax shall be paid without deduction of tax, and 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 an annuity other than an annuity directed to be paid free of tax to deduct, from the amount of the 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 that 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 that income is available for the payment thereof.

(3) Where section 11(3)(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 that year of income.

Deductions of
tax from
emoluments
*7 of 1976, s.2,
1 of 1982, s.3,
8 of 1983, s.15,*

37.(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 percent 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 tax shall also apply to the collection and recovery of the penalty as if it were tax due from the employer:

8 of 1997 s.39.

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).

8 of 1997 s.39

(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 five 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 the quarter.

(4) 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 an assessment for the year of income in which those 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.

(6) An employer 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 the imposition:

5 of 1998 s.37

Provided that-

(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.

5 of 1998 s..37

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

Penalty for failure to make deductions under Section 35, 36 or 37

8 of 1991 s.63

37A. Where a corporate body which is required to make a deduction under section 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.

Application to Government

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

C - Set-off of Tax

Set-off of tax

39(1) An amount tax of which -

- (a) has been deducted under section 17A (in respect of a person other than an individual), 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.

6 of 2001 s.50

(2) If any citizen of Kenya chargeable to tax in Kenya for any year of income on employment income 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.

6 of 2001 s.50

(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 is increased by the inclusion of such income in his employment income.

(4) Credit under this section shall not exceed the amount of tax payable in Kenya on such employment income.

6. of 2001 s.50

*Set-off of
import duty.
Cap 472.
13 of 1995, s86
8 of 1996, s.39,*

39A.(1) An amount of import duty which has been paid under section 117 of the Customs and Excise Act in respect of capital goods, qualifying for wear and tear deductions under Part II of the Second Schedule (excluding passenger cars) imported with the prior approval of the Minister, for private investment in a project the cost of which is not less than 5 million United States dollars within a period of two years from the date of first investment expenditure, if the Minister is satisfied that the investment is capable of generating net economic benefits to Kenya, shall be set off for the purposes of collection against the tax charged on the income of the person who incurred the investment expenditure:

Provided that -

- (i) the set-off of import duty shall only be made against income tax payable on the income of the person who incurred the investment expenditure arising from the investment and other activities related or similar to the investment expenditure arising from the investment in the case of an extension or replacement of such capital goods in so far as the said capital goods and the new investment have been commissioned and become productive during the year; and
- (ii) the capital goods are used wholly and exclusively in the production of the taxable income; and
- (iii) the private investment is a project other than an official aid funded project or a project funded directly or indirectly by the Government; and
- (iv) the import duty to be set-off does not form part of the cost of the capital goods for the purposes of wear and tear deductions;
- (v) the amount of import duty to be set off shall not be treated as a withholding, advance or instalment tax or as a prepayment of that person's final tax liability;
- (vi) the amount of the import duty to be set off shall be applied to reduce the person's final tax liability before taking into account any withholding, instalment or advance tax already paid in respect of that year of income;
- (vii) the remainder of the import duty after having been applied in accordance with paragraph (vi) of this proviso shall be applied to reduce the person's final tax liability for the following and subsequent years of income before taking into account any withholding, instalment or advance tax already paid in that year of income;

- (viii) the import duty to be set off shall not be refundable except –
 - (a) to the extent of that amount of duty which has not been offset by the year following the year the investment is first put into use or any subsequent year; and
 - (b) upto the amount of the duty that would have been offset if the investor had not claimed the investment deduction on any investment.

9 of 2000 s.48

(2) The cost of a project under subsection (I) shall include all expenditure on -

- (a) capital assets (excluding land) that fall under Part I of the Second Schedule; and
- (b) capital goods (excluding passenger cars) qualifying for wear and tear deductions under Part II of the Second Schedule.

Cap.472

(3) For the purposes of this section -

8 of 1997 s.40

"official aid funded project" has the meaning assigned to it in section 2 of the Customs and Excise Act; and

"passenger car" means a passenger-carrying motor vehicle with seating capacity of not more than 9 passengers.

Special
arrangements
for relief
from double
taxation.

D - Double Taxation Relief

40. (Repealed by 8 of 1978, s.9)

7 of 1976, s.2

41.(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 with a view to affording relief from double taxation in relation to income tax and other taxes of a similar character imposed by the laws of the country, shall, notwithstanding anything to the contrary in this Act or in any other written law, have effect in relation to income tax, and that notice shall, subject to the provisions of this section, have effect according to its tenor.

(2) The 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) A notice under this section may be 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 notice made under subsection (1) and of any subsequent notice made under subsection (3) to be laid, without delay, before the National Assembly.

Computation
of credits
under special
arrangements.

42.(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.

7 of 1976, s.2

(2) (Deleted by 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) 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) a 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 the 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 that dividend were a dividend of a class in relation to which those arrangements so provide.

(6) A credit shall not be allowed under a special arrangement against tax chargeable upon the income of a 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 that year of income.

(7) Where the amount of a credit or exemption given under a 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 an assessment or claim to which the adjustment gives rise, being an assessment or claim made within six years from the time when all those 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).

Time limit.

43. Subject to section 42(7), a 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

Income of a person assessed on him.

44. Where under this Act the income of a person is chargeable to tax, that income shall, subject to this Act, be assessed on, and the tax thereon charged on, that person.

Wife's income etc.

45.(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.

4 of 1999 s.38

Provided that the income of a married woman consisting of wife's employment income, wife's professional income or wife's self employment income 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, each spouse shall, for the purposes of the 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 a 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 non-resident person.

Income of incapacitated person.

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

Income of non-resident person.

47.(1) The income of a non-resident person shall be assessed on, and the tax thereon charged on, that 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 a ship, or the captain of an aircraft, owned or chartered by a non-resident person who is chargeable to tax under section 9 shall (though not to the exclusion of any other agent) be deemed the agent of that 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 that broker, general commission agent or other agent is not the normal agent of the non-resident person.

Income of deceased person, etc.

48.(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), be assessed on, and the tax charged on, his executors or administrators for that year of income.

(2) An amount received by the executors or administrators of a deceased person which would, but for his death, have been his income for a 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 that year of income.

(3) Where executors or administrators distribute the estate of a deceased person before a 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.

Liability of
joint trustees.

49. Where two or more persons are trustees, an 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.

Liability of
person in
whose name
income of
another
person
assessed

50. A person in whose name the income of another person is assessable under this Act shall be responsible, in relation to the assessment of that income, for doing all 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 that 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.

Indemnificatio
n of
representative

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

PART VIII - RETURNS AND NOTICES

Returns of
income and
notice of
chargeability

52.(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 that 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 that return shall include a declaration signed by that person, or by the person in whose name he is assessable, that the return is a full and true statement; but where 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 that business.

(2) In the case of the executors or administrators of a deceased person, or of the liquidator of 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 that return relates.

(3) A person chargeable to tax for a year of income who -

(a) within four months after the end of that 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 that year of income, has not made a provisional return of income for that year of income within four months of the end of that accounting period,

has not been required to make a return of income for that 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 that 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.

(4) Where a 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 the 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 that year of income.

*10 of 1990, s.51
4 of 1993, s.45*

Final Return
with Self-
assessment.

52A. (Repealed by 8 of 1996, s.40).

*8 of 1991, s.64
9 of 1992, s.48
8 of 1997, s.41*

52B.(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 his accounting period:

Provided that an employee shall not be required to furnish to the Commissioner such a return of income -

- (i) if he had no income chargeable to tax for that 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.
- (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.

*Provisional
returns.*

2 of 1975, s.5

53.(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; but 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.
- (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 the return and where the person making the return has 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) A 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) shall, within fourteen days of the expiration of that 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).

Documents to be included in return of income.

*13of1979, s.5,
18of1979, s.2.*

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

- (a) a copy of the accounts signed by himself and by that other person together with a certificate signed by that other person -
 - (i) where the accounts were prepared by the 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 the accounts present true and fair view of the gains or profits from the 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 directors or partners, by all the directors or partners:

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

(2) The Commissioner may, by notice in writing, require a person who has made a return of income and to whom subsection (1) applies to furnish him within a reasonable time, not being less than thirty days from the date of service of the notice, with a certificate signed by the professional person who prepared or examined the accounts a copy of which was sent with the 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 the accounts were prepared by a professional person, recording the extent of his verification of the books of accounts and documents produced to him;
- (c) where the accounts were examined by a professional person, specifying the nature of the books of account and documents produced to him and the extent of his examination thereof.

(3) Where a professional person refuses to give a certificate referred to in subsection (1) or (2) 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 the return shall send the statement to the Commissioner.

(4) Where a person who carries on a business makes a return of income for a year of income and accounts of his business for an accounting period relating to that year of income have not been prepared or examined by another person in a professional capacity, he shall furnish with the 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 the 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 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 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 directors or partners, by all the directors or partners.

(5) For the purposes of this section:-

"accounts" means a balance sheet or statement of assets and liabilities, and 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 certified public accountant or an authorized accountant within the meaning of the Accountants Act.

6 of 2001, s.51

Cap.531

Keeping of records of receipts expenses, etc.

54A.(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.

8 of 1996, s.41

(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.

Books and accounts.

55.(1) Where a person appearing to be chargeable with tax fails or refuses to keep 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 the records, books, and accounts, and to keep them in the language, specified in the notice.

(2) A 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.

Production and preservation of books, attendances, etc.

56.(1) For the purpose of obtaining full information in respect of the income of a person or class of persons, the Commissioner may, by notice in writing, require, in the case of the income of a 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 the notice, any accounts, books of account, and other documents which the Commissioner may consider necessary;
- (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 the time and place specified in the 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 that year of income; but 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.

Return of
salaries,
pensions, etc.

57.(1) The Commissioner may, by notice in writing, require an employer or any other person making the payments herein referred to, to furnish him within a reasonable time, not being less than thirty days from the date of service of the 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 them;
- (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 them;

but 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 (i) –
 - (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);
 - (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.

Return as to
fees,
commissions,
royalties, etc.

58.(1) The Commissioner may, by notice in writing, require a person carrying on a business 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 all payments made by that 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 the business; or
- (b) payments for services rendered, or in anticipation of services to be rendered, in connection with the formation, acquisition, development, or disposal of the business or a part of it, by persons not employed in the 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 connection with 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.

Occupier's
return of rent.

59. The Commissioner may, by notice in writing, require a 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 the notice, with a return containing -

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

Return of
lodgers and
inmates.

60. The Commissioner may, by notice in writing, require a person who provides accommodation for a lodger or inmate to furnish him within a reasonable time, not less than thirty days from the date of service of the 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 the date of the notice.

Return of
income
received on
account of
other
persons.

61. The Commissioner may, by notice in writing, at any time require a person who is in receipt of income as the representative of, or on behalf of, another 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 the 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.

Return as to
income
exempt
from tax.

62. 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 containing a full and true statement -

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

Return in relation to settlements

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

Return in relation to registered pension fund, etc.

64. The Commissioner may, by notice in writing, require the trustees of a registered pension fund or pension scheme and an employer who contributes to that fund to furnish him within a reasonable time, not being less than thirty days from the date of service of the 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 the fund or scheme;
- (b) the amount and nature of payment;
- (c) a copy of the accounts of the fund or scheme up to the last date prior to the notice to which the accounts have been made up; and
- (d) such further information and particulars in connection with the fund or scheme or the regulations relating thereto as the Commissioner may require.

Return of annuity contract benefits.

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

Return of resident company dividends

66. The Commissioner may, by notice in writing, at any time require a 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 the notice, with a return giving the full name and address of each shareholder to whom a dividend was paid and, in respect of each shareholder, full particulars of his shareholding at the date of declaration of the dividend, the gross amount paid or payable to him, the tax deducted thereupon and any other particulars that the Commissioner may require, as notified generally by notice published in the Gazette or as specified by notice in writing to a particular resident company.

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

8 of 1978, s..9

67.(1) The Commissioner may, by notice in writing, require a person carrying on a business who, in the ordinary course of the operation thereof, receives or retains money in circumstances that interest becomes payable thereon, and in particular, a 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 the notice, with a return of all interest paid or credited by that person during a year specified in the notice in the course of his business, or any part of his business that 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; but the year specified in the 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), 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 the notice, and that separate notice shall, if served on the manager or other person in charge of the 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, a notice subsequently served under subsection (1) on the person carrying on the business shall not be deemed to extend to a transaction to which the separate notice extends.

(3) This section shall, with any necessary adaption, apply in relation to the 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.

Return as to
dividends paid
by building
societies.

68.(1) The Commissioner may, by notice in writing, require a building society 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 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,

and the 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 amounts of the dividends; but the year specified in the 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 –

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"foreign building society" means a building society registered under section 75 of the Building Societies Act;

"resident building society" means a building society registered under section 6 of that Act.

Access to
official
information.

69.(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 the officer and 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 possession of that officer; but no officer shall under this section be obliged to disclose particulars as to which he is under a statutory obligation to observe secrecy.

8 of 1997 s.42

(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 authorized 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.

8 of 1997 s.42

(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.

8 of 1997 s.42

(4) Subject to subsection (3), where any person upon whom a 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.

Further returns and extension of time

70.(1) The Commissioner may, by notice in writing, require a person to furnish him within a reasonable time specified in the notice, not being less than thirty days from the date of service of the 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 a 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.

Return deemed to be furnished by due authority.

71. A return, statement, or form, purporting to be furnished under this Act by or on behalf of a 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 the return, statement, or form, shall be deemed to be cognizant of all matters contained therein.

Additional tax in event of failure to furnish return or fraud in relation to return
*13 of 1979, s.5,
8 of 1997 s.43,
4 of 1999 s.39.*

72.(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 52A shall, for each period of twelve months or part thereof during which the failure continues, 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 shall, for each month or part thereof from the commencement of the failure up to the date on which the Commissioner makes a provisional assessment for the year of income under section 74(3), or an assessment under section 73, whichever is the earlier, be charged with additional tax equal to three per cent of the normal tax in the 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

9 of 2000 s.49

- (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 percent of the compensating tax which should have been shown on such return.

6 of 2001 s.52

(2) A person who, in relation to a 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 the omission, claim or statement was due to fraud or to 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 a 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 that amount from his return of income.

(3) Where a failure, omission, claim, statement, deduction or set-off as is referred to in subsections (1) and (2) has been made in connection with a return of income required under this Act to be furnished by a person on behalf of another person, the 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 proceedings are commenced for an 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;

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

(5) Notwithstanding anything in Part X, where in an appeal against an assessment which includes additional tax one of the grounds of appeal relates to the charge of that 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), 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), 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 that question is decided in favour of the person concerned no additional tax shall be payable.

(6) The Commissioner may at any time remit the whole or part of any additional tax imposed under subsection (2) up to a maximum of five hundred thousand shillings per person per annum and a refusal to make a remission under this subsection shall not be questioned in any Court:

Provided that -

*8 of 1997 s.43
9 of 2000 s.49*

- (a) 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
- (b) the Commissioner shall make a quarterly report to the Minister of all additional tax remitted during that quarter.

(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.

*Offences in respect of failure to furnish return or fraud in relation to return.
10 of 1990 s.53*

72A. 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 compensating 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.

Penalty for the negligence of authorized tax agent.

8 of 1991 s.65

72B. 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 authorized 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:

Provided that nothing in this section shall affect the liability to tax of the person subject to additional tax under section 72.

Penalty on underpayment of instalment tax.

4 of 1993, s.51

8 of 1997, s.44

8 of 1997, s.44

72C.(1) Subject to the Twelfth Schedule, a penalty of twenty percent 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 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 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.

Penalty on unpaid tax.

4 of 1993 S.51

72D. Where any amount of tax remains unpaid after the due date a penalty of twenty percent shall immediately become due and payable.

Provided that, 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 the self assessment of tax under section 52B.

PART IX - ASSESSMENTS

Assessments **73.(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 that person under this Act for the delivery of a return of income.

8of1991, s.66 (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 the return is not true and correct, determine, according to the best of his judgement, the amount of the income of that person and assess him accordingly.

(3) Where a person has not delivered a return of income for a year of income, whether or not he has been required by the Commissioner so to do, the Commissioner considers that the person has income chargeable to tax for that year, he may, according to the best of his judgement, determine the amount of the income of that person and assess him accordingly; but the assessment shall not affect any liability otherwise incurred by that person under this Act in consequence of his failure to deliver the return.

Provisional assessments. **74.(1)** Without prejudice to his powers under section 73, 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 that person under this Act for the delivery of a provisional return of income.

(2) When a person has furnished a provisional return he shall thereupon be deemed to have been provisionally assessed under this section on the basis of the estimates contained in the return.

(3) Where a person has not submitted a provisional return of income for a 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 judgement, determine the amount of the income of that person and assess him accordingly; but the assessment shall not affect any liability otherwise incurred by that person under this Act in consequence of his failure to deliver the return.

Instalment
Assessments.
10 of 1990, s.54
8 of 1996, s.42

74A.(1) Without prejudice to his powers under sections 73 and 74, the 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.

(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.

(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 judgement, estimate the income of that person and make an instalment assessment upon him accordingly.

Minimum
additional
tax or penalty.
4 of 1993, s.52

74B. Notwithstanding any other provisions of this Act, any additional tax or penalty (but excluding any interest) charged shall not be less than one thousand shillings in the case of an individual or five thousand shillings in any other case.

Assessment of
person about
to leave or
having left
Kenya.

75. Where the Commissioner has reasonable cause to believe that a 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 judgement, determine the amount of the income of that person for that year of income and assess him accordingly, but that assessment shall not affect the liability of that person otherwise arising under this Act.

Assessment
not to be
made on
certain
employees.

76. The Commissioner shall not assess an employee for a year of income -

(a) if that employee had no income chargeable to tax for that year of income other than income consisting of emoluments; and

(b) if on the basis of those emoluments and the personal reliefs to which that employee is entitled the tax payable by that employee in respect of those emoluments has been recovered by deduction under section 37,

unless, prior to the expiry of seven years after that year of income, that employee applies to the Commissioner to be assessed, whether in connection 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 that employee for that year of income.

Assessments
not to be
made on
certain
income.
8 of 1991, s.67

76A. 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.

Additional
assessments.

77. Where the Commissioner considers that a 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 that person at such additional amount as, according to the best of his judgement, that person ought to be assessed.

Service of
notice of
assessments,
etc.

78. The Commissioner shall cause a notice of an assessment, provisional assessment or instalment assessment to be served on the person assessed, and the 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; but no notice need be served in the case of a person deemed to have been assessed under section 74(2) or 74A(2).

Time limit for
making
assessments,
etc.

79.(1) An assessment may be made under this Act at any time prior to the expiry of seven years after the year income to which the assessment relates, but –

- (a) 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, an assessment in relation to that 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 thereon may be made at any time prior to the expiry of seven years after the year of income in which the gains or profits are received;
- (c) in any case to which the proviso to paragraph (d) of section 4, or 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 that person, the assessment shall be made prior to the expiry of three years after the year of income in which that 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 and on any appeal consequent thereon.

Assessments
list.

80.(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.

Errors, etc. in
assessments
or notices.

81.(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 a person affected by the assessment.

PART X - OBJECTIONS, APPEALS AND RELIEF FOR MISTAKES

Local
Committees.

82.(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 the period, not exceeding two years, specified in his appointment unless, prior to the expiration of that 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 an appeal;
- (b) prescribing the procedure to be adopted by a local committee in hearing an appeal and the records to be kept by the 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.

The Tribunal.

83.(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 the period, not exceeding two years, specified in his appointment unless, prior to the expiration of that 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.

Notice of
objection of
assessment.

84.(1) A 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) 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 sixty days after the date of service of the notice of assessment; but if the Commissioner is satisfied that owing to the 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, 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 sixty 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) 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), 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.

Powers of
Commissioner
on receipt of
objection

85.(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 judgement; 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 the amendment and the amount of the tax payable to be served on that person; or
- (b) refuses to amend the assessment, he shall cause a notice confirming the assessment to be served on that person.

Rights of
Appeal from
Commissioner
's
determination
of objection.

10of1986, s30

86.(1) A person who has been served with a notice under section 85(3) may -

- (a) if his assessment is based upon or consequent upon a direction issued under section 23 or 24, appeal from the decision of the Commissioner to the Tribunal; or
- (b) in any other case, appeal from that 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 that subsection.

(2) A party to an appeal under subsection (1) of this section or under section 89(1) 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 in which a notice of that decision has been served upon him; but 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(2)(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.

Procedure on appeal.

87.(1) In this section, "appellate body" means the Court, the Tribunal or a local Committee.

- (2) In an appeal under section 86 -
 - (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, but
 - (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 any other order thereon which 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 the decision and of the date thereof to be issued and that 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 payment of that amount, whether or not the amount of tax is specified in the decree.

Finality of assessment.

88.(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); or
 - (ii) a notice has been served under section 85(3) 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.

Application
of appeal
procedure
to other
decisions, etc.,
of
Commissioner
.8 of 1978, s.9

- 89.(1)** A person aggrieved by -
- (a) a notice given by the Commissioner under section 55(1); 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) 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 a party thereto.

(4) Where any appeal under subsection (1) 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.

Relief in respect of error or mistake.

90.(1) Where for any year of income, a person who, having 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.

Rules for appeals to the court.

91. The Chief Justice may make rules governing appeals to the Court under this Part.

Appeals to Court of Appeal.

91A. 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.

PART XI - COLLECTION, RECOVERY AND REPAYMENT OF TAX

Time within which payment to be made.
*2 of 1975, s.5,
7 of 1976, s.2,
13 of 1979, s.5,
9 of 1989, s.21.*

92.(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 not later than the last days of the months in the current year of income as specified in the Twelfth Schedule:

10 of 1990, s.55

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 due 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 9 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), 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, 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) 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.

Due date for
payment of
tax under self-
assessment
10 of 1990, s.55
8 of 1991, s.69
8 of 1997, s.46
5 of 1998, s.38

92.A. Where any person 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 end of his year of income or accounting period.

Payment of
tax where
notice of
objection etc.
*13 of 1978, St.
10 of 1986, s32*

- 93.(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.

Interest on
unpaid tax.
*8 of 1978, s.9,
13 of 1979, s58
of 1983, s.16,
10 of 1990 s56.*

94.(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, including the penalty remaining unpaid for more than one month after the due date until the full amount is recovered.

(2) The penalty under section 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.

*8 of 1991, s.71
8 of 1997, s.47
9 of 2000, s.51*

(3) For purpose 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 as assessment may be stood over on account of an objection or an appeal.

(4) The Commissioner may remit the whole or part of any penalty or late payment interest or both such penalty or and interest charged under section 72D up to a maximum of five hundred thousand shillings each per person per annum:

Provided that -

- (a) the Commissioner may remit any amount of penalty or late payment interest in excess of 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.

*Interest on
Underestimated
tax.
7 of 1976, s.2,
10 of 1965, s.35*

95.(1) If, for a year of income, the difference between the amount of tax assessed on the total income of a 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).

8 of 1997, s.48

(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 the 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.

10 of 990, s. 58

95A (Repealed by 4 of 1993 S.56).

Appointment
and duties of
agent

96.(1) In this section -

"agent" means a person appointed as such under subsection (2);

"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, as soon as may be practicable, 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 an agent under subsection (4) -

(a) sufficient moneys for the payment of 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 shall be stopped 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); 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), 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 case 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.

Deceased persons.

97. 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, 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.

Collection of tax from persons leaving or having left Kenya.

98.(1) Notwithstanding anything to the contrary in this Act, where the Commissioner has assessed a person under section 75 he 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 -

- (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, 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 therefor 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) 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 therefor 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 subsection (4) and (5) 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) 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 a 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 9 of 2000 S.53)

Collection of
tax from
guarantor.

100.(1) Where security has been given under section 98(1) or (2) and that security consists of a form of guarantee under which, in default of payment of tax in terms of the 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.

Collection of
tax by suit.

101.(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 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 the amount of tax is due and payable by that person.

Collection of
tax by
distrain.
7 of 1976, s.2

102.(1) In a case in which tax is recoverable in the manner provided by section 101 the Commissioner may, instead of suing for the tax, recover it by distress, and for that purpose may by order under his hand authorize an officer to execute distress upon the goods and chattels of the person from whom the tax is recoverable and that officer may, at the cost of the person from whom the 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;
- (ii) where the full amount of tax due and payable has been paid after the issue of an order under 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 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 distress is being levied and a 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), 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 costs 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.

Security on
property for
unpaid tax.

103.(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, 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) 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.

Collection of tax from shipowner, etc.

104.(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 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.

Refund of tax overpaid.

105.(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) applies, a claim for repayment may be made within the period in which an assessment may be made.

Repayment of tax in respect of income accumulated under trusts.

106.(1) Where under a will or settlement, other than a settlement to which section 25 or 26 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

General penalty.

107. 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.

Additional penalties.
4 of 1993, s.57

108.(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 willful or gross neglect, or fraud on the part of an authorized 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.

Failure to comply with notice, etc.
7 of 1976, s.2

109.(1) A 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); or
- (b) fails to furnish a full and true return in accordance with the requirements of a notice served on him under this Act or fails to give notice to the Commissioner as required by section 52(3); 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), 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); 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); 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, 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.

8 of 1991, s.72

(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.

Income Tax Act Cap. 470

Incorrect
returns,
etc.

110.(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.

Fraudulent
Returns, etc.

111.(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 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 record, 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.

Obstruction of officer.

112. 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.

Evidence in cases of fraud, etc.

113.(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.

Power of
Commissioner
to compound
offences.

114.(1) Where a person has committed an 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; but 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) -
 - (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 an offence under this section, the person concerned shall not be liable to prosecution in respect of that offence; and if a prosecution is brought it shall be a good defence for that person to prove that the offence has been compounded under this section.

Place of trial. **115.** A person charged with an 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 that 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; but 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.

Offences by corporate bodies. **116.** 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.

Officer may appear on prosecution. **117.** 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 proceedings to which the Commissioner is a party and, subject to the directions of the Attorney General, that officer may conduct a prosecution for an offence under this Act and for that purpose shall have all the powers of a public prosecutor appointed under the Criminal Procedure Code.

Tax charged to be payable Notwithstanding prosecution. **118.** The amount of 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.

Power to search and seize. **119.(1)** If an officer of the rank of assessor or above authorized by the Commissioner to inquire into the affairs under this Act of a 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), the officers shall require a police officer to be present during the exercise thereof and a police officer so required shall comply with that requirement.

(3) For the purposes of subsection (1), 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.

Powers to inspect books and documents.

120(1) Notwithstanding anything to the contrary in any provision or rule of law, an officer of the rank of assessor or above authorized by the Commissioner to inquire into the affairs of a person for any of the purposes of this Act shall at all time 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, or 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) may require the owner or Manager of a property or business, or a person employed in connection with that property or business, or any other person, to give him all reasonable assistance and to answer all proper questions relating to the 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 any other person, to attend at the premises with him.

Admissibility of evidence.

121. Notwithstanding any provision or rule of law to the contrary -

- (a) a 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 a 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

Appointment
of
Commissioner
and other
officers.

122. There shall be appointed a Commissioner of Income Tax and such other officers as may be necessary for the due administration of this Act and the efficient working of the Income Tax Department and the Commissioner of Income Tax so appointed shall, subject to the control of the Minister, be responsible for the control and management of the Department and for the collection of, and accounting for, tax.

Commissioner
's
discretion to
abandon or
remit tax.
L.N.97/2001

123.(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 elect to 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) Where the Commissioner has elected to refrain from assessing or recovering tax under the provisions of subsection (1), he shall report that election in writing to the Minister as soon as may be after the 30th June next following his election.

Exercise of
powers, etc.

124.(1) Subject to any express direction by the Commissioner to the contrary, the powers and duties of the Commissioner under this Act, other than powers under section 114, may be exercised by a Deputy Commissioner, Senior Assistant Commissioner, or Assistant Commissioner.

(2) 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 section 114 and 123.

Official
secrecy.
7 of 1976, s.2,
10 of 1983, s.2.

125.(1) An 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 a 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 122 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 court a document, or to communicate to a court 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) an officer or person from revealing a document or information relating to the income of a person or confidential instructions in respect of the administration of the Income Tax Department to another officer or person so employed in the course of his duties, or to a person authorized in that behalf by the Minister in relation to a person resident in Kenya, or to a court or person for the purposes of this Act;
- (b) an officer from revealing a document or information solely for revenue or statistical process to a person in the service of the Government in a revenue or statistical department where that document or information is needed for the purpose of the official duties of that last mentioned person and where last mentioned person has made a subscribed a declaration of secrecy in relation to information coming to his knowledge in the course of his official duties;
- (c) an officer from revealing a 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.

(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 that relief or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to those taxes.

Offences by
or in relation
to officers, etc

126.(1) An officer or other person employed in carrying out the provisions of this Act who -

- (a) directly or indirectly asks for, or takes, in connection with his duties any payment or reward whatever, whether pecuniary or otherwise, or a promise or security for such a payment or reward, not being a payment or reward which is lawfully entitled to receive; or
- (b) enters into or acquiesces in an agreement to do, abstain from doing, permit, conceal, or connive at, an 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, and without lawful excuse, reveals to any person a 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 a 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.

(2) A person who -

- (a) directly or indirectly offers or gives to an officer, or to another person employed in carrying out the provisions of this Act, any payment or reward whatever, whether pecuniary or otherwise, or a 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 that 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.

PART XIV - MISCELLANEOUS PROVISIONS

Form of notices, etc.

127.(1) The Commissioner may specify the form of a 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 that 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 an 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) Any form, notice or other document issued, or 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.

Service of notices, etc.

128.(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 that notice or other document may be so served or given by addressing it to that person, or, where that person is a company, to the principal officer or secretary of the 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 by post addressed to his usual or last known place of address or to a post office box rented in the name of that 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 an address in Kenya, ten days after the date of posting;
- (b) where it is sent to an 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; but 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 that person refuses or neglects to take delivery of the letter, and the letter consists of a notice or other document, then service of that notice or other document shall be deemed to have been effected.

(4) Where the income of a person is assessable and chargeable in the name of another person, then if a notice or document which is required or authorized to be served on or given to the first mentioned person is served on or given to the other person the notice or document shall be deemed also to have been served on or given to the first mentioned person.

Liability of manager, etc., of corporate body

129. Where an obligation is imposed by or under this Act on a Corporate body, the general manager or other principal officer of that body shall be responsible for performing that obligation.

Rules

130. The Minister may make rules prescribing anything, which is to be prescribed under, and generally for carrying out the provisions of, this Act.

Exemption from stamp duty

131. All securities of whatever nature over property, movable or immovable, and all transfers of property in favour of or by the Commissioner shall be exempt from stamp duty.

Income Tax Act Cap. 470

Personal
identification
numbers.
8 of 1991, s.73

132.(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.

9 of 1992, s.56

(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.

9 of 1992, s.56

(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.

Repeals and
transitional
2 of 1975, s.5

133.(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.

E.A.Cap.24
Cap.4

(2) Subject to subsection (4), the Management Act shall, notwithstanding anything contained in the Treaty for East African Co-operation Act, cease to have the force of law in Kenya with effect from 1st January, 1974.

No.29 of 1971

(3) Subject to subsection (4), the Income Tax (Allowances and Rates)(No. 2) Act, 1971, is repealed.

(4) Notwithstanding subsections (2) and (3), the 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 those 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.

*13of1975, s.2,
7of1976, s. 2,
12of1977, s.5,
8 of 1978, s.9,
6 of 1981, s.5,
8of1983, s.17,
13of1984, s21
18of1984, s.5,
8of1985, s.14,
10of1986, s33
10of1987, s36
3of1988, s.43,
10of1988, s34*

FIRST SCHEDULE (Sections 13 & 14)

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 for the time being in force, to the extent provided by that Act.

2. The income of a person who, or organization which, is exempt from income tax by or under any Act for the time being in force, to the extent provided by that Act.

3. That part of the income of the President 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.

5 of 1998,s.39

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 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 that association if that 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 those purposes, and the interest on investments of that society.

8. The income of a local authority.

9. Interest on tax reserve certificates which may be issued by authority of the Government.

6 of 2001, s.53

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 purposes which result in the benefit of the residents of Kenya:

Provided that any such income which consists of gains or profits from a business shall not be exempt from tax unless those gains or profits are applied solely to those purposes and either -

- (i) the business is carried on in the course of the actual execution of those purposes; or
- (ii) the work in connection with the business is mainly carried on by beneficiaries under those purposes; or

- (iii) the gains or profits consist of rents (including premiums or similar consideration in the nature of rent) received from the leasing or letting of land and chattels leased or let therewith.

11. The income of a person from a 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 the income shall be exempt from tax.

12. The income of a registered pension scheme.

13. The income of a registered trust scheme.

14. The income of a 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 an insurance company.

17. Pensions or gratuities granted in respect of wounds or disabilities caused in war and suffered by the recipients of those pensions or gratuities.

18. A payment in respect of disturbance, not exceeding three months' salary, made in connection with a change in the constitution of the government of a Partner State or the Community to a person who, before the change, was employed in the public service of any of those governments or of the Community.

19.)

20.) (Deleted by 8 of 1978, s. 9)

21.)

22. That part of the income of an officer of the Government or of the Community accrued in or derived from Kenya which consists of foreign allowances paid to that officer from public funds in respect of his office:

Provided that, where a person to whom all allowance is paid is granted a deduction under section 15 in respect of 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 that allowance as is equal to the amount of that 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 those Corporations.

24. (Deleted by 8 of 1978, s. 9)

25. The emoluments of an officer of the Desert Locust Survey who is not resident in Kenya.

26. The emoluments -

(a) of members of the armed forces of a country to which section 95 of the Constitution applies;

(b) of a person in the public service of the government of that country in respect of his office under that government where that person is resident in Kenya solely for the purpose of performing the duties of his office,

where those emoluments are payable from the public funds of that country and are subject to income tax in that country.

27. The emoluments payable out of foreign sources in respect of duties performed in Kenya in connection with a technical assistance or other agreement for development services or purpose to which the Government is a party to a 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 those emoluments.

28. An education grant paid by the Government of the United Kingdom under an agreement between that government and the Government of Kenya received by a person who is employed in the public service of Kenya.

29. The income received by way of remuneration under a 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 entered into and which provides that 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 the Government.

31. Gains or profits resultant from a reward paid by the United Kingdom Atomic Energy Authority for the discovery of uranium ore in Kenya, except to the extent that the 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 a 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 Africa 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, and this exemption shall 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 that 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 individual 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 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 that property used for residential purposes shall be separately determined from that used for business purposes or for the production of income;
- Cap.283
Cap.284
Cap.300
- (d) property (being land) transferred by an individual where -
 - (i) the transfer value is not more than thirty thousand shillings;
 - (ii) agricultural property having an area of less than one hundred acres where that 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;
- Cap.5
- (e) land which has been adjudicated under the Land Consolidation Act or the Land Adjudication Act when the title to that land has been registered under the Registered Land Act and transferred for the first time;
- Cap.488
- (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.

- Cap.270 **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.
- 38.** (Deleted by 10 of 1987 s. 36)
- 39.** (Deleted by 10 of 1987 s. 36)
- 40.** Interest earned on contributions paid into the Deposit Protection Fund established under the Banking Act.
- 41.** Interest paid on loans granted by the Local Government Loans Authority established by section 3 of the Local Government Loans Act.
- 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.
- 8 of 1991 s.74 **43.** The income of a registered individual retirement fund.
- 13 of 1995 s.87 **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.
- 8 of 1997 s.49 **46.** Dividends received by a registered venture capital company.
- 8 of 1997 s.49 **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.
- Cap. 485A
8 of 1997, s.49 **48.** Gains arising from trade in securities exchange operating in Kenya by any dealer licensed under the Capital Markets Authority Act:
- Provided that such securities have been held for a period not exceeding twenty-four months from the date of acquisition.
- 8 of 1997, s.49 **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.

**PART II - SECURITIES, THE INTEREST ON WHICH IS
EXEMPT FROM TAX**

1. Interest payable to non-resident persons on the following securities -

Kenya Government 2 3/4 per cent Stock 1977/83,
Kenya Government 3 1/2 per cent Stock 1973/78,
Kenya Government 4 1/2 per cent Stock 1971/78,
Kenya Government 5 per cent Stock 1978/82,
Kenya Government 5 1/2 per cent Stock 1976/80,
Kenya Government 6 1/2 per cent Stock 1972/74,
Kenya Government 6 per cent Loan to finance
Development Programme 1957/60, 1960/63, 1980/93,
Nairobi City Council 3 1/4 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 5 1/2 per cent Stock 1980/84,
East African High Commission 5 per cent
International Co-operation Administration Loan 1978,
East African High Commission 4 3/4 per cent
International Bank for Reconstruction and Development Loans
1974 (two issues),
East African High Commission 5 3/4 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 6 1/2 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 that income represents interest accrued in respect of or derived from a loan of Deutsch Mark 27,257,515 made by that corporation 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 that 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)

Deductions

PART I - DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON CERTAIN BUILDINGS

*2 of 1975, s.5,
13 of 1975, s.2,
7 of 1976, s.2
L.N.123/1976,
L.N.189/1977,
8 of 1978, s.9,
13 of 1979, s.5,
6 of 1981, s.5,
14 of 1982, s.21,
18 of 1984, s.6,
8 of 1985, s.15,*

- 1.(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 a 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

*10of 986, s.34,
10of 987, s.37,
2of 1989, s.22.*

- (b) in a case where that amount has been so increased, to that fraction as so increased; and
- (c) in a 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 that person for any year of income in which the building is so used:

Provided that -

8of 1991, s.75

- (i) where the building was so used for part only of that year of income, the deduction shall be proportionately reduced;
- (ii) where the 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 that person for any year of income in which the 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.

(1A) Where a building is an industrial building within the meaning of subparagraph (1), the following civil works or structures on the premises of the 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 that deduction, would be the residue of expenditure at the end of that 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.

Increase of deductions.

2. Notwithstanding paragraph 1 (1)(a), where the Commissioner is satisfied that, having regard to the type of construction or to the use to which an 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 considers just and reasonable, and all the provisions of this Part shall apply accordingly.

Ascertainment of residue of expenditure.

3. 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 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) if it had always been an industrial building.

Sale of
building
prior to use.

4.(1) Where capital expenditure is incurred on the construction of a building and before that building is used, it is sold -

- (a) 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;

but where the building is sold more than once before it is used, item (b) 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 before the building is used he sells it in the course of that business or part thereof, subparagraph (1)(b) 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 the 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 or 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 the 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 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 the dwelling-house and which conforms with prescribed conditions;
 - (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).
- (2) Item (a) of subparagraph (1) shall apply in relation to a part of a business or undertaking as it applies in relation to a business or undertaking; but 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 subparagraphs (1) and (2) but subject to subparagraph (4), the expression "industrial building" does not include a 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; but this subparagraph shall not apply to a prescribed dwelling-house, or to part of, a building which is a dwelling-house constructed for the occupation by persons employed in a business or undertaking referred to in subparagraph (1) or to a building constructed for the welfare of those persons, if that building will cease to belong to the person carrying on the 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 that person if he ceased to carry on the business or undertaking on the termination of, or had little or no value to that person where the business or undertaking ceased to be carried on during, the year of income in respect of which a 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.

Interpretation

6.(1) A reference in this Part to the incurring of capital expenditure on the construction of 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**

Wear and tear
deductions

7.(1) Subject to this Part, where, during a year of income, 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 37.5 per cent for class (a), 25 per cent for class (b) and 12.5 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 -

8 of 1991, s.75

- (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 percent 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).

Ascertainment
of written
down value.

8.(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 machinery of that class purchased and the deduction of the amount realized on the sale of machinery of that class sold in the year of income 1974, or a succeeding year of income, less deductions made under this Part; and where the amount realized for machinery of a class sold in a year of income exceeds that which, but for the deduction of that amount would be 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.

Application to
lessors.

9. 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.

Expenditure on buildings in connection with the installation of machinery.

10. 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.

Balancing deductions and balancing charges.

11.(1) Where wear and tear deductions or investment deductions have been made in computing the gains or profits of a person under paragraphs 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 ceases to be owned by him, there shall be made in computing his gains or profits 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 cessation of a trade a balancing deduction or 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 moneys, as the case may be.

Effect in
certain
successions,
transfers, etc.

12. 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.

Special
provisions
as to certain
sales.

13.(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) 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.

Private use.

14. 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.

Expenditure
on private
vehicles.

*8 of 1996 s.45
4 of 1999 s.40*

15.(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 latter 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 latter 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.

PART III - DEDUCTIONS IN RESPECT OF MINING OPERATIONS

16.(1) In this Part, except where 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) 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) 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, anhydride, 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, unless it has been obtained by underground mining operation and does not include a specified mineral;

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"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.

Deductions.

17.(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), 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 a 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 deduction for all years of income shall not exceed the expenditure.

Apportionment of deductions.

18. 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 that expenditure, or in part of the asset, is transferred 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.

Operations on separate mines treated separately.

19. 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.

Expenditure incurred by persons not engaged in business of mining.

20.(1) 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 deposits of minerals, or winning access to those deposits and, without having carried on a business of mining, sells assets representing that 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.

Sum received by vendor treated as trading receipts.

21. 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 those 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 that 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 - DEDUCTION IN RESPECT OF CAPITAL EXPENDITURE ON AGRICULTURAL LAND

Deductions in respect of capital expenditure on farmworks.

22.(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, where in any year of income commencing on or after the 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.

(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 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 purpose 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 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 part of that 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 a year of income in which the transfer takes place, shall be apportioned in such a 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) where an interest in land is a leasehold interest and that leasehold interest comes to an end, then that 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 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.

Definitions
for Part IV.

23. 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, daps, 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

Buildings and
machinery.

24.(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 purposes of manufacture; or
- (d) on or after the 1st January, 1992 on the purchase and installation of machinery to be used for the purpose of manufacture; or
- (e) on the construction of a hotel building which is certified as an industrial building under paragraph 5(1)(c);

there shall be deducted, in computing 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 the building referred to in subparagraph (e), as the case may be, a deduction referred to as an investment deduction.

(2) The amount of the investment deduction under sub paragraph (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
1 st January, 1988	60%
1 st January, 1989	75%
1 st January, 1990	85%
1 st January, 1995	60%
1 st July, 2000	100%
1 st January, 2002	85%
1 st January, 2003	70%
1 st January, 2004	60%

- (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 of first use is any year of income or accounting year commencing on or after	Percentage of the Capital Expenditure
1 st January, 1988	10%
1 st January, 1989	25%
1 st January, 1990	35%
1 st January, 1995	60%

1 st July, 2000	100%
1 st January, 2002	85%
1 st January, 2003	70%
1 st January, 2004	60%

- (3) For the purposes of this paragraph -
- (a) where, under paragraph 24(1)(a) or paragraph 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 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) where capital expenditure is incurred on the construction of a building and before that building is used, it is sold -
 - (i) the expenditure actually incurred on the construction thereof shall be left out of account for purposes of any deduction allowed under subparagraph (1); but
 - (ii) 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 it is used, item (ii) shall have effect only in relation to the last sale.

- (e) "building" includes any building structure and where the building is used for purposes of manufacture it includes the civil works and structures deemed to be part of an industrial building under paragraph 5(1A) of this Schedule;

"installation" means affixing to the fabric of a building in a manner necessary for and appropriate to the proper operation of the machinery concerned or otherwise setting up the machinery for use as may be appropriate for the type of machine;

"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;
- (iv) water supply or disposal; and
- (v) Workshop machinery for the maintenance of the machinery.

4 of 1999, s.40

"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 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.

Capital expenditure on buildings and machinery for purposes of manufacture under bond. *13 of 1995, s88*

24.A(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 sub paragraph (2) 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.

9 of 2000, s.54

(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 of first use is any year of income or accounting year commencing or after	Percentage of the Capital Expenditure
1 st January, 1995	40%
1 st July, 2000	NIL
1 st January, 2002	15%
1 st January, 2003	30%
1 st January, 2004	40%

(3) The deduction allowable under subparagraph 2, (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 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)(e) 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.

Capital expenditure on buildings and machinery for use in an export processing zone.

8 of 1991, s.75

24B.(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 the 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 percent 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.

Shipping

25. 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 that 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 that 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 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.

Sale of buildings prior to use.

26. Where capital expenditure is incurred on the construction of a building to which paragraph 24(1)(a) or (c) applies and which is sold before it is first used then the provisions of paragraph 4 shall apply.

PART VI - MISCELLANEOUS PROVISIONS

Apportionment of consideration for sale, exchange, etc of any property or of leasehold interests.

27.(1)(a) A 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) 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 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.

Interpretation
of certain
references
to
expenditure.

28.(1) Unless the context otherwise requires, references in this Schedule to capital expenditure and capital sums in relation to the person incurring that expenditure, or paying those 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) A 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.

Subsidies.

29.(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 a 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 purpose of this Schedule, 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) insurance moneys or other compensation moneys payable in respect of an asset which has been demolished, destroyed or put out of use; and
- (c) 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).

(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), 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 purpose 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 the 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 carried on or was to be carried on by the contributor, then, on a transfer of the business or apart 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 a 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.

Prevention of
double
allowances.

30. If a deduction is made under any Part in respect of property, or in respect of capital expenditure on 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.

Increase of deductions.

31. 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.

Other provisions.

32.(1) In this Schedule, unless the context otherwise requires -

"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;

"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) A 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) A 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 property would have fetched if sold in the open market shall be determined by the Commissioner.

(5) Where the 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, a reference in this Schedule to a year of income shall be construed as a reference to that accounting period; but where a deduction under this Schedule is related to a year of income and the 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 the deduction shall be proportionately increased or decreased, as the case may be.

THIRD SCHEDULE (Sections 29, 30, 31, 32, 33, 34 & 35)

RATES OF PERSONAL RELIEFS AND TAX

HEAD A - RESIDENT PERSONAL RELIEF

Resident personal reliefs.

1. Personal Relief

The amount of personal relief shall be twelve thousand six hundred and seventy two shillings.

HEAD B - RATES OF TAX

*2 of 1975, s.5,
13 of 1975, s.2,
7 of 1976, s.2,
12 of 1977, s.5,
8 of 1978, s.9,
10 of 1980, s.5,
12 of 1980, s.3,
6 of 1981, s.5,
14 of 1982 s.22,
13 of 1984 s.22
18 of 1984, s.7,
8 of 1985, s.16,
10 of 1987 s.38,
10 of 1988, s.36,
9 of 1989, s.23,
6 of 2001 s.55.*

1. The individual rates of tax shall be-

	Rate in each twenty shillings
On the first Shs.116,160	10%
On the next Shs.109,440	15%
On the next Shs.109,440	20%
On the next Shs.109,440	25%
On all income over Shs.444,480	30%

6 of 2001, s.55

1A. The wife's employment, wife's professional and wife's self-employment income rates of tax shall be:

	Rate in each Shillings
On the first Shs.116,160.....	10%
On the next Shs.109,440.....	15%
On the next Shs.109,440.....	20%
On the next Shs.109,440.....	25%
On all income over Shs.444,480	30%

6 of 2001, s.55

(2) The corporate rate of tax shall be -

(a) in the case of a resident company -

	Rate in each Twenty shillings
(i) for the year of income 1974 and each subsequent year of income up to and including the year of income 1989	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	7.50
(v) for the year of income 1993 up to 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 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-

	Rate in each Twenty shillings
(i) for the year of income 1974 and each subsequent year of income up to and 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 the year of income 1992 | 9.00 |
| (v) | for the year of income 1993 upto and including the year of income 1997 | 8.50 |
| (vi) | for the year of income 1998 upto 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 1st July, 1994 and 30th June, 1995 the corporation rate of tax shall be increased by one-half shilling in each twenty shillings.

6 of 1994 s.47

(bb) in the case of a company newly listed on any securities exchange approved under the Capital Markets Authority Act with at least twenty percent of its issued share capital listed, twenty seven percent for the period of three years commencing immediately after the year of income following the date of such listing.

*6 of 2001 s.55
Cap.485A*

(c) 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.

*10 of 1990 s.60
8 of 1991 s.76
9 of 2000 s.55.*

3. The non-resident tax rates shall be-

- (a) in respect of management or professional fees, other than management or professional fees deductible under paragraph 5(2)(g) of the Ninth Schedule, consultancy, agency or contractual fees, twenty 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.

5 of 1998, s.40

- (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;
- (e) (i) in respect of 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 a 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, a place (whether public or private) for the purpose of entertaining, instructing, taking part in a 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 an appearance or performance mentioned in subparagraph (g), 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.

4. (Deleted by 8 of 1978, s.9.)

5. The resident withholding tax rates shall be –

*8 of 1996, s.46
5 of 1998, s.40*

- (a) in respect of a dividend, ten 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 percent;
 - (ii) Government Bearer Bond of at least two years duration and other sources, fifteen percent 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 or group of persons, five per cent of the gross amount payable to brokers, and ten per cent of the gross amount payable to all others;

*8 of 1996, s.46
9 of 2000, s.55
6 of 2001, s.55*

- (d)(i) in respect of a payment of a pension or any withdrawal from a registered pension fund, registered provident fund, the National Social Security Fund or 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;

6 of 2001, s.55

- (ii) in respect of surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds, thirty percent of the gross sum payable.

- (e) in respect of a qualifying dividend, five per cent of the amount payable,

9 of 2000s.55

- (f) in respect of consultancy, agency or contractual fee, the aggregate value of which is twenty-four thousand shillings in a month or more, two per cent of the gross amount payable;

- (g) in respect of a royalty, five per cent of the gross amount payable; and
- (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 instruments; and
 - (iii) fifteen per cent of the gross amount payable in any other case.

*8 of 1983, s.18,
8 of 1985, s.17.*

6. The rate of deduction for a transaction chargeable to withholding tax under subsection (3A) of section 35 shall be two and a half per cent of the gross amount or aggregate consideration of the transaction.

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 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;
- (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.

FOURTH SCHEDULE (Sections 15 and 35)

FINANCIAL INSTITUTIONS

Cap.488	A bank or a financial institution licensed under the Banking Act.
Cap.487	An insurance company licensed under the Insurance Act.
Cap.489	A building society registered under the Building Societies Act.
Cap.490	A co-operative society registered under the Co-operative Societies Act.
Cap.493B	The Kenya Post Office Savings Bank established by the Kenya Post Office Savings Bank Act.
Cap.323	The Agricultural Finance Corporation established by the Agricultural

Cap.323 Finance Corporation Act.

Cap.507 A person licensed under Part VII of the Hire Purchase Act.

FIFTH SCHEDULE (Section 2)

10 of 1988 s.37

SCHEDULED PROFESSIONS AND SCHEDULED QUALIFICATIONS

	Profession	Qualifications
Cap.253	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.16	3. Legal	Any person who is an advocate within the meaning of the Advocates Act.
Cap.299	4. Surveyors	Any person licensed as a surveyor under the Survey Act .
	(a) land surveyor	
	(b) surveyor	Any person who is a fellow or professional associate of the Royal Institution of Chartered Surveyors.
Cap.525	5. Architects Quantity Surveyors	Any person who is registered as an architect or a quantity surveyor under the Architects and Quantity Surveyors Act.
Cap.366	6. Veterinary Surgeons Veterinary	Any person who is registered or licensed as a veterinary surgeon under the Surgeons Act.
Cap.530	7. Engineers	Any person who is registered under the Engineers Registration Act.
Cap.531	8. Accountants	Any person who is registered as an accountant under the Accountants Act.
Cap.534	9 Certified Public Secretaries	Any person who is registered under the Certified Public Secretaries Act of Kenya (Section 133).

2 of 1975, s.5

SIXTH SCHEDULE (Section 133)

TRANSITIONAL PROVISIONS

1. 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 that application;
- (d) 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 those 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 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 a 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) Reference 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 a person for the year of income 1973 results in a deficit, the total income of that 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 a 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 year of income for the purposes of ascertaining his income therefrom for each year of income, then that 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 that residue of expenditure or expenditure still unallowed as the case may be, shall, in relation to that 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 2 of 1975, s.5.);

- (c) the Commissioner may divide an amount into the portions and a portion is taken into account in computing the gains or profits or in ascertaining total income for a year of income prior to the commencement of this Act,

then an assessment in relation thereto for that year of income may be made as if that 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 a 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 that year of income, nothing in this Act shall operate to charge that beneficiary on income received after the commencement of this Act which has been charged on him under the Management Act.

9. 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 members thereof appointed for areas under section 97 of the Management Act shall continue to act according to the terms of the notices making those appointments as if those 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 subsection (1), (2), (3) and (4) of section 8 of the Management Act, that 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 -

- (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

(Repealed by 8 of 1978, s.9)

EIGHTH SCHEDULE (Sections 3(2)(f) and 15(3)(f))

PART I - ACCRUAL AND COMPUTATION OF GAINS FROM PROPERTY OTHER THAN INVESTMENT SHARES TRANSFERRED BY INDIVIDUALS

1.(1) In this Part, unless the context otherwise requires -

"adjusted cost" has the meaning assigned thereto in paragraph 8;

"company" includes -

- (a) a member's 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;

*13 of 1975, s.2,
7 of 1976, s.2,
8 of 1978, s.9,
6 of 1981, s.5,
14 of 1982 s.23,
8 of 1985, s.18.
Interpretation*

"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;

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"marketable security" includes a security capable of being sold and stock as defined in section 2 of the Stamp Duty Act;

"property" -

Cap.2

- (a) in the case of a company has the meaning assigned thereto in the Interpretation and General Provisions Act, and includes property acquired or held for investment purposes but does 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;

"transfer value" has the meaning assigned thereto in paragraph 7.

(2) For the purpose 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) a third person participates directly or indirectly in the management, control or capital of the business of both.

(4) For the purposes of subparagraph (3) 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 that authority, are situated in the country of that authority; and
- (b) subject to paragraph (a), 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.

Taxation of gains.

2. 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.

Income not chargeable.

3.(1) Income is not chargeable to tax under section 3(2)(f) 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 a transfer of machinery classified in paragraph 7 of the Second Schedule is not chargeable to tax under section 3(2)(f).

Computation
of gains.

4.(1) The gain which accrues to a person on the transfer of 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 property, 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) A 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 installments but a payment by way of interest on a 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.

Dealings by
nominees,
trustees and
liquidators,
and for the
enforcement
of securities.

5.(1) In relation to 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 a 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 a 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.

Meaning of
transfer.

6.(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 that 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 the 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.

Schedule - (2) There is no transfer of property for the purposes of this

- (a) in the case of the transfer of property for the purpose only of securing a debt or a loan, or on a transfer by a creditor for the purpose only of returning property used as a 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 property to a person as legatee in the course of the administration of the estate of a deceased person; and "legatee" includes a person taking under a devise or other testamentary disposition or 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;
- (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; or

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Cap.53

- (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.

Transfer value.

7.(1) Subject to this Schedule, the transfer value of property shall be computed by reference to those 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 of 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) an 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 an amount received by the person out of the proceeds of those dealings.

(2) Subject to this Schedule, for the purpose of computing the transfer value of property there shall be deducted the incidental costs to the transferor of making the transfer.

(3) In the case where no amount is ascertainable under this Schedule as the transfer value of property the transfer value of the property shall be deemed to be nil.

Adjusted cost.

8.(1) Subject to this Schedule, the adjusted cost of 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 property, an amount computed shall be reduced by such amounts as have been allowed as deduction under section 15(2).

(3) Where a company issues to 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 the old shares and the 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 the old shares and the 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.

Market value.

9.(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, 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, 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 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 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.

Incidental costs.

10. For the purposes of paragraph 7(2) and 8(1)(d), 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 a 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 a 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 a valuation or in ascertaining market value; and
- (e) any other costs which the Commissioner may allow as being just and reasonable.

Amounts not allowable in computing transfer value or adjusted cost.

- 11.** No amount shall be allowed -
 - (a) under paragraph 7(2) as part of the incidental costs of making a transfer; or
 - (b) under paragraph 8 as part of the adjusted cost of 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).

Transfer or acquisition of property with other property.

12. 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.

Exemption

13.(1) No gain or loss shall be included in the computation of income under section 3(2)(f) 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; but following that exchange, the cost to the transferor 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 debenture shall be the cost to the issuee of the property received.

(2) As a condition of making his finding that any one of the transactions referred to in subparagraph (1) 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 a 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 dividend, the charge of gain or loss to income, the cost or valuation of property, the allocation of cost or value between different properties, and the accounting treatment of any item.

(3) An agreement made pursuant to subparagraph (2) 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

Interpretation

14. 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 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; 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 those authorities, that 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).

Computation of gains.

15. The gain subject to tax under this Part is the amount by which the transfer value of investment shares transferred by a person who is an individual exceeds the adjusted cost of those shares.

Deduction of tax.

16. The gain ascertained under paragraph 15 is subject to a deduction of income tax at the rate of seven and a half per cent of that gain.

Losses. **16A.** Where in computing the gain accruing to a person on the transfer of investment shares, it is found that the adjusted cost of 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.

Set-off of tax. **17.** The provisions of section 39 apply to tax deducted under paragraph 16.

Collecting of tax. **18.** 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).

Remittance of tax. **19.** The remittance of money by a stockbroker under paragraph 18 shall be a full and final discharge to the stockbroker as against all persons from liability in respect of that money.

Failure to collect and remit. **20.** A stockbroker who fails to collect and remit as required under paragraph 18, 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.

Exemption. **21.(1)** Where the transferor of investment shares is an unincorporated association or body of individuals of a public character which as 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 connection 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 the Schedule.

PART III - REDUCTION OF CHARGEABLE GAINS IN RESPECT OF PROPERTY ACQUIRED BEFORE 1ST JANUARY, 1975, AND TRANSFERRED BEFORE 1ST JANUARY, 1985

Interpretation. **22.(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.

Application. **23.** 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.

Amounts represented by A and B in reduction formula

24. In paragraph 25 -

A is -

- (a) in respect of property acquired before 1st January, 1955, the number 1955; or
- (b) in respect of property acquired on 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.

Reduction formula.

25. 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 -

$$\frac{(1975 - A) \times 100}{B - 1954}$$

NINTH SCHEDULE (ss.4(f), 15(2) and 18(16))

TAXATION OF PETROLEUM COMPANIES

18 of 1984 s.8

PART I – INTERPRETATION

1. In this Schedule, unless the context otherwise requires -

Interpretation.

"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 all 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 leveling 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;

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" 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;"

"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;

"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 operation 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 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

Determination
of income.

2.(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.

Sales of
Petroleum at
arm's length.

3.(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 circumstances;
 - (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.

Disposal of petroleum.

4. 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.

Allowable deductions.

5.(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 gain 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-fifth 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 of 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. 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(1) An assignment of a right under a petroleum agreement shall not give rise to a chargeable gain under the Eighth 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 therefor 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 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

Petroleum service sub-contractors.

8. 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.

Assumed profit rate.

9.(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 mobilization 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.

Payments.

10.(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.

Returns

11.(1) The tax collected by a petroleum company under this paragraph in a month shall be remitted within thirty days to the Commissioner 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 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).

Records.

12. 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)

AGRICULTURAL PRODUCE AND ITS AUTHORISED AGENTS

*13 of 199, s.90
4 of 1999, s.42*

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. Chemelil Sugar Co. Limited. Mumias Sugar Co. Limited. Associated Sugar Co. Limited. South Nyanza Sugar Co. Limited. Muhoroni Sugar-cane Farmers Co-operative Union Limited.
Pyrethrum Flower (Wet and dry)	Pyrethrum Board of Kenya
Tobacco Leaf	B.A.T. (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. George Williamson Kenya Limited. Sasini Tea and Coffee Limited. Pannel Bellhouse Mwangi & Co. (Kaisugu Ltd). Kosagat Tea Estate. Theta Group Limited. (Kibwari Tea Estate Limited) Mitchell Cotts & Co. (E.A.) Limited. (Nandi Tea Estates Limited). Estates Services Limited. (Siret Tea Co. Limited). Kariarana 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 & Produce Board
Pigs	Farmers Choice Limited. Uplands Bacon Factory Limited.
Raw Cotton	Mwea Ginnery. Kibos Ginnery. Hola Ginnery. Makueni Ginnery.

Meru Ginnery.
Salama Ginnery.
Malindi Ginnery.
Homa Bay Ginnery.
Kendu Bay Ginnery.
Nambale Ginnery.
Samia Ginnery.
Malakisi Ginnery.
Ndere Ginnery.
Lamu Ginnery.
Kitui Ginnery.

Hides and skins

Kamiti Tanners Limited.
Aziz Din Nabi Bux.
New Market Leather Factory Ltd.
Bulleys Tanneries Limited.
Nakuru Tanners Limited.
Nakuru Chrome Tanning Co. Limited.
Bata Shoe Co. Limited.
Sagana Tanneries Limited.
Alpharama Limited.
Barbar Tannery Limited.
Other Tanneries.
Furs and 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 (s. 4B)

*10of1990, s61
Cap.517.*

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(c) 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 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(c) 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 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.

6 of 1994, s.49

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 percent or more of the voting shares of the other company.

TWELFTH SCHEDULE (s. 12(2))

PROVISIONS RELATING TO INSTALMENT TAX

*10 of 1990, s. 62
4 of 1993, s. 61,
13 of 1995 s 91,
8 of 1996, s. 47.*

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 multiplying 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 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 payment 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 payment;

(c) where the tax is computed on the basis of the preceding year assessment, the amount of tax assessed for the preceding year; and

(d) a declaration by the person making the payment or by the person in whose he is assessable that the instalment payment is a full and true estimate to the best of his knowledge and belief.

THIRTEENTH SCHEDULE (s.132(6))

TRANSACTIONS FOR WHICH PERSONAL IDENTIFICATION NUMBER (PIN) WILL BE REQUIRED

9 of 1992, s.58

Institution	Purpose of Transaction.
Commissioner of Lands	Registration of title 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	New registrations.
Insurance Companies	Underwriting of policies.
Ministry of Commerce	Trade licensing.
Commissioner of VAT	Applying for registration.
Customs and Excise	Importation of goods Customs Clearing and Forwarding.
Kenya Power & Lighting Co. Ltd.	Payment of deposits for power connections.
All Government Ministries and public bodies.	All contracts, supply of goods and services.

SUBSIDIARY LEGISLATION

Declaration under definition of "permanent or semi-permanent crops" under section 2(1)

DECLARATION OF CROPS

L.N.17/1975
L.N.269/1980 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.

L.N.19/1985 Later additions -

L.N.158/1989 Jojoba plant and bananas
Roses.
Grape vines

Declaration under definition of "specified mineral" under Section 2(1)

DECLARATION OF MINERALS

L.N.157/1989 Flourspar
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)

L.N.93/1974 Industrial and Commercial Development Corporation Investment Company Limited.

L.N.43/1975 Executive Secretary of African Social Studies Programme.

L.N.44/1975 Regional and Deputy Regional Directors of Christian Children's Fund.

L.N.116/1975 Kenya Accountants and Secretaries National Examination Board.

L.N.118/1975 Non-Resident Income from licensees under the Oil Production Act.

L.N.147/1975 Morgan Grenfell and Company Limited.

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 Deutsche Gesellschaft für Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH.

L.N.97/1977 European Investment Bank.

L.N.122/1977 Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V.

L.N.123/1977 Deutsche Gesellschaft für Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH.

L.N.124/1977 Commonwealth Development Corporation.

L.N.125/1977 Manufacturers Hanover Export Finance Limited.

L.N.126/1977 Morgan Grenfell and Company Limited.

L.N.147/1977 United States Agency for International Development.

L.N.148/1977 Federal Home Loan Bank of New York.

<i>L.N.272/1977</i>	European Investment Bank.
<i>L.N.163/1977</i>	Danish Turnkey Dairies Limited.
<i>L.N.13/1978</i>	European Investment Bank.
<i>L.N.14/1978</i>	European Investment Bank.
<i>L.N.15/1978</i>	European Investment Bank.
<i>L.N.35/1978</i>	European Development Fund.
<i>L.N.129/1978</i>	Guinness Mahon and Company Limited.
<i>L.N.258/1978</i>	European Investment Bank.
<i>L.N.259/1978</i>	European Investment Bank.
<i>L.N.45/1979</i>	Osterreichische Landerbank Aktiengesellschaft.
<i>L.N.79/1979</i>	Process Engineering Company S.A.
<i>L.N.83/1979</i>	Union Bank of Switzerland.
<i>L.N.127/1979</i>	European Development Fund.
<i>L.N.128/1979</i>	European Investment Bank.
<i>L.N.179/1979</i>	Commonwealth Development Corporation.
<i>L.N.285/1979</i>	Industrial Development Bank of India.
<i>L.N.167/1980</i>	Kenya Power Company Limited (Revoked by L.N.73/1998).
<i>L.N.168/1980</i>	Institute of Certified Public Accountants of Kenya.
<i>L.N.169/1980</i>	Kenya Medical Association.
<i>L.N.169/1980</i>	East African Medical Journal.
<i>L.N.10/1981</i>	Guinness Mahon and Company Limited.
<i>L.N.52/1981</i>	Rift Valley Development Trust.
<i>L.N.52/1981</i>	Deloraine Estate Limited.
<i>L.N.155/1981</i>	Various Financial Institutions.

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- L.N.4/1982* Navy, Army and Air Force Institute.
- L.N.240/1983* Export Development Corporation.
- L.N.72/1984* Skandinaviska Enskilda Banken.
- L.N.240/1985.* President.
- L.N.3/1989* Syndicate of French Banks.
- L.N.51/1989* Armed Forces Canteen Organization (A.F.C.O.).
- L.N.52/1989* Jisaidie Cottage Industries.
- L.N.115/1989* Consortium of French Banks.
- L.N.160/1989* European Investment Bank
- L.N.223/1989* European Investment Bank.
- L.N.224/1989* Banque Indosuez.
Banque Francaise du Commerce Exterieur.
- L.N.225/1989* Syndicate of Lenders.
- L.N.248/1989* Kenya Women Finance Trust Limited
- L.N.249/1989* Commonwealth Development Corporation.
- L.N.273/1989* Indosuez Bank Belgie NV.
- L.N.6/1990* Two French Banks.
- L.N.48/1990* Credit Lyonnais Bank Nederland NV.
- L.N.49/1990* De Nederlandse Investeringsbank Voor Ontwikkelingslanden NV.
- L.N.58/1990* Kreditanstalt Fur Wiederaufbau, Frankfurt am Main.
- L.N.85/1990* Skandinaviska Enskilda Banken.
- L.N.225/1990* Export Development Corporation of Canada.
- L.N.266/1990* Indosuez Bank Belgie NV.
- L.N.356/1990* German Finance Company for Investment in Developing Countries.

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- L.N.99/1991* Export Development Corporation of Canada.
- L.N.72/1992* Westdeutsche Landesbank (Europa) Financing Services, Ireland Chartered West LB Limited London.
- L.N.82/1992* Netherlands Development Finance Company.
Prefund-Project Rehabilitation Fund Limited.
- L.N.83/1992* Missionaries of Charity in Kenya.
- L.N.27/1993* Institute of Certified Public Secretaries of Kenya.
- L.N.164/1993* International Development Association.
- L.N.352/1993* Export Import Bank of Japan, The Bank of Tokyo Limited, Daiwa Bank Limited of Japan.
- L.N.365/1993* Export Development Corporation of Canada.
- L.N.408/1993* Tomen Corporation of Japan.
- L.N.43/1994* African Network for the Prevention and Protection Against Child Abuse and Neglect (A.N.P.P.C.A.N.)
- L.N.219/1994* District Trade Development Joint Boards.
- L.N.330/1994* Wildlife Conservation International.
- L.N.15/1998* Societe De Promotion et Economique S.A. (PROPARCO)

Notice under Section 35(7)

- L.N.286/1979* Industrial Development Bank Limited.
- L.N.115/1980* Development Finance Company of Kenya Limited.
- L.N.116/1980* Industrial and Commercial Development Corporation Limited.

Notice under Section 41

- E.A.C.
L.N.10/1970.* Double Taxation Relief (Kenya/Zambia).
- E.A.C.
L.N.5/1973.* Double Taxation Relief (Kenya/Denmark).
- E.A.C.
L.N.6/1973.* Double Taxation Relief (Kenya/Norway).
- E.A.C.
L.N.14/1973.* Double Taxation Relief (Kenya/Sweden).

- E.A.C.*
L.N.253/1977 Double Taxation Relief (Kenya/United Kingdom).
- L.N.20/1980* Double Taxation Relief (Kenya/Federal Republic of Germany).
- L.N.111/1987* Double Taxation Relief (Kenya/Canada).
- L.N.61/1989* Double Taxation Relief (Kenya/India).

Rules under Section 82

THE INCOME TAX (LOCAL COMMITTEES) RULES (Rules under Section 82)

L.N.7/1974
L.N.103/1976
L.N.95/1980

- Citation. **1.** These Rules may be cited as the Income Tax (Local committees) Rules.
- Interpretation **2.** 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 that person;

"clerk" means the clerk of a local committee appointed pursuant to rule 3;

"memorandum" means a memorandum of appeal presented under rule 4;

"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.

Appointment of clerk. **3.(1)** The Commissioner shall appoint an officer of the Income Tax Department to be the clerk to a local committee; and the Commissioner may appoint one officer as clerk to two or more local committees.

(2) A clerk shall, in matters 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 any change in that address.

Form of and time for lodging an appeal.

4. 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); but 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 that period and that there has been no unreasonable delay on his part, the local committee may extend that period.

Memorandum of appeal

5. 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.

Statements of facts of appellant.

6.(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; and
- (d) a certificate signed by the Commissioner acknowledging receipt of the return of income required by section 52, together with the documents specified in section 54, for the year to which the appeal relates.

(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 89, may be the subject of an appeal.

Income Tax Act Cap. 470

Service of
memorandum.

7. 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.

8. (Revoked by L.N. 103/1976).

Notice and
place of
hearing

9.(1) As soon as may be convenient after receipt by him of a memorandum the clerk shall notify the chairman thereof.

(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.

Procedure.

10. 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;
- (b) the appellant shall state the ground of his appeal and support it by relevant evidence, but 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 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 relevant evidence;
- (d) the appellant shall be entitled to reply but may not rely on a 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 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.

Local committee to determine own procedure in certain matters.

11. In matters of procedure not governed by these Rules or the Act, a Local committee may determine its own procedure.

Copies of documents admissible.

12. 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 admitted in evidence.

Fees and costs.

13. 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.

Rules under Section 83

L.N.5/1974

THE INCOME TAX (TRIBUNAL) RULES

Citation.

1. These Rules may be cited as the Income Tax (Tribunal) Rules.

Interpretation.

2. 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 Tribunal appointed under section 83(2);

"clerk" means the clerk of the Tribunal appointed pursuant to rule 3;

"memorandum" means a memorandum of appeal presented under rule 4;

"section" means a section of the Act.

Appointment
of Clerk.

3.(1) The Commissioner shall appoint a person to be the clerk of the Tribunal, and that 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 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 purposes of these Rules, and shall in the same manner notify any change in that address.

Form of and
time for
lodging an
appeal.

4. 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); but 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 that 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.

Memorandum
of appeal.

5. 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.

Statements of
facts of
appellant.

6.(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

(c) a statement, signed by the appellant,

setting out precisely all the facts on which the appeal is based 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).

Service of memorandum of appeal.

7. 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.

Statements of facts of Commissioner

8.(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, 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 same time of filing a statement of facts pursuant to paragraph (1), 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.

Notice and place of hearing.

9.(1) As soon as may be convenient after receipt by him of the memorandum the clerk shall notify the chairman thereof.

(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 appellant 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.

Procedure.

10. 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 ground of his appeal and may support it by any relevant evidence, but, 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 a ground 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 to the appellant;
- (c) at the conclusion of the statement, and evidence on behalf of the appellant, the Commissioner may make 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, which 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.

Tribunal to determine own procedure in certain matters.

11. In matters of procedure not governed by these Rules or the Act, The Tribunal may determine its own procedure.

Copies of documents admissible.

12. 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, but the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

Fees and costs.

13. 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.

Rules under section 91

THE INCOME TAX (APPEALS TO THE HIGH COURT) RULES

L.N.105/1974
L.N.41/1980

Citation.

1. These Rules may be cited as the Income Tax (Appeals to the High Court) Rules.

Interpretation

2. 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.

Form of and time of filing appeal.

3. 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); but 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.

Form of memorandum

4. A 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.

Statement of facts of appellant.

5. 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.

Registration of Memorandum.

Cap. 21
Sub. Leg.

6.(1) After the memorandum and the documents referred to in rule 5 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 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.

(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.

Abatement of
appeals.

6A. 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.

Service of
Memorandum
of Appeal.

7. A copy of the memorandum of appeal and the documents referred to in rule 5 shall be served by the Registrar upon the respondent upon payment of the prescribed fee for service thereof, but in a case referred to in section 89(3)(c) service shall be made by the appellant.

Statement of
facts of
respondent.

8. 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 of 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.

Notice and
place
of hearing.

9. Unless the parties otherwise agree, the Registrar shall give fifteen clear days' notice in writing to the parties of the date and place fixed for the hearing of the appeal.

Right to begin.

10. (1) On the day 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, if it does not dismiss the appeal at once, hear the respondent and the appellant shall be entitled to reply.

Dismissal of
Appeal for
Appellant's
Default.

11.(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.

Readmission
of Appeal
dismissed
for default.

12. Where an appeal is dismissed under rule 11 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.

Rehearing on application of respondent against whom ex parte decree made.

13. Where an appeal is heard ex parte and judgement 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 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.

Grounds of appeal.

14. 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.

Additional evidence.

15. 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.

Copies of documents admissible.

16. Subject to section 121 and save where the Court in a particular case otherwise directs or where a 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.

Proceedings in chambers.

17. (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.

Execution of decree where tax payable not set out therein.

18. 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 that decree shall have effect as if it were a decree for the payment of the amount of tax set out in the notice or statement, as the case may be.

Fees.

19. 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 the appeal.

Extent to which rules on civil procedure apply.

20. 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 judgement 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.

Rules under section 130

L.N.257/1973
L.N.122/1986
L.N.201/1986

THE INCOME TAX (PAYE) RULES

Citation.
L.N.98/2001

1. These Rules may be cited as the Income Tax (PAYE) Rules.

Interpretation.

2.(1) In these Rules, unless the context otherwise requires -

"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;

"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 one thousand shillings per month; and
- (d) in the case of a resident individual, the amount of the pension in excess of one hundred and fifty thousand shillings per year,

L.N.98/2001

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" means, in relation to a month, the emoluments receivable by an employee during that month, calculated in accordance with the Act and these Rules;

"monthly personal relief", in relation to a 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;

"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 the information that 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 a year of income;

"unused personal relief", in relation to a month or months in the same year of income, means that amount of monthly personal relief as is in excess of the tax payable under these Rules in that month or months.

(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.

Application of
Section 128 of
Act.

3. 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.

Deduction of
tax.

4. (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 paragraph (1) shall be guilty of an offence.

Calculation of
monthly tax
due.

5. 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.

Calculation of
deduction and
maintenance
of records.

6. (1) On the occasion of the last payment of emoluments in a 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, the employer shall deduct the amount of that 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 to the employee in that month, the employer shall deduct the amount of tax which is not recoverable from that payment from the first payment of emoluments in the following month and from any subsequent 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 that payment.

(4) An employer who fails to comply with paragraph (2) or (3) shall be guilty of an offence.

Notification
of
emoluments
and tax
deducted.

7. On the occasion of the last payment of emoluments in a 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 that month, the total tax deducted from those emoluments and such other particulars as the Commissioner may require.

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 that calculation;
- (b) the employee may give 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 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 payment to that employee in any month of, or on account of, emoluments the amount of tax deducted therefrom by the employer shall be in accordance with that decision.

(4) Notwithstanding that a valid objection has been made, on the occasion of 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.

End of month procedure.

9. At the end of every month, an employer shall compile, in the manner that the Commissioner may direct, a list which shall include the name of each employee in his employment 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.

Payment of tax by employer.

10.(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), pay, to such person as the Commissioner shall direct, all amounts of tax which the employer has deducted under these Rules during that month.

(2) Paragraph (1) shall not apply to an employer in respect of a 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 that 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 a month is less than one hundred shillings, that 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 those amounts is greater than one hundred shillings, the employer shall comply with paragraph (1), so however, that the employer shall comply with paragraph (1) in the month of December in each year notwithstanding that the total amounts of tax is less than one hundred shillings.

(3) A person to whom the Commissioner has, under paragraph (1), directed that an employer pay tax shall keep a record of payment in the form that the Commissioner may direct and shall enter therein particulars of tax which has been paid to him.

(4) An 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), shall be guilty of an offence.

Employer failing to pay tax or to provide required certificates.

11.(1) If, before the tenth day following the end of a month, or before a later day that may have been notified to him by the Commissioner, an employer has paid no 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 provisions 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.

(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.

Recovery to
tax.

12. 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.

Return by
employer at
end of each
year.

13.(1) Not later than one month after the end of each year an employer shall render to the Commissioner –

- (a) a statement and declaration in the form that the Commissioner may provide or authorize in respect of each employee employed at any time during that year, showing such particulars as the Commissioner may require;
- (b) such free monthly personal relief notifications used by the employer during the year as the Commissioner may direct; and
- (c) all tax deduction cards used by the employer during the year (including those tax deduction cards which the employer may have submitted during the year for reason of arithmetical errors or other incorrect entries) which shall show, in addition to the particulars required by rule 7, such other particulars as the Commissioner may direct.

(2) An employer who fails, within one month after the end of a year, to pay as the Commissioner has directed the tax deducted which he would have been liable to pay under rule 10 had he complied with the provisions of these Rules, shall be guilty of an offence.

(3) If an employer ceases to carry on business before the end of a year he shall carry out the requirements of this rule within one month of cessation.

Inspection of
employer's
records.

14.(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.

Death of
employer

15. 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.

Change of
employer.

16. 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 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 payment of tax which was deductible from emoluments paid to the employee before the change took place.

L.N.98/2001
Penalty.

17. 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.6/1974
L.N.73/2000

THE INCOME TAX (DISTRAINT) RULES

1. These rules may be cited as the Income Tax (Distraint) rules.

2. In these Rules, unless the context otherwise requires -

"distrainee" means the debtor named in an order;

"distrain agent" means a person appointed as a distraint agent under rule 3;

"distress" means a distress levied pursuant to an order;

"distress debt" means the amount of tax, and interest charged thereon, specified in an order;

"distrainor" 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 distrainors in the execution of orders, but 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 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 that security shall be refunded or cancelled on the termination of the appointment of the agent unless it is forfeited under this rule.

(2) If a distraint agent is convicted of an offence involving fraud or dishonesty in connection with the functions performed by him as an 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), and the provisions of the Criminal Procedure Code, 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.

(2) An order shall be executed by attachment of such goods of the Distrainee as, in the opinion of the distrainor, 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 distrainor.

6.(1) An order shall be issued by the Commissioner in duplicate and service thereof shall be effected by service by the distrainor 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 of an agent of the distrainee empowered to accept service, or 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 distrainor 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 acknowledgement 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.

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 distrainor 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 distrainor 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.

8. As soon as practicable after the attachment of goods under these Rules, the distrainor 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 distrainor, 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.

9. On the sale by public auction of goods attached under these Rules the distrainor 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 distrainor, and thereupon those goods remaining unsold shall at the cost of the distrainee be restored to the distrainee.

10. Immediately after the completion of sale by public auction of goods attached under these Rules, the distrainor 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 distrainor in 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) A 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 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 expenses incurred thereby shall be recoverable from the distrainee under rule 9 or 11, 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 distress under these Rules there may be claimed by the distrainor and recovered under rule 9 or 11, as the case may be, costs at the rate specified in the Schedule.

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, as the case may be, shall be those specified in the Schedule.

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, 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.

16. The rates of remuneration specified in the Schedule shall be deemed to include all expenses of advertisements, inventories, catalogues, insurance and necessary charges for safeguarding goods attached under these Rules.

SCHEDULE

1. DISTRAINOR'S CHARGES

Where no distress is levied and distress debt and 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 –

	Shs.
(a) Where distress debt does not exceed Shs 1,000	40
(b) Where the distress debt exceeds Shs 1,000	100

2. DISTRAINT AGENT'S CHARGE

- (a) Where no distress is levied and the distress debt and 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 40
- (b) For attaching goods or attaching and keeping possession thereof for 10 days or part thereof, when the estimated value of the property, or the sum of the distress debt and costs and expenses, whichever is the less
- (i) does not exceed shs 10,000 thereof 4 percent
- (ii) exceeds shs 10,000 -
on the first shs 10,000 thereof 4 per cent
- on the excess
over shs 10,000
thereof 3 per cent

But where the goods or part thereof are sold by public auction, the distraint

agent's charges shall instead be calculated in the manner directed above by reference to the total amount realized on the sale after deduction of the auctioneer's commission under rule 15.

- (c) For keeping possession of attached goods after the expiration of ten days from the date of attachment -
- for each day, or part thereof $\frac{1}{4}$ per cent of the goods with a maximum of Shs.20.
- (d) 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.

L.N..8/1974
L.N.266/1986

THE INCOME TAX (PRESCRIBED DWELLING-HOUSE) RULES

1. These Rules may be cited as the Income Tax (Prescribed Dwelling-House) Rules.

Cap.226.

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, as having been provided under section 9 of that Act.

THE INCOME TAX (REGISTERED UNIT TRUSTS) RULES, 1990

Citation.

1. These Rules may be cited as the Income Tax (Registered Unit Trusts) Rules, 1990.

Interpretation.

2. A unit trust 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 shall undertake passive portfolio investment and will not own or conduct business; and
- (b) the sole purpose of the unit trust is to carry on investments on behalf of beneficiaries; and
- (c) no units holder owns or is capable of holding more than twelve and one half percent of the units in any one unit trust; and
- (d) it will maintain at least twenty-five unit holders.

3. (1) Application for the registration of a unit trust under rule 2 shall be made by the manager or trustee of the unit trust to the Commissioner in writing and shall be accompanied by two copies of the trust deed and a copy of the licence issued under Unit Trust Act.

(2) The Commissioner shall, as soon as practicable after considering the application, register the unit trust and notify the manager or trustee in writing the year of income in respect of which the registration is first to take effect.

4. Where unit holders in any unit trust are exempt persons under the First Schedule, the manager or trustee of the unit trust shall maintain separate but identifiable account of the funds of such exempt persons.

L.N.318/1974
L.N.50/1980
L.N.232/1988
L.N.239/1991
L.N.136/1992
L.N.70/1993
L.N.124/1996
L.N.74/2000
L.N.99/2001

THE INCOME TAX (RETIREMENT BENEFIT) RULES, 1994

1. These Rules may be cited as the Income Tax (Retirement Benefits) Rules, 1994 and shall come into operation on 17th June, 1994.

2.(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, pension scheme, an individual retirement fund, a provident fund or trust fund.

Existing
Schemes.

3. 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.

Registration of
Pensions
funds.

4. 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 established in Kenya under an irrevocable trust; and

(b) is established by or on behalf of an employer with the principal object of providing for his employees on retirement from his service, or for their dependants on the death of those employees, pensions or similar periodical benefits related to their service with him; and

(c) provides that all moneys payable thereunder shall be paid in Kenya; and

(d) provides that no money payable thereunder shall be paid or payable to an employee while in the service of the employer; and

- (e) provides that no benefit or contribution accruing or payable thereunder shall be capable of assignment; and
- (f) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and
- (g) provides that in respect of any one employee, the aggregate of contributions for a year of income by the employee to a registered pension and registered provident funds 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 ten thousand five hundred pounds (or, where contributions are made in respect of a part year of service by the employee, eight hundred and seventy five pounds per month), whichever is less:

Provided that in the case of a defined contribution pension fund, where surplus is identified by the audit required under subparagraph (r)(i), such surplus shall be allocated to the account of members of the fund in lieu of new contributions by the employer in the year and subsequent year until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions by the employer; and

- (h) provides that in respect of all employees who are members of a defined benefit registered fund, the aggregate of contributions by the employer under defined benefit provisions of registered funds for a year of income in respect of those employees shall together not exceed thirty per cent of all such employees' pensionable income for that year of income or ten thousand five hundred pounds times the number of full-year members of the defined benefit registered funds of the employer, whichever is less, reduced by the aggregate contributions in respect of such members of defined registered funds allowed under subparagraph (g):

Provided that -

- (i) in the case of defined pension fund, where a surplus is identified in the actuarial report under subparagraph (r)(ii), the contribution made by the employer in the year shall be reduced by the amount by which the surplus exceeds the average contribution made by the employer over the previous three years; and

- (ii) where an actuary certifies that the required contribution under the defined benefit provisions exceeds the contribution amount established in this paragraph caused by reasons other than any increase in the required contribution amount arising from changes made since the preceding actuarial determination of the contribution amount required by the employer either in the formula determining the defined benefit or in the past service liability of the fund, the permitted contribution may be established as if the limit of ten thousand five hundred pounds times the number of full-year members of the defined benefit registered benefit fund of the employer did not apply.
- (i) provides that, not more than one-third of the pension may be payable as a lump sum by way of commutation of a pension, except in the case of benefits arising from additional voluntary contributions which may be fully commuted;
- (j) 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
 - (ii) except upon earlier retirement on account of infirmity of mind or body; and
- (k) 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
- (l) 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
- (m) provides that no loan or other benefit shall be provided out of the fund to the employee or any person not dealing at arm's length with that employee; and

- (n) provides that any employee who is in a category for which the employer has established the pension fund shall be eligible for membership after a maximum of two years of service with that employer, except that where the fund is non-contributory, membership shall be automatic after the period required for eligibility has been attained; provided that where the pension fund was registered prior to 5th June, 1992, the fund must comply with this condition by 1998; and
- (o) provides that all benefits derived from contributions made by an employee shall vest immediately in the employee; and
- (p) provides that retirement benefits accrued from membership shall be fully vested in an employee after a maximum of five years of pensionable service; provided that where the pension fund was registered prior to 5th June, 1992, the fund must comply with this condition by 1998; and
- (q) provides that the periods of service of an employee for purposes of subparagraph (n) and (p) shall be determined without regard to temporary interruptions of employment for periods of nine months or less; and
- (r) provides that -
 - (i) in the case of a defined contribution pension fund, an audit shall be carried out at least once every three years beginning from 1st January, 1995 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;
 - (ii) in the case of a defined benefit pension fund, an actuarial investigation shall be carried out by an 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.

(s) 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.

Registration
of provident
funds.

5. A provident fund to which rule 3 does not apply shall, upon application being made under rule 8, be registered by the Commissioner for purposes of the Act if he is satisfied that it -

- (a) is established in Kenya under an irrevocable trust; and
- (b) is established by or on behalf of an employer with the principal object of providing for the payment of lump sums to his employees in respect of their service with him upon their leaving that service after a specified period thereof, or to any of the dependants, or to the estate, of any of those employees on their death while in that service; and
- (c) provides that all sums payable thereunder shall be paid in Kenya; and
- (d) provides that no money payable thereunder shall be paid or payable to an employee while in the service of the employer; and
- (e) provides that no benefit or contribution accruing or payable thereunder shall be capable of assignment; and
- (f) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and

- (g) provides that in respect of any one employee, the aggregate of the 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 ten thousand five hundred pounds or, where contributions are made in respect of part year of service by the employee, eight hundred and seventy five 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 subparagraph (o)(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;

- (h) provides that in respect of all employees who are members of a defined benefit registered fund, the aggregate of contributions by the employer under defined benefit provisions of registered funds for a year of income in respect of those employees shall together not exceed thirty per cent of all such employees' pensionable income for that year of income or ten thousand five hundred pounds times the number of full-year members of the defined benefit registered funds of the employer, whichever is less, reduced by the aggregate contributions in respect of such members of defined benefit registered funds allowed under subparagraph (g) and by such amount as may be required under the proviso to paragraph 4(h);
- (i) provides that -
 - (i) 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;
 - (ii) in the case of an employee who was a member of a registered provident fund prior to 7th June, 1990, the lump sum may be paid after the completion of the specified period of service;

- (iii) if the employee became a member of a registered provident fund after 7th June, 1990, the lump sum 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
- (iv) notwithstanding that the conditions set in subparagraphs (ii) and (iii) have not been satisfied, a contributing employee who is a member of a registered provident fund may receive the full amounts payable 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;
- (j) provides that no loan or other benefit shall be provided out of the fund to the employee or any person not dealing at arm's length with that employee; and
- (k) provides that any employee who is in a category for which the employer has established provident fund shall be eligible for membership after a maximum of two years of service with that employer, except that where the fund is non-contributory, membership shall be automatic after the period required for eligibility has been attained; provided that where the provident fund was established prior to 5th June, 1992, the fund must comply with this condition by 1998; and
- (l) provides that all benefits derived from contributions made by an employee shall vest immediately in the employee; and
- (m) provides that retirement benefits accrued from membership shall be fully vested in an employee after a maximum of five years of pensionable service; provided that where the provident fund was registered prior to 5th June, 1992, the fund must comply with this condition by 1998; and
- (n) provides that the periods of service of an employee for purposes of subparagraph (k) and (m) shall be determined without regard to temporary interruptions of employment for periods of nine months or less; and
- (o) provides that -

- (i) an audit shall be carried out at least once every three years beginning from 1st January, 1995 during which all assets shall be valued at their market prices and all surplus funds not allocated to the accounts of a member of the fund identified:

Provided that, where the provident 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 accounts of a member of the fund.

- (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.
- (p) 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.

Registration
of individual
retirement
funds.

6. 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 established in Kenya under an irrevocable trust; and
- (b) is established by a qualified institution with the principal objects of receiving funds and investing such funds in qualifying assets on behalf of an individual beneficiary in order to provide pension benefits for such an individual, or the surviving dependants or estate upon the death of such an individual; and
- (c) provides that all sums payable thereunder shall be paid in Kenya; and
- (d) provides that no benefits or contribution accruing or payable thereunder shall be capable of assignment and shall not be pledged as security on a loan; and
- (e) 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
- (f) provides that the fund shall be invested in qualifying assets; and
- (g) 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
- (h) 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
- (i) provides that the beneficiary may withdraw all or part of the balance of the funds at any time without unreasonable delay; and
- (j) provides that in every year starting in the year following the year in which the beneficiary attains sixty years of age, at least ten percent of the balance of the funds at the beginning of the year shall be withdrawn and paid to the beneficiary; and
- (k) provides that upon the death of the beneficiary the funds shall be distributed or transferred as legally required; and
- (l) provides that all benefits derived from contributions by or on behalf of an individual shall vest in that individual immediately.

Discretionary
Registration.

7. 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.

Registration
procedure.

8.(1) Application for the registration of a scheme under rule 4, 5 or 6 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.

Alteration of regulations to be notified.

9. 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.

Withdrawal of registration.

10.(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 rule 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 rule 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 requirement 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 fulfill 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 fulfills 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. The Income Tax (Retirement Benefit) Rules, (1993) are revoked.

L.N.210/1995

THE INCOME TAX (REGISTERED HOME OWNERSHIP SAVINGS PLAN) RULES, 1995

Citation and Commencement.

1. These Rules may be cited as the Income Tax (Home Ownership Savings Plan) Rules, 1995, and shall come into operation on 1st January, 1996.

Interpretation.

2. 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.

Application for Registration.

3.(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 rules 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-
 - (i) the trust deed; and
 - (ii) any rules or other document constituting the Plan.

Requirements for Registration.

4. The Commissioner may, on receipt of an application under rule 3, register a Plan if-

- (a) it is established in Kenya under an irrevocable trust;
- (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) the deposits shall only be invested in qualifying assets;
 - (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;
 - (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 upto the tenth year the depositor shall make in his account an annual deposit of up to forty eight 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.

Notification
of
registration.

5. 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.

Supply of
information
to the
Commissioner

6. 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 any interest in a permanent house;
- (c) the amount of deposits; mode of investment and any withdrawal thereof;
- (d) such other information as the Commissioner may from time to time require.

Alteration of
Trust Deed,
Rules, etc.

7. 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.

8. (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 documents 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.

L.N.72/1996

THE INCOME TAX (INVESTMENT DUTY SET OFF) RULES, 1996

1. These Rules may be cited as the Income Tax (Investment Duty Set Off) Rules, 1996 and shall come into operation on the 14th April, 1996.

2. In making application for consideration of approval by the Minister for duty set off under section 39A to the Act, the following particulars shall accompany the application:

- (a) A detailed list of the proposed imports of the capital goods, plant and equipment (excluding passenger cars) that will qualify for deductions under Part II of the Second Schedule.
- (b) Pro forma invoices from suppliers or other independent estimates of the value of the proposed imports (including clean reports of finding by the authorized preshipment inspection agency).
- (c) A detailed feasibility study of the investment project showing-

- (i) the value and expected timing of the investment expenditure that qualifies for deduction under Parts I and II of the Second Schedule and which is proposed for qualification of the project under the minimum investment limit of not less than 5 million United States dollars within a period of two (2) years; and
- (ii) detailed cash flow statements which allow for the estimation of the net economic benefit of the project, including-
 - (a) cash flow relating to goods or services to be produced locally or for export, or purchased locally or imported for use in the production of goods and services;
 - (b) employment expected to be created;
 - (c) foreign and domestic financing obligations;
 - (d) other foreign obligations or commitments, e.g. management fees or royalties; and
 - (e) income tax, rates on property, licence fees or similar obligations.

Cap.472

3. The application under paragraph 2 shall be completed before the clearance of the goods through customs and payment of duties under Section 117 of the Customs and Excise Act.

4. The duty set off on capital goods shall be permitted for investment projects that are new investment in productive capital goods, or replacement, expansion, extension or modification of existing productive capital goods.

5. No duty set off shall be allowed for subsequent replacement or addition to capital goods that have qualified for a duty set off without a new application under paragraph 2 of these Rules.

6. All applications for duty set off under Section 39A shall be made to the Minister for Finance, who, upon being satisfied that the applicant has fulfilled the requirements of Section 39A and these Rules, shall issue a letter of approval to the applicant with a copy to the Commissioner General of the Kenya Revenue Authority that specifies-

- (a) sufficient details to identify the applicant, the nature of the investment project and its location;
- (b) the detailed list of capital goods (including quantities and description) the duty paid on which will qualify for set off; and
- (c) the validity period of the approval which shall not be less than two (2) years, but not more than four (4) years from the date of approval to the date of the capital goods being first put in use.

7. At the time of customs clearance of capital goods approved for duty set off, the applicant may apply to the Commissioner of Customs and Excise to send a certified copy of the import entry documents to the Commissioner of Income Tax for purposes of verifying any subsequent claim for duty set off.

8. An applicant who has imported approved capital goods shall claim the duty set off at the time of filling the self-assessment return for the year of income in which the goods are first put in use, subject to the validity period in paragraph 6.

9. A claim for duty set off shall be accompanied by a copy of the approval letter of the Minister of Finance and copies of the import entries for the approved capital goods imports.

THE INCOME TAX (VENTURE CAPITAL COMPANY) RULES, 1997

L.N.103/1997

Citation and Commencement.

1. These Rules may be cited as the Income Tax (Venture Capital Company) Rules, 1997 and shall be deemed to have come into operation on 1st September, 1996.

Interpretation.

2. In these Rules, unless the context otherwise requires -

"eligible activities" means activities other than those listed in rule 4 of these Rules;

Cap.485A.

"fund manager" means a person licensed by the Capital Markets Authority under the provisions of the Capital Markets Authority Act for the purpose of managing a venture capital company;

"venture capital company" means a company incorporated in Kenya for the purpose of investing in a new or expanding venture company.

Income Tax Act Cap. 470

Registration of
Venture
capital
Companies.

3. A venture capital company 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 companies; and
- (c) it is approved by Capital Markets Authority; and
- (d) it is managed by a fund manager; and
- (e) seventy-five percent or more of its portfolio of investable funds is invested in the equity shares of venture companies; and
- (f) the primary activities of the venture company in which it has invested are approved activities.

Prohibited
activities.

4. The primary activities of a venture company shall not include -

- (a) trading in real property;
- (b) banking and financial services; or
- (c) retail and wholesale trading services

Registration
procedure.

5.(1) An application for registration of a venture capital company under rule 3 shall be made in writing and shall be accompanied by -

- (a) two copies each of the company's
 - (i) memorandum and articles of association;
 - (ii) certificate of incorporation;
 - (iii) certificate of approval by the Capital Markets Authority;
 - (iv) Personal Identification Number Card;
- (c) 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 company is acceptable for registration, and the same notification shall specify either –

- (a) the reason thereof, 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.

Withdrawal of
Registration.

6.(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.

L.N.100/2001

THE INCOME TAX (WITHHOLDING TAX) RULES 2001

Citation and
commencement.

1. The Rules may be cited as Income Tax (Withholding Tax) Rules, 2001.

Interpretation.

2. In these Rules, unless the context otherwise requires:-

“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;

“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 authorized by the Commissioner in any particular case, and on which the information that the Commissioner may direct with respect to tax is recorded.

Income Tax Act Cap. 470

Application of
Section 128 of
the Act.

3. 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.

Deduction of
withholding
Tax.

4.(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 paragraph shall not exceed the rates specified under paragraph (a).

(2) A person who fails to comply with the requirement of paragraph (1) commits an offence.

Maintenance
of records.

5. (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 authorized by the Commissioner, record such particulars as the Commissioner may direct in respect of that payment.

(3) Any person who fails to comply with paragraph (1) or (2) commits an offence.

Certificate of
tax deduction.

6. 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.

Dispute in
calculation of
withholding
tax.

7. (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 payer 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 paragraphs (3) and (4) shall be refunded to the payee.

Payment of
withholding
tax.

8. (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.

(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 paragraph (2), commits an offence.

Person failing to pay tax or provide required certificate.

9.(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.

Recovery of tax.

10. 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.

Withholding tax return at end of each year.

11. (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 authorize 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.

(3) Any person who fails to render a return to the Commissioner within two months after the end of a year as required under paragraph (1), commits an offence.

Inspection of a person's records.

L.N.96/2002

12.(1) A person liable to pay withholding tax shall, when called upon to do so by the Commissioner, 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, based on the information obtained from the inspection, showing –

- (a) the tax which 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.

Death of an individual.

13. 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.

Change in circumstances of a person.

14. Where there has been 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.

General Penalty.

15. 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.

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THE INCOME TAX (LEASING) RULES, 2002

Citation.

1. These Rules may be referred to as the Income Tax (Leasing) Rules, 2002.

Interpretation.

2. In these Rules, unless the context otherwise requires –

“asset” includes equipment;

“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;

“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.

Income chargeable to tax.

3. 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.

Deduction.

4. 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

(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 of which the deduction is sought is incurred by the lessor wholly and exclusively in the production of income chargeable to tax; and

(ii) in the case of a lessee, that the sole consideration for the payment in respect of which the deduction is sought is the use of, or the right to use, an asset.

Capitalization of assets.

5. (1) Assets to which these Rules relate shall be capitalized in the books of the lessor, and where the same are sold off upon the expiration of the lease, the difference between the sale price and the 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 in the books of the lessee.

Register.

6. The lessor shall maintain a separate register for all leased assets.

Duration of lease.

7. The duration of a lease shall be stipulated in writing and shall not be extended except with the authority of the Commissioner.

Where lease is terminated.

8. (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.

(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.

Transfer of ownership.

9. Where the Commissioner is of the opinion that a lease contract was entered into with the intention of transferring ownership, or where the substance of the contract effectively transfers ownership, the provisions of the Act on assessment and payment of tax in respect of a hire purchase transaction shall apply to such transaction.

Cross-border lease.

10 (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 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.

**THE INCOME TAX (NATIONAL SOCIAL SECURITY FUND)
(EXEMPTION) RULES, 2002**

L.N.97/2002

Citation and Commencement.

1. 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.

Interpretation.

2. In these rules, unless the context otherwise requires:-

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“Board of Trustees” means the National Social Security Fund Board of Trustees constituted under section 4 of the National Social Security Fund Act;

“accounting period” has the meaning assigned to it in section 2 of the Act;

“Commissioner” means the Commissioner of Income Tax;

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“National Social Security Fund” means the National Social Security Fund established under section 3 of the National Social Security Fund Act and “Fund” shall be construed accordingly.

Conditions for Exemption.

3. 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 percent 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. 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. 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.