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This version has been updated for amendments contained in the Finance Act 2018 and the Tax Laws (Amendment) Act 2018.

Viva Africa Consulting

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CHAPTER 470**THE INCOME TAX ACT****ARRANGEMENT OF SECTIONS****PART I PRELIMINARY**

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CHAPTER 470

THE INCOME TAX ACT

Commencement: 1st January 1974

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

PART 1 PRELIMINARY

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.

Short title and
commencement

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

Interpretation

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

"actuary" means -

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

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

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

"assessment" means an assessment, instalment assessment, self-assessment, or additional assessment made under this Act;

Finance Act 2014

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

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

"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;

"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;

"collective investment scheme" has the meaning assigned to it in section 2 of the Capital Market Act;

"commercial vehicle" means a road vehicle which the Commissioner is satisfied is-

- (a) manufactured for the carriage of goods and so used in connection with a trade or business; or

- (b) a motor omnibus within the meaning of that term in the Traffic Act; or
- (c) used for the carriage of members of the public for hire or reward;

"Commissioner" means -

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

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

"compensating tax" means the addition to tax imposed under section 7A;

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

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

"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;

Finance Act, 2016

"deemed interest" means an amount of interest equal to the average ninety-one-day Treasury Bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the nonresident, where such loan is provided free of interest;

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

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

"defined contribution provision", in respect of a registered fund, means terms of the fund -

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

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

Finance Act 2018

"demurrage charges" means the penalty paid for exceeding the period allowed for taking delivery of goods or returning of any equipment used for transportation of goods."

"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;

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

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

"**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;

"**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;

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

"information technology" means any equipment or software for use in storing, retrieving, processing or disseminating information."

Finance Act 2017 **"interest"** (other than interest charged to 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 a commitment or service fee paid in respect of any loan or credit ***or an Islamic finance return;***

Finance Act 2017 ***"Islamic finance arrangement" means all financial arrangements, including transactions, instruments, products or related activities that are structured in accordance with Islamic Law;***

Finance Act 2017 ***"Islamic finance return" means any amount received or paid in relation to Sukuk or an Islamic finance arrangement;***

"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;

"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, contractual, professional or consultancy services however calculated;

"Minister" means the Cabinet Secretary for the time being responsible for matters relating to finance; Finance Act 2013

"National Social Security Fund" means the National Social Security Fund established under Section 3 of the National Social Security Fund Act; Cap 258.

"natural resource income" means-

Finance Act 2014

- (i) an amount including a premium or such other like amount paid as consideration for the right to take minerals or a living or non-living resource from land or sea; or
- (ii) an amount calculated in whole or in part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea.

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

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

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

"officer" means the Commissioner and any other member of staff of the Kenya Revenue Authority appointed under section 13 of the Kenya Revenue Authority Act.;

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

"paid" includes distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person;

"pension fund" means a fund for the 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

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

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

"permanent establishment" in relation to a person, means a fixed place of business and includes a place of management, a branch, an office, a factory, a workshop, and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, a building site, or a construction or installation project which has existed for six months or more where that person wholly or partly carries on business:

Provided that-

- (a) the permanent establishment of the person shall be deemed to include the permanent establishment of the person's dependent agent;
- (b) in paragraph (a), the expression "dependent agent" means an agent of the person who acts on the person's behalf and who has, and habitually exercises, authority to conclude contracts in the name of that person;

"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 a 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

Deleted (Finance Act, 2014)

"public pension scheme" means a pension scheme that pays pensions or lump sums out of the Consolidated Fund.

"qualifying assets", in respect of a registered individual retirement fund, means time deposits, treasury bills, treasury bonds, securities traded on any securities exchange approved under the Capital Market Act and such other categories of assets as may be prescribed in the investment guidelines issued under the Retirement Benefit Act, 1997;

"qualifying dividend" means that part of the aggregate dividend that is chargeable to tax under section 3(2)(b) and

which has not been otherwise exempted under any other provision of this Act, but shall not include a dividend paid by a designated co-operative society subject to tax under section 19A (2) or 19A (3);

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

"qualified institution" means a bank licensed under the Banking Act, 1989 or an insurer registered under the Insurance Act, or such other financial institution as may be approved under the Retirement Benefit Act, 1997;

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

- (i) a bank or financial institution licensed under the Banking Act, or Cap 488.
- (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 Cap 489.
- (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;

“real estate investment trust” shall have the meaning assigned to it in the Capital Market Act;

Cap 485A.

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

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

“registered provident fund” means one which has been registered with the Commissioner in such manner as may be prescribed;

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

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

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

"resident", when applied in relation -

(a) to an individual, means -

- (i) that he has a permanent home in Kenya and was present in Kenya for any period in 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;

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

"Retirement Benefit Authority" means the Authority by that name established under the Retirement Benefit Act, 1997;

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

"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;

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

"special arrangement" means an arrangement for relief from double taxation having effect under section 41 or an agreement for the exchange of tax information under section 41A;

Deleted (Finance Act, 2014)

Finance Act 2017

“Sukuk” has the meaning assigned to it in section 2 of the Public Finance Management Act, 2012

No. 18 of 2012

"tax" means the income tax charged under this Act;

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

“telecommunication operator” means a person licensed as such under the Kenya Information and Communications Act, 1998;

"total income" means, in relation to a person, the aggregate amount of his income, other than income exempt

from tax under Part III, chargeable to tax under Part II, as ascertained under Part IV;

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

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

Provided that training fee shall not include fees paid for educational service provided by-

Finance Act 2015

- (a) a pre-primary, primary, or secondary school;
- (b) a technical college or university;
- (c) an institution established for the promotion of adult education, vocational training or technical education.

"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;

"unit trust" has the meaning assigned to it in section 2 of the Capital Market Act.

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

"whole time service director" means a director of a company who is required to devote substantially the whole of his time to the service of 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;

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

"wife's self-employment income" means gains or profits arising from a business of a married woman living with her husband which are chargeable to tax under section 3(2)(a)(i), and any income chargeable under section 3(2) (a)(iii) or section 3(2)(b) but does not include any income derived from the provision of goods or services by her to a business, partnership or a company owned by or the voting power of which is held to the extent of twelve and one half 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;

~~"winnings" has the meaning assigned to it in the Betting, Lotteries and Gaming Act.~~

Cap 131.

~~"winnings" means the positive difference between payouts made and stakes placed in a given month, for each player, payable to punters by bookmakers licenced under the Betting, Lotteries and Gaming Act.~~

Tax Laws
(Amendment)
Act 2018

"winnings" includes winnings of any kind and a reference to the amount or the payment of winnings shall be construed accordingly.

Finance Act 2018

Provided that this definition shall only apply in the case of winnings payable to punters (players) by bookmakers.

Finance Act 2015

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

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

(2) In relation to any year of income in respect of which an order relating to tax or personal reliefs has been made under the Provisional Collection of Taxes and Duties Act 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

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. Charge of tax

(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
 - (ii) any withdrawals from, or payments out of, a registered pension fund or a

- registered provident fund or a registered individual retirement fund; and
- (iii) any withdrawals from a registered home ownership savings plan.
- (d) Deleted (by 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.
- (g) subject to section 15(5A), the net gain derived on the disposal of an interest in a person, if the interest derives twenty percent or more of its value, directly or indirectly, from immovable property in Kenya; and Finance Act 2014
- (h) a natural resource income; Finance Act 2014
- (3) For the purposes of this Section -
 - (a) "person" does not include a partnership;
 - (b) a bonus or interest paid by a designated co-operative society, as defined under section 19A, shall be deemed to be a dividend.
 - (c) for the purposes of subsection (2)(g) and section 15(5A)-
 - (i) "immovable property" means mining right, an interest in a petroleum agreement, mining information or petroleum agreement, mining information or petroleum information;
 - (ii) "net gain", in relation to the disposal of an interest in a person, means the

consideration for the disposal reduced by the cost of the interest; and

- (ii) the terms “consideration”, “cost”, “disposal”, “interest in a person”, “mining information”, “mining right”, “person”, “petroleum agreement”, and “petroleum information” have the meaning assigned to them in the Ninth Schedule.

4. For the purposes of section 3 (2) (a) (i) -

Income from
Business

- (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 partner from 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;

Provided that in computing the total income of a partnership, there shall be deducted the cost of medical

expenses or medical insurance cover paid by the partnership for the benefit of any partner, subject to a limit of one million shillings per year.

- (c) 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 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 of 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 "licensee", "contractor" or subcontractor" as defined in the

Ninth Schedule, the provisions of that Schedule shall apply.

4A. (1) A foreign exchange gain or loss realized on or after the 1st January 1989 in a business carried on in Kenya shall be taken into account as a trading receipt or deductible expenses in computing the gains and profits of that business for the year of income in which that gain, or loss was realized:

Income from
business where
foreign exchange
gain or loss is
realized

Provided that -

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

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

(2) The amount of foreign exchange gain or loss shall be calculated in accordance with the difference between (a times r1) and (a times r2) 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;

r1 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 realised.

r2 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 realised 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.

"all loans" shall have the meaning assigned in section 16 (3).

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

Export
processing zone
enterprise.

5.(1) For the purposes of section 3(2)(a)(ii), an amount paid to- Income from employment

- (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; and
 - (iii) notwithstanding the provisions of subparagraph (ii), where such amount is received by an employee as payment of subsistence, travelling, entertainment or other allowance, in respect of a period spent outside his usual place of work while on official duties, the first two thousand shillings per day expended by him for the duration of that period shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of his gains or profits;
- (b) save as otherwise expressly provided in this section, the value of a benefit, advantage, or facility of whatsoever nature the aggregate value whereof is not less than thirty-six thousand shillings granted in respect of employment or services rendered;
 - (c) an amount 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, any amount received as compensation on the termination of the contract shall be deemed to have accrued evenly over the unexpired period of the contract;
 - (ii) where the contract is for an unspecified term and provides for compensation on the termination thereof, the compensation shall be deemed to have accrued in the period immediately following the termination at a rate equal to the rate per annum of the gains or profits from the contract received immediately prior to termination;
 - (iii) where the contract is for an unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination of the contract shall be deemed to have accrued evenly in the three years immediately following such termination.
- (d) any balancing charge under Part II of the Second Schedule;
 - (e) the value of premises provided by an employer for occupation by his employee for residential purposes;
 - (f) an amount paid by an employer as a premium for an insurance on the life of his employee and for the benefit of that employee or any of his dependants:

Provided that this paragraph shall not apply where such an amount is paid-

- (i) to a registered or unregistered pension scheme, pension fund, or individual retirement fund; or
- (ii) for group life policy cover, unless such a cover confers a benefit to the employee or any of his dependants.

(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%
- (v) in the year of income commencing on the 1st January 1994, 15%; and
- (vi) in the year of income commencing on or after the 1st January 1995, 15% or such interest rate based on 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 lower.

"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, adopted 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).

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

- (a) such value as the Commissioner may, from time to time, determine; and

- (b) the prescribed rate of benefit.

Provided that –

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

Finance Act 2008

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

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

- (i) in the 1996 year of income, 1% of the initial capital expenditure on the vehicle by the employer;
- (ii) in the 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.

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

- (a) in the case of a director of a company, other than a whole time service director, an amount equal to the higher of fifteen per centum of his total income excluding the value of those premises and income which is chargeable under

Section 3(2)(f), the market rental value and the rent paid by the employer:

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

Provided that for the purposes of this paragraph -

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

Provided that -

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

- (ii) where premises are owned by the employer, the fair market value of the premises in that year.

(4) Notwithstanding anything to the contrary in subsection (2) "gains or profits" do not include -

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

Provided that this paragraph shall not apply to expenditure other than expenditure on the provision of passages for the benefit of an employee recruited or engaged outside Kenya and who is in Kenya solely for the purpose of serving the employer and is not a citizen of Kenya;

- (aa) expenditure on vacation trips to destinations in Kenya paid by the employer on behalf of an employee:

Provided that-

- (i) this paragraph shall cease to apply on the 1st July 2015;
 - (ii) the period of vacation shall not exceed seven days; and
 - (iii) the term "employee" shall include the immediate family members of the employee;
- (b) in the case of a full-time employee or his beneficiaries (which expression includes a whole time service director, or a director who controls more than five per cent of the share capital or voting power of a company) the value of any medical services provided by the employer; or medical insurance provided by an insurance provider approved by the Commissioner of Insurance and paid for by the employer on behalf of a full-time employee or his beneficiaries:

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

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

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

- (i) to an unregistered pension scheme, unregistered provident fund or unregistered individual retirement fund; or
 - (ii) to a registered pension scheme, a registered provident fund or a registered individual retirement fund in excess of the amount specified in Section 22A or 22B.
- (d) educational fees of employee's dependents or relatives disallowed under section 16(2)(a)(iv) which have been taxed in the hands of the employer;
 - (e) fringe benefits subject to tax under section 12B.
 - (f) the value of meals served to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer (whether the meals are supplied in the premises of the employer or the premises of the third party) where the value of the meal does not exceed the sum of forty-eight thousand shillings per year per employee, subject to such conditions as the Commissioner may specify.

- (g) an amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme:

Provided that-

- (a) this paragraph shall only apply in respect of amounts not exceeding two hundred and forty thousand shillings for each year of service;
- (b) this paragraph shall not apply to any person who is eligible for deductions under section 22A.
- (h) For the purposes of this subsection,
 - (i) “beneficiaries” means the full time employee’s spouse and not more than four children whose age shall not exceed twenty-one years; and
 - (ii) Deleted (Finance Act 2014)

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

Provided that-

- (a) In the case of an employee share ownership plan, the value the benefit shall be the difference between the market value, per share, and the offer price, per share, at the date the option is granted by the employer; and
- (b) The Commissioner may, from time to time, prescribe the value where the cost or the fair market value of a benefit cannot be determined.

(6) For the purposes of paragraph (a) of the proviso to subsection (5)-

- (a) the benefits chargeable shall accrue where such plan is registered with the Commissioner as a collective investment scheme within the meaning of the Capital Markets Act and shall be deemed to have accrued to the employee at the end of the vesting period.
- (b) "offer price" means the price at which an employer's shares are initially offered to an employee under an employee share ownership plan;
- (c) "market value", in relation to a share, means-
 - (i) where the shares are fully listed on any securities exchange operating in Kenya, the mid-market value on the date the shares were granted by the employer; or
 - (ii) where the shares are not fully listed, the price which the shares might reasonably be expected to fetch on sale in the open market, which shall be agreed upon with the Commissioner before the grant of the options:
- (d) "share option" means the offer made by an employer to an employee to purchase a fixed number of shares at a fixed price, which may be paid for at the end of the vesting period;
- (e) "vesting period" means a fixed period of time between the date of offer by the employer and the date after which the option to purchase can be exercised by the employee.

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.

Income from the
use 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.

6A.(1) Notwithstanding any other provision of this Act, a tax to be known as residential rental income tax shall be payable with effect from the 1st January 2016 by any resident person from income which is accrued in or derived from Kenya for the use or occupation of residential property, and which ***is in excess of one hundred and forty four thousand shillings but does not exceed*** ten million shillings during any year of income

Imposition of
residential rental
income tax

Finance Act 2016

Provided that this section shall not apply where a person who would otherwise pay tax under this section, by notice in writing addressed to the Commissioner, elects not to be subject to residential rental income tax, in which case the other provisions of this Act shall apply to such a person.

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

Finance Act 2015

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

Income from
dividends
Finance Act 2018

~~(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 realised on the disposition of assets of the company) whether earned before or during the winding up are distributed (whether in cash or otherwise), the distribution shall be deemed to be payment of a dividend;~~

~~(d) where a company issues debentures or redeemable preference shares to any of its shareholders and receives therefore 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.~~

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

- (a) a dividend paid by a resident company shall be deemed to be income of the year of income in which it was payable;
- (b) an amount shall be deemed to be a dividend distributed by a company to a shareholder where —

- (i) any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder or any person related to that shareholder;
- (ii) the shareholder or any person related person to that shareholder is discharged from any obligation measurable in money which is owed to that company by that shareholder or related person;
- (iii) the amount is used by that company in any other manner for the benefit of the shareholder or any related person to that shareholder;
- (iv) any debt owed by the shareholder or any person related to that shareholder to any third party is paid or settled by that company;
- (v) the amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or related person to such shareholder, resulting from an adjustment.

(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.

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

Finance Act 2008

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

Dividend tax
Account

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

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

~~(a) — by one shilling for every shilling of income tax paid by the company, excluding any final withholding tax paid on qualifying dividends received by the company, after the commencement of the accounting period in respect of years of income commencing in or after 1988;~~

~~(b) — by one shilling for every shilling of compensating tax paid by the company, as provided in subsection (5);~~

~~(c) — Deleted.~~

~~(d) — in the case of dividends received by the company from another company one shilling multiplied by the fraction equal to $t/(1-t)$ times one shilling for every one shilling of such dividends received in accounting periods for years of income commencing in or after 1993 (where 't' is a percentage equal to the current corporation rate for the company).~~

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

~~(5) — If the amount of the dividend tax account would be decreased below zero in any instance as a result of the~~

~~deduction required under subsection (4), the company shall pay compensating tax with respect to the accounting period in which the dividend causing the negative balance is paid in an amount sufficient to bring such a resulting negative balance up to zero.~~

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

~~(a) — zero; or~~

~~(b) — an amount equal to the sum of all taxes paid by the company prior to the accounting period for the year of income 1993 in respect of accounting periods for the years of income commencing in or after 1988 (other than final withholding tax on qualifying dividends), and an amount equal to $t/(1-t)$ times all dividends received from another company during accounting periods for years of income 1988 to 1992 less an amount equal to $t/(1-t)$ times the amount of all dividends actually paid by the company during the accounting periods for the years of income 1988 to 1992 (and not with respect to any prior years), where 't' is equal to the corporation rate of tax for the year of income 1993.~~

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

Finance Act 2008

7A. Where a dividend is distributed out of gains or profits on which no tax is paid, the company distributing the dividend shall be charged to tax in the year of income in which the dividends are distributed at the resident corporate rate of tax on the gains or profits from which such dividends are distributed:

Dividend distributed out of untaxed gains or profits

Finance Act 2018

Provided that this section shall not apply to registered collective investment schemes.

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.

Income from
pensions, etc

(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 by or services rendered to the Community or one of its corporations shall be deemed to have accrued in or to have been derived from Kenya-

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

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

Finance Act,
2009

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

- (a) in the case of a lump sum commuted from a registered pension, or individual retirement fund, the first six hundred thousand shillings; or

Finance Act,
2009

- (b) in the case of a withdrawal from a registered pension or individual retirement fund upon termination of employment, the lesser of-
 - (i) the first sixty thousand shillings per full year of pensionable service with that employer starting on the later of the date the pensionable service began, or, where the employee had previously received a lump sum payment from that same employer, the date the employee's pensionable service recommenced after receipt of that lump sum; or Finance Act, 2009
 - (ii) the first six hundred thousand shillings; or Finance Act, 2009
- (c) in the case of a lump sum paid out of a registered provident fund (or a defined contribution registered fund deemed by the Commissioner to be a provident fund for the purposes of assessing under this paragraph accumulations for the payment of lump sums other than out of a pension), the total of-
 - (i) the lesser of the first six hundred thousand shillings or the first sixty thousand shillings per full year of pensionable service with that employer starting on the later of the date the pensionable service began or, where the employee had previously received a lump sum payment from that same employer, the date the employee's pensionable service recommenced after receipt of that lump sum; and Finance Act, 2009
 - (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 31 December, 1991 of the accumulated balances and the members of the provident funds as of 31 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

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

Finance Act,
2009

(e) in the case of a lump sum paid out of a registered home ownership savings plan, the amount used for the purchase of an interest in or for the construction of a permanent house for occupation by the depositor within twelve months immediately following the year of withdrawal;

(f) the total pensions and retirement annuities received by a resident individual from an unregistered pension or individual retirement fund or scheme:

(i) the contributions to which have not been allowed as a deduction under any other provisions of this Act; and

(ii) the income thereof has been taxed.

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

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

- (b) the net accumulated funds on each account earn the average rate of return on all the assets in the fund at the accounting date for a year of income; and
 - (c) the net accumulated funds based on contributions prior to 1st January 1991, are made up of the accumulated balances as at 31st December 1990 less any withdrawals from the fund plus any investment income earned on the fund up to the accounting date for a year of income.
- (6) Upon the death of an employee who is a member or beneficiary of a registered fund-
 - (a) the widow, widower or dependents shall qualify as a group for the same tax exempt amounts out of pension income and lump sums as are available under subsections (4) and (5) respectively as if such amounts had been received by the employee; and
 - (b) where the registered fund provides for no payment of retirement benefits other than the payment of a lump sum to an estate, the first one million four hundred thousand shillings of such a lump sum payment shall be deemed to be income not chargeable to tax as income of the estate or its direct beneficiaries.
- (7) Upon the death of the beneficiary of a registered individual retirement fund or registered home ownership savings plan, the balance of funds shall be deemed to have been withdrawn immediately preceding the time of his death and shall be included in his income for that year, except-
 - (a) where such funds have been bequeathed to the spouse, the ownership of the fund may be transferred to the spouse; or
 - (b) where funds are bequeathed to his children under the age of eighteen years at the time of his

death, such funds shall be included in the income of such children;

- (c) where the funds of a depositor under a registered home ownership savings plan are bequeathed to another depositor, the funds may be transferred to that depositor.

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

(9A) Where the Commissioner withdraws the registration of a home ownership savings plan, then the balance of the funds held in each depositor's account shall be included in that depositor's income with effect from the beginning of the year of income in which the grounds for the withdrawal arose, except where such funds are transferred to a similar plan in an approved institution within twelve months of the withdrawal of the registration with the prior written approval of the Commissioner in which case such funds shall not be included in the depositor's income.

(10) For the purposes of this section-

- (a) pension and lumpsums 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.

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

9.(1) Where a non-resident person carries on the business of ship owner, 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 the gross amount received on account of the carriage; and those gains or profits shall be deemed to be income derived from Kenya; but this subsection shall not apply to gains or profits from the carriage of passengers who embark, or cargo or mail which is embarked, in Kenya solely as a result of transshipment.

Income of certain non-resident persons deemed derived from Kenya

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

10.(1) 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 -

Income from Management or professional fees, royalties, interest, and rents

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

Finance Act 2014

Finance Act 2009

- (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),
- (g) [winnings.](#) Finance Act 2016
Tax Laws
(Amendment)
Act 2018
- (h) Deleted (Finance Act 2014)
- (i) [demurrage charges; and](#) Finance Act 2018
- (j) [an insurance premium](#) Finance Act 2018

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

(1) Provided that –

- (i) this subsection 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 in part, in Kenya; Finance Act 2014
- (ii) this subsection 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. Finance Act 2014
- (iii) for the avoidance of doubt, the expression “non-resident person” shall include both head office and other offices of the non-resident person. Finance Act 2014

(2) A net gain referred to in section 3(2)(g) is deemed to be income that accrued in or was derived from Kenya.

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.

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

(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.

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-

Imposition of
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 to the tax that would be payable by that person if his total income for the current year was an amount equal to his instalment income; or
- (b) the amount specified in the preceding year assessment multiplied by one hundred and ten 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 or 37.

Finance Act 2016

(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.

12A. (1) Notwithstanding any other provision of this Act, a tax to be known as advance tax shall be payable commencing on the 1 January 1996 in respect of every commercial vehicle at the rates specified in the Third Schedule.

Imposition of
advance tax
Finance Act,
2007
Finance Act,
2010

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

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.

Imposition of
fringe benefit
tax.

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 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 in this Act in respect to fines, penalties, interest charges, objections and appeals shall apply mutatis mutandis to the fringe benefit tax imposed under this section.

(6) For the purpose of this section-

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

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

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

~~12C. (1) Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable with effect from the 1st January 2007, by any resident person whose income from business is accrued in or derived from Kenya and does not exceed five million shillings during any year of income.~~

Imposition of
Turnover tax
Finance Act,
2008

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

~~(1A) Notwithstanding subsection (1), turnover tax shall not apply to:-~~

Finance Act,
2008

~~(a) rental income and management or professional or training fees;~~

~~(b) the income of incorporated companies; or~~

~~(c) any income which is subject to a final withholding tax under this Act.~~

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

12C. (1) Notwithstanding any other provision of this Act, a tax to be known as presumptive tax shall be payable by a resident person whose turnover from business does not exceed five million shillings during a year of income.

Finance Act 2018

(2) The presumptive tax shall apply to all persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income.

(3) A person liable to pay tax under subsection (1) may, by notice in writing, addressed to the Commissioner, elect not to be subject to the provisions of this section in which case the other provisions of this Act shall apply to such person.

(4) The due date for payment of tax under subsection (1) shall be at the time of payment for the business permit or trade license or renewal of the same.

(5) Notwithstanding subsection (1), presumptive tax shall not apply to income derived from—

- (a) management and professional services; or
- (b) rental business; or
- (c) incorporated companies.

PART III – EXEMPTION FROM TAX

Certain income
exempt from tax

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

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.

Deductions
allowed

(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; and the Commissioner may prescribe such guidelines as may be appropriate for the purposes of determining bad debts under this subparagraph.
- (b) amounts to be deducted under the Second Schedule in respect of that year of income;
- (bb) amounts to be deducted under the Ninth Schedule in respect of that year of income;
- (c) expenditure of a capital nature incurred during that year of income by the owner or occupier of farm land for the prevention of soil erosion;

- (d) 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 for 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 69 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) Deleted (Finance Act, 2014)
- (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;
- (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

Finance Act,
2009

- his employer's regional office, which office has been approved for the purposes of this paragraph by the Commissioner;
- (iii) who is absent from Kenya for the performance of those duties for a period or periods amounting in the aggregate to one hundred and twenty days or more in that year of income; and
 - (iv) whose gains and profits from that employment are not deductible in ascertaining the total income chargeable to tax under this Act of his employer or of any company or partnership which controls, or is controlled by, that employer; and in this subparagraph "control" has the meaning assigned to it in paragraph 32 of the Second Schedule.
- (s) expenditure of a capital nature incurred in that year of income by a person on legal costs and other incidental expenses relating to the authorisation and issue of shares, debentures or similar securities offered for purchase by the general public;
 - (ss) expenditure of a capital nature incurred in that year of income by a person, on legal costs and other incidental expenses, for the purposes of listing on any securities exchange operating in Kenya, without raising additional capital;
 - (t) expenditure incurred by the lessee in the case of a lease or similar transaction as determined in accordance with such rules as may be prescribed under this Act;
 - (u) expenditure of a capital nature incurred in that year of income by a person on rating for the purposes of listing on any securities exchange operating in Kenya.

- (v) club subscriptions paid by an employer on behalf of an employee.
- (w) any cash donation in that year of income to a charitable organization registered or exempt from registration under the Societies Act or the Non-Governmental Organisation Co-ordination Act, 1990, and whose income is exempt from tax under paragraph 10 of the First Schedule to this Act, or to any project approved by the Minister for Finance;
- (x) expenditure of a capital nature incurred in that year of income, with the prior approval of the Minister, by a person on the construction of a public school, hospital, road or any other similar kind of social infrastructure;
- (y) expenditure of a capital nature incurred in the purchase or acquisition of an indefeasible right to use a fibre optic cable by a telecommunication operator, provided the amount of deduction shall be limited to five per cent per annum.
- (z) ***expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports.*** Finance Act, 2016
- (aa) ***expenditure incurred in that year of income on donations to the Kenya Red Cross, county governments or any other institution responsible for the management of national disasters to alleviate the effects of a national disaster declared by the President.*** Finance Act 2017
- (ab) **thirty percent of electricity cost incurred by manufacturers in addition to the normal electricity expense, subject to conditions set by the Ministry of Energy.** Finance Act 2018

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

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

Provided that-

- (i) the amount of interest which may be deducted under this paragraph shall not exceed the investment income chargeable to tax for that year of income, and where the amount of that interest paid in that year exceeds the investment income of that year, the excess shall be carried forward to the next succeeding year and deducted only from investment income and, in so far as the interest has not already been so deducted, from investment income of the subsequent years of income; and
 - (ii) for the purposes of this paragraph, "investment income" means dividends and interest but excludes qualifying dividends and qualifying interest.
- (b) the amount of interest not exceeding **three hundred** thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first four financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him during that year of income for residential purposes:

Finance Act,
2016

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 the excess, if any, of his share of any loss incurred by the partnership, calculated after deducting the total of any remuneration and interest on capital payable to any partner by the partnership and after adding any interest on capital payable by any partner to the partnership, over the sum of that remuneration and interest so payable to him less any such interest so payable by him;
- (e) Deleted (by 8 of 1978, s.9.);
- (f) the amount of any loss realised in computing, in accordance with Paragraph 5(2) of the Eighth Schedule, gains chargeable to tax under section 3 (2) (f); but the amount of any such loss incurred in a year of income shall be deducted only from gains under section 3 (2) (f) in that year of income and, in so far as it has not already been deducted, from gains in subsequent years of income.
- (g) In the case of a business which is a sole proprietorship, the cost of medical expenses or medical insurance cover incurred for the benefit of the proprietor, subject to a limit of one million shillings per year

Finance Act,
2009

(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 that year and the next nine succeeding years of income:

Finance Act,
2015

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, next succeeding four years of income, to the extent of the amount of her income which is assessed on her husband in those years of income.
- (iii) deleted.
- (iv) any deficit incurred by a person as at 1st January, 2010 shall be deemed to have been incurred in that year of income.

Finance Act,
2009

Finance Act,
2009

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

Finance Act,
2014

- (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.

(5A) For the purpose of section 3(2)(g), the amount of the net gain to be included in income chargeable to tax is the amount computed according to the following formula-

Finance Act 2015

$$A \times B/C$$

Where-

A is the amount of the net gain;

B is the value of the interest derived directly or indirectly, from immovable property in Kenya; and

C is the total value of the interest.

(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 seven 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;

Finance Act 2015

- (e) the specified sources of income are-
 - (i) rights granted to other persons for the use or occupation of immovable property;
 - (ii) employment (including former employment) of personal services for wages, salary, commissions or similar rewards (not under an independent contract of service), and a self-employed professional vocation;
 - (iii) employment the gains or profits from which is wife's employment income, profession the gains or profits from which is wife's professional income and wife's self-employment the gains or profits from which is wife's self-employment income;
 - (iv) agricultural, pastoral, horticultural, forestry or similar activities, not falling within subparagraphs (i) and (ii) of this paragraph;
 - (ivA) surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds which are deemed to be the income of the employer under section 8(10); and
 - (ivB) income of a licensee from one licence area or a contractor from one contract area as determined in accordance with the Ninth Schedule.
 - (v) other sources of income chargeable to tax under section 3 (2) (a), not falling within subparagraph (i), (ii), (iii) or (iv) of this paragraph.
- (8) Deleted

Deductions not
allowed

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 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) and aa;
- (iv) educational fees of employee's dependents or relatives; or
- (v) club fees including entrance and subscription fees except as provided in Section (15)(2)(v);
- (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

Finance Act,
2014

- 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 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 realisation 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 realisation 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) (Deleted by Finance Act No. 10 of 2006)
- (j) interest payments in proportion to the extent that the highest amount of all loans held by the company at any time during the year of income exceeds the greater of-
 - (i) three times the sum of the revenue reserves and the issued and paid up capital of all classes of shares of the company; or
 - (ii) the sum of all loans acquired by the company prior to the 16th June 1988 and still outstanding in that year,

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

Finance Act,
2010

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

Finance Act,
2008

- (k) Deleted (by 69 of 1997, s 33.).
- (l) Deleted (Finance Act, 2009).
- (3) For the purposes of subsection (2), the expressions –

“all loans” means loans, overdrafts, ordinary trade debts, overdrawn current accounts or any other form of

indebtedness for which the company is paying a financial charge, interest, discount or premium,

Deleted

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

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

Finance Act,
2012

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.

Ascertainment of
Income of
farmers in
relation to stock

(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 a capital receipt; and, if a part of the stock is disposed of otherwise than in the open market, he shall be charged on the cost or open market value of 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 realised price;
- (b) if transferred without payment to a beneficiary under the will or on the intestacy of the deceased farmer, on the open market value:

Provided that where such beneficiary succeeds to such business of farming and elects, by notice in writing to the Commissioner within one year after the end of the year of income in which the farmer dies, not to take into account the

value of stock, the following provisions shall have effect in relation to any stock which was so transferred to him-

- (i) no amount shall be charged on the executors or administrators in respect of the stock transferred to him; and
 - (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.

17A. (Repealed by No. 9 of 2000, S.43)

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

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 utilises 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.

Finance Act,
2010
Finance Act,
2014

(3) Where a non-resident person carries on business with a related resident person or through its permanent establishment and the course of that business is such that it produces to the resident person or through its permanent establishment 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 or through its permanent establishment 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 per cent 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.

Finance Act,
2014

(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 non-resident person.

Provided that for the avoidance of doubt, the expression “non-resident person” shall include both the head office and other offices of the non-resident person.

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

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

(7) Deleted (Finance Act, 2014)

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

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

18A. (1) Where a resident entity operating in a preferential tax regime carries on business—

Ascertainment of gains or profits of business in a non-preferential tax regime. Finance Act 2017

- (a) with a related resident person not operating in a preferential tax regime; and**
- (b) the business produces to the resident person not operating in a preferential tax regime either no profits or less than the ordinary profits which would have been 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.

(2) For the purposes of this section, the expression “preferential tax regime”, with respect to an item of income or profit, means any legislation, regulation or administrative practice which provides a preferential rate of taxation to such income or profit, including reductions in the tax rate or the tax base.

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.

Ascertainment of income of insurance companies.

(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) of this subsection-
 - (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 and exempt investment income in that year of income in computing the gains or profits of that business under this Act.

(4) The gains or profits for 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-
 - (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,

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

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

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

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

Finance Act 2008

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

- (a) the same proportion of the amount of actuarial surplus recommended by the actuary to be transferred to the shareholders as the actuarial liability in respect of its long-term insurance business in Kenya bears to the actuarial liability

in respect of its total long-term insurance business; and

- (b) the same proportion of any other amounts transferred from the life fund for the benefit of shareholders as the actuarial liability in respect of its long-term insurance business in Kenya bears to the actuarial liability in respect of its total long-term insurance business; and
- (c) the same proportion of thirty percent of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurance Act as the actuarial liability in respect of its long-term insurance business in Kenya bears to the actuarial liability in respect of its total long-term insurance business.

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

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

Finance Act 2018

(6B) For the avoidance of doubt, the gains arising from the transfer of property by an insurance company other than property connected to life insurance business shall be taxed in accordance with the provisions of the Eighth Schedule.

(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) Deleted

Cooperative
societies.

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

Finance Act,
2013

- (a) a society which has been exempted from all the provisions of the Co-operative Societies Act under section 92 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 business as a credit and savings co-operative society to which the provisions of subsection (4) apply, the income on which tax shall be charged shall be its total income for the year of income deducting therefrom an amount equal to the aggregate of bonuses and dividends declared for that year and distributed by it to its members in money or an order to pay money.

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

- (a) fifty per centum of its gross income from interest (other than interest from its members);
- (b) its gross income from any right granted for the use or occupation of any property not being a royalty, ascertained in accordance with the provisions of this Act;
- (c) gains chargeable to tax under section 3 (2) (f);

(d) any other income (excluding royalties) chargeable to tax under this Act not falling within 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 asset 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-operative Societies Act the membership of which is restricted to individual persons.

20.(1) Subject to conditions specified by the Minister under section 130 –

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

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

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

Members' clubs
and trade
associations.

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 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 instalments, 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.

Deductions 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 forty thousand shillings (or, where contributions are made to registered funds of the employer in respect of a part year of service of the member, twenty thousand shillings per month of service).

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

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

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

funds of the employer in respect of a part year of service of the member, twenty thousand shillings per month of service),

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

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

- (a) the sum of the contributions made by the employer and by the employees in the year to registered funds in respect of members of the defined benefit registered funds of the employer; or
- (b) thirty per cent of the sum of the pensionable incomes from the employer in the year of members of defined benefit registered funds of the employer; or
- (c) two hundred and forty thousand shillings times the number of full-year members of defined benefit registered funds of the employer exceeds the sum of -
 - (i) the deductible contributions made in the year to registered funds of the employer by members of registered funds of the employer under subsection (1); and
 - (ii) the amounts deducted by the employer for the year for contributions made under defined contribution provisions of registered funds under subsection (2) in respect of the members of the defined benefit registered funds.

(4) In determining the deductible amounts that can be made to registered funds by employees and by employers,

subsection (1) shall be applied before subsection (2) and subsection (2) shall be applied before subsection (3).

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

- (a) where an employee retires or terminates his employment with an employer and joins the services of another employer and requests funds to be transferred from the former employer's registered fund to the new employer's registered fund; or
- (b) where an employer establishes a new registered fund and transfers the existing pension rights of an employee to that new registered fund; or
- (c) where an employee terminates his employment with an employer and requests funds, which would otherwise be withdrawn or commuted as a lump sum, to be transferred to a registered individual retirement fund; or
- (d) where an employee and the employer agree mutually to transfer funds relating to the existing retirement benefit rights 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) 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).

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

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

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

Registered home
ownership savings
plan

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).

Tax Laws
(Amendment) Act
2018

(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~~ **ninety-six** thousand shillings per year of income or ~~four~~ **eight** thousand shillings in respect of each month.

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

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

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

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

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

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

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

“approved institution” means a bank or financial institution registered under the Banking Act, 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 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.

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;
- (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 eighteen years.

Finance Act,
2013

(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-

Finance Act,
2013

- (a) "child" means a child under the age of eighteen 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.

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 adjustments as he may consider appropriate, including the assessment for a year of income which, but for any alteration in the date to which the accounts of the business are made up, would have been assessed for that year of income, treat the income of that accounting period as income of the year of income in which the accounting period ends, and tax shall be charged accordingly.

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

(4) Any person to whom subsection (3) applies shall not later than 31 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 RELIEF

General.

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.

(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.

Affordable housing
relief
Tax Laws
(Amendment) Act
2018

30A. (1) A resident individual who satisfies the Commissioner that in a year of income that the person

- (a) is eligible to make an application under an affordable housing scheme;
- (b) has applied and is awaiting the allocation of a house under an affordable housing scheme; and
- (c) is saving for a purchase under an affordable housing scheme approved by the Cabinet Secretary in charge of housing,

shall for that year of income be entitled to a personal relief in this Act referred to as the affordable housing relief.

(2) A person who has been allocated a house under the affordable housing scheme and has been subject to an affordable housing relief under subsection (1) shall not be re-eligible for a subsequent relief.

Insurance Relief

31.(1) A resident individual who proves that in a year of income-

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

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

Provided that -

- (i) no insurance relief shall be granted in respect of that part of a premium for an insurance as secures a benefit which may, at the option of the assured, be withdrawn at any time prior to the determination of the insurance, and in that case the proportion of premiums otherwise eligible for relief, if any, shall be the amount that the Commissioner may determine to be just and reasonable;
- (ii) no relief shall be granted in respect of a premium for an insurance unless the person claiming the relief furnishes evidence as to the nature and conditions of the insurance and such other

particulars as may be required by the Commissioner;

- (iii) an education policy with a maturity period of at least ten years shall qualify for relief; and
- (iv) the provisions of this section shall apply only to life or education policies whose term commences on or after the 1st January 2003.
- (v) a health policy whose term commences on or after the 1st January 2007 shall qualify for relief;
- (vi) where a policy is surrendered before its maturity, all the relief granted to the policy holder shall be recovered from the surrender value of the policy and remitted to the Commissioner by the insurer.

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

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

Rates of tax

34.(1) Subject to this section-

- (a) tax upon the total income of an individual, other than that part of the total income comprising wife's employment income, fringe benefits and the qualifying interest, shall be charged for a year

- of income at the individual rates for that year of income;
- (b) tax upon that part of the total income which consists of wife's employment income, 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;
 - (g) tax upon the total fringe benefits provided by an employer shall be charged at the resident corporation rate for that year of income.
 - (h) tax upon gross receipts of a person chargeable to tax under section 12C shall be charged at the resident rate for that year of income.

Finance Act, 2015	(i)	Deleted.
Finance Act, 2015	(j)	tax upon the capital gains of a person charged under section 3(2)(f) shall be charged at the rate of five percent and shall not be subject to further taxation;
Finance Act, 2015	(k)	tax upon gross rental receipts of a person chargeable to tax under section 6A shall be chargeable at the resident rate specified under the Third Schedule for that year of income.
Finance Act, 2015	(l)	The transfer of interest in a person shall be charged as per provisions of the Ninth schedule
Finance Act 2016 Tax Laws (Amendment) Act 2018	(m)	winnings.
	(1A).	Deleted (Finance Act, 2014).
	(1B).	Deleted (Finance Act, 2014).
	(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;
Finance Act, 2014	(b)	a royalty or natural resource income;
	(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,

Finance Act 2016
Tax Laws
(Amendment) Act
2018

- (h) a payment in respect of an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (g),
- (i) **winnings.**
- (j) a payment in respect of gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2).
- (k) Deleted (Finance Act, 2015)

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).

Finance Act 2018

- (n) **demurrage charges; or**

Finance Act 2018

- (o) **an insurance premium except insurance premium paid for insurance of aircraft.**

- (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.

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

- (ii) a commission paid by a resident air transport operator to a non-resident agent in order to secure tickets for international travel.

Finance Act,
2014

- (b) a royalty or natural resource income;

Finance Act,
2010

- (c) a rent, premium or similar consideration for the use or occupation of property, except aircraft or aircraft engines, locomotives or rolling stock;
- (d) a dividend;
- (e) interest and deemed interest, including interest and deemed 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) **winnings;**
- (j) Deleted (Finance Act, 2016);
- (k) Deleted (Finance Act, 2014);
- (l) gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2),
- (m) **demurrage charges;**
- (n) **an insurance premium except insurance premium paid for insurance of aircraft;**

Finance Act 2002
Tax Laws
(Amendment) Act
2018
Finance Act 2016

Finance Act, 2012

Finance Act 2018

Finance Act 2018

which is chargeable to tax, deduct therefrom tax at the appropriate non-resident rate.

Finance Act,
2015

(1A) Subsection (1) shall not apply to payments made by filming agents and filming producers approved by the Kenya Film Commission to actors and crew members approved for purposes of paragraphs (g) and (h).

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

Finance Act 2016

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

- (a) a dividend; or
- (b) interest, other than interest paid to a financial institution specified in the Fourth Schedule which is resident or which has a permanent establishment in Kenya including interest arising from a discount upon final satisfaction or redemption of a debt, bond, loan, claim, obligation or other evidence of indebtedness measured as the original issue discount, other than interest or discounts paid to a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule;

Provided that –

- (i) where the bond, loan, claim, obligation or other evidence of indebtedness is acquired by a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule from the resident person, such an exempt person or financial institution shall deduct tax from the difference between the acquisition price and the original issue price; and
 - (ii) where the resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner.
- (c) an annuity payment excluding that portion of the payment which represents the capital element;
or

- (d) a commission or fee paid or credited by an insurance company to any person for the provision, whether directly or indirectly, of an insurance cover to any person or group of persons (except a commission or fee paid or credited to another insurance company);
- (e) a pension or a lump sum commuted or withdrawn from a registered pension fund or a lump sum out of a registered provident fund in excess of the tax-exempt amounts specified in section 8(4) and (5), or any amount paid out of a registered individual retirement fund, or a benefit paid out of the National Social Security Fund in excess of the tax-exempt amount specified in section 8(5); or
- (ee) surplus funds withdrawn from or paid out of registered pension or provident funds;
- (f) management or professional fee or training fee the aggregate value of which is twenty-four thousand shillings or more in a month,

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

- (g) a royalty or natural resource income;
- (h) **winnings;**
- (i) ***Deleted (Finance Act, 2016);***
- (j) ***rent, premium or similar consideration for the use or occupation of immovable property;***

Finance Act 2010
Tax Laws
(Amendment) Act
2018

Finance Act 2016

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

Finance Act 2016

(3A) Notwithstanding the provisions of subsection (3), only a person appointed for that purpose by the Commissioner, in writing, shall deduct tax under paragraph (j) of that subsection.

(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 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.

Finance Act 2018

(5A) The Commissioner shall pay the tax deducted from winnings under subsection (1)(i) and (3)(h) into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, 2012.

(6) Deleted (Finance Act, 2016)

(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, on or before the twentieth day of the month following the month in 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.

(6B) ***Deleted (Tax Procedures Act 2016)***

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

Finance Act,
2010

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

Finance Act,
2010

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

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

Deduction of tax
from emoluments.

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 that tax shall also apply to the collection and recovery of the penalty as if it were tax due from the employer:

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

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

Provided that-

- (a) the Commissioner may remit any amount of penalty in excess of 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 there on, 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.

Finance Act,
2010

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

Finance Act,
2010

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

(6) ***Deleted (Finance Act, 2016)***

(7) ***Deleted (Finance Act, 2016)***

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

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 tax

39(1). An amount of tax 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,
- (c) has been paid by a person under section 12A.

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.

Finance Act,
2008

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

Finance Act,
2008

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

the inclusion of such income in his employment income or income specified under section 10(e).

Finance Act,
2008

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

Finance Act,
2009

39A. Repealed (Finance Act 2009)

Set-off tax rebate
for apprenticeships
Finance Act, 2015

39B. (1) Any employer who engages at least ten university graduates as apprentices for a period of six to twelve months during any year of income shall be eligible for tax rebate in the year subsequent to the year of such engagement

(2) The Cabinet Secretary may by notice in the Gazette make regulations for the better carrying out of the provisions of this section.

D - Double Taxation Relief

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

Special
arrangement for
relief from Double
taxation
Finance Act, 2014

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, subject to subsection (5) but notwithstanding any other provision 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 a notice made under subsection (1) and of any subsequent notice made under subsection (3) to be laid, without delay, before the National Assembly.

(5) Subject to subsection (6), where an arrangement made under this section provides that income derived from Kenya is exempt or excluded from tax, or the application of the arrangement results in a reduction in the rate of Kenyan tax, the benefit of that exemption, exclusion, or reduction shall not be available to a person who, for the purposes of the arrangement, is a resident of the other contracting state if fifty per cent or more of the underlying ownership of that person is held by an individual or individuals who are not residents of that other contracting state for the purposes of the agreement.

(6) Subsection (5) shall not apply if the resident of the other contracting state is a company listed in a stock exchange in that other contracting state.

(7) In this section, the terms “person” and “underlying ownership” have the meaning assigned to them in the Ninth Schedule.

Agreements for
exchange of
information

41A. The Minister may, by notice in the Gazette, from time to time declare that arrangements specified in the notice, being arrangements made with the government of any country with the view of exchanging information relating to income tax or other taxes of a similar character imposed by the laws of that country, shall, notwithstanding anything to the contrary in this Act or any other written law, have effect in relation to income tax, and that notice shall, subject to the provisions of this section, have effect accordingly.

Computations of
credits under

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.

(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.

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

(2) Where a married woman is not living with her husband, 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 a 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.

Indemnification of representative.

51. A person responsible under this Act for the payment of tax on behalf of another 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.

51A. Repealed (Finance Act, 2016)

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

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

Final return with
self-assessment.

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 this 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;

(Proviso (i) and (ii) deleted by 7 of 2002 s.44)

(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.

53. Repealed (by Finance Act, 2014)

Documents to be
included in return
of income

54.(1) 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 been prepared or examined by another person in a professional capacity, then he shall furnish -

- (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 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, 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 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 account 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 a trading account, profit and loss account, receipts and payments accounts, or other similar account however named;

"professional person", in the case of a company, means a holder of a practicing certificate or a written authority to

practice issued in accordance with the provisions of the Accountants Act.

Keeping of records
or 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.

Finance Act, 2014

(1A) For the purposes of this section, the carrying on of business includes any activity giving rise to income other than employment income.

(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.

Supply of
information upon
change in
particulars

54B. Every person carrying on a business shall notify the Commissioner of any changes in the following particulars within thirty days of the occurrence of the change-

- (a) the place of business, trading name and contact address;
- (b) in the case of-
 - (i) an incorporated person, of the persons with shareholding of ten per cent or more of the issued share capital;
 - (ii) a nominee ownership, to disclose the beneficial owner of the shareholding;
 - (iii) a trust, full identity and address details of trustees, settlors and beneficiaries of the trust;
 - (iv) a partnership, the identity and address of all partners; or

- (v) cessation or sale of business, all relevant information regarding liquidation or details of new ownership.

Books and Accounts

55. Deleted (Tax Procedures Act, 2016)

56. Deleted (Tax Procedures Act, 2015)

Returns 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 (1) -

- (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 the 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 being 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.

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 sub-section (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 sub-section (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 adaptation, 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 -

"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.

69. Deleted (Tax Procedures Act, 2015)

70. Deleted (Tax Procedures Act, 2015)

71. Deleted (Tax Procedures Act, 2015)

72. *Repealed (Finance Act 2016)*

72A. Deleted (Tax Procedures Act, 2015)

Penalty for the negligence of authorized tax agent.

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 authorised tax agent, such a person shall be liable to a penalty equal to one half of such additional tax but in any case not less than one thousand shillings and not exceeding fifty thousand shillings with respect to each such return, statement or other document as shall be the subject of such additional tax.

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.

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 one million five hundred thousand shillings per person per annum of the penalty or interest; and

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

Penalty on unpaid tax.

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

Provided that-

Finance Act, 2010

- (a) in the case where the instalment penalty under section 72C applies, the penalty under this section shall not apply except to the extent that any such instalment penalty has not been paid by the due date for self-assessment of tax under section 52B;
- (b) this section shall not apply in the case of penalties imposed for breach of any other provision of this Act.

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.

(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, 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.

Finance Act, 2014

74. Repealed (Finance Act, 2014)

Instalment
assessments.

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.

74B. Deleted (Tax Procedures Act, 2015)

75. Deleted (Tax Procedures Act, 2015)

75A. *Repealed (Finance Act, 2016)*

75B. Deleted (Tax Procedures Act, 2015)

Assessments 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.

Assessment not to
be made on certain
income

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

- 77. Deleted (Tax Procedures Act, 2015)
- 78. Deleted (Tax Procedures Act, 2015)
- 79. Deleted (Tax Procedures Act, 2015)
- 80. Deleted (Tax Procedures Act, 2015)
- 81. Deleted (Tax Procedures Act, 2015)

PART X- OBJECTIONS, APPEALS AND RELIEF FOR MISTAKES

- 82. Repealed (Tax Appeals Tribunal Act, 2013)
- 83. Repealed (Tax Appeals Tribunal Act, 2013)
- 84. Deleted (Tax Procedures Act, 2015)
- 85. Deleted (Tax Procedures Act, 2015)
- 86. Deleted (Tax Procedures Act, 2015)
- 87. Deleted (Tax Procedures Act, 2015)
- 88. Deleted (Tax Procedures Act, 2015)
- 89. Deleted (Tax Procedures Act, 2015)
- 90. Deleted (Tax Procedures Act, 2015)
- 91. Deleted (Tax Procedures Act, 2015)
- 91A. Deleted (Tax Procedures Act, 2015)

PART XI - COLLECTION, RECOVERY AND REPAYMENT OF TAX

Time within which
payment is to be
made

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 on or before the twentieth day of the months in the current year of income as specified in the Twelfth Schedule.

Provided that where the instalment assessment is made under section 74A (3), the tax shall be due and payable within thirty days of service of the notice of that assessment.

(2B) Where the Commissioner makes an instalment assessment under section 74A (3), the amount payable in that assessment for the purpose of section 94 shall be deemed to be tax remaining unpaid after the due date on which interest under the section may be charged.

- (3) Deleted (Finance Act, 2014)

(4) Deleted by Act no. 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) Deleted (Tax Procedures Act, 2015)

(7) Deleted (Tax Procedures Act, 2015)

(8) Deleted (Tax Procedures Act, 2015)

Due date for
payment of tax
under self-
assessment

92A. (1) Where any person is required to furnish a return under section 52B, the tax chargeable thereunder shall be due and payable on the last day of the fourth month following the end of his year of income or accounting period.

(2) Where the Commissioner makes an additional assessment under section 73(2)(b), the tax charged thereunder shall be deemed to have been due and payable on the last day of the fourth month following the end of the year of income or accounting period.

93. Deleted (Tax Procedures Act, 2015)

94. Deleted (Tax Procedures Act, 2015)

95. Deleted (Tax Procedures Act, 2015)

95A. (Repealed by Act no.4 of 1993)

96. Deleted (Tax Procedures Act, 2015)

96A. Deleted (Tax Procedures Act, 2015)

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.

98. *Repealed (Finance Act, 2016)*

99. (Repealed by Act no. 9 of 2000 s.53).

100. Deleted (Tax Procedures Act, 2015)

101. Deleted. (Tax Procedures Act, 2015)

102. Deleted. (Tax Procedures Act, 2015)

103. Deleted (Tax Procedures Act, 2015)

103A. Deleted (Tax Procedures Act, 2015)

Collection of tax
from ship owner,
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 ship owner, charterer or air transport operator, issue to the proper officer of Customs by whom clearance may be granted a certificate containing the name of that person and the amount of the tax due and payable and on receipt of that certificate the proper officer of Customs shall refuse clearance from any port or airport in Kenya to any ship or aircraft owned by that person until the tax has been paid.

(2) No civil or criminal proceedings shall be instituted or maintained against the proper officer of Customs or any other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship or aircraft is detained under this section affect the liability of the owner, charterer or agent to pay harbour or airport dues and charges for the period of detention.

105. *Repealed (Finance Act, 2016)*

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.

108. Repealed

Finance Act 2017

Failure to comply
with notice, etc.

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.

(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.

110. Deleted (Tax Procedures Act, 2015)

111. Deleted (Tax Procedures Act, 2015)

112. Deleted (Tax Procedures Act, 2015)

113. Deleted (Tax Procedures Act, 2015)

114. Deleted (Tax Procedures Act, 2015)

115. Deleted (Tax Procedures Act, 2015)

116. Deleted (Tax Procedures Act, 2015)

117. Deleted (Tax Procedures Act, 2015)

118. Deleted (Tax Procedures Act, 2015)

119. Deleted (Tax Procedures Act 2015)

120. Deleted (Tax Procedures Act 2015)

121. Deleted (Tax Procedures Act 2015)

122. Deleted (Tax Procedures Act 2015)

123. Deleted (Tax Procedures Act 2015)

123A. Deleted (Tax Procedures Act 2015)

123B. Deleted (Tax Procedures Act 2015)

123C. Deleted (Tax Procedures Act 2015)

124. Deleted (Tax Procedures Act 2015)

125. Deleted (Tax Procedures Act 2015)

126. Deleted (Tax Procedures Act 2015)

PART XIV - MISCELLANEOUS PROVISIONS

127. Deleted (Tax Procedures Act 2015)

127A. Deleted (Tax Procedures Act, 2015)

127B. Deleted (Tax Procedures Act, 2015)

127C. Deleted (Tax Procedures Act, 2015)

127D. Deleted (Tax Procedures Act, 2015)

127E. Deleted (Tax Procedures Act, 2015)

128. Deleted (Tax Procedures Act, 2015)

129. Deleted (Tax Procedures Act, 2015)

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.

132. Deleted (Tax Procedures Act, 2015)

Repeals and
transitional

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.

(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.

(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.

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 organisation 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. Deleted (Finance Act, December 2012)

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.

Finance Act, 2014

8. The income of a county government.

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

10. Subject to section 26, the income of an institution, body of persons or irrevocable trust, of a public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion or education-

- (a) established in Kenya; or
- (b) whose regional headquarters is situated in Kenya,

in so far as the Commissioner is satisfied that the income is to be expended either in Kenya or in circumstances in which the expenditure of that income is for the purposes which result in the benefit of the residents of Kenya:

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.

Finance Act, 2012

and provided further that an exemption under this paragraph-

- (A) shall be valid for a period of five years but may be revoked by the Commissioner for any just cause; and
- (B) shall, where an applicant has complied with all the requirements of this paragraph, be issued within sixty days of the lodging of the application.

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

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

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

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 an 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) Deleted (by 38 of 2013, s 22)
- (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 the income shall be exempt from tax.

30. The income received by virtue of their employment by citizens of the United States of America who are employed by the Department of Agriculture of the United States of America on research work in co-operation with 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 Organisation 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 utilised 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 a dependant of either or both of his parents;

(vi) where a residence is used in part for business purposes, or is transferred in a single transaction together with land and other property used for the production of income, the taxable value of that property used for residential purposes shall be separately determined from that used for business purposes or for the production of income;

(d) property (being land) transferred by an individual where -

Finance Act, 2015

(i) the transfer value is not more than three million shillings;

Finance Act, 2015

(ii) agricultural property having an area of less than fifty 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;

(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;

(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.

Finance Act, 2015

Provided that where there is a court case regarding such estate the period of the transfer or sale under this paragraph shall be two years from the date of the finalization of such court case.

37. Deleted (by No 57 of 2012 s 23)

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.

43. The income of a registered individual retirement fund.

44. The income of a registered home ownership savings plan.

45. Income of the National Social Security Fund provided that the fund complies with such conditions as may be prescribed.

Statute Law
(Miscellaneous
Amendments) Act
2017

45A. The income of the National Hospital Insurance Fund established under the National Hospital Insurance Fund Act, 1998 consisting of—

(a) all contributions and other payments into and out of the Fund; and

(b) monies invested under section 34 of the Act.

Finance Act, 2015

46. Dividends received by a registered venture capital company, special economic zone enterprises, developers and operators licensed under the Special Economic Zone Act.

47. Gains arising from trade in shares of a venture company earned by a registered venture capital company within the first ten years from the date of first investment in that venture company by the venture capital company

Provided that the venture company has not been listed in any securities exchange operating in Kenya for a period of more than two years.

48. Gains arising from trade in securities listed on any securities exchange operating in Kenya by any dealer licensed under the Capital Markets Authority Act:

Provided that such securities have been held for a period not exceeding twenty-four months from the date of acquisition.

49. Interest income accrued in or derived from Kenya under financial arrangements made or guaranteed by the Export-Import Bank of the United States, an agency of the United States of America.

50.(1) Investment income of a pooled fund or other kind of investment consisting of retirement schemes, provided that all the constituent schemes of the pooled fund are registered by the Commissioner

(2) For the purposes of this paragraph, “pooled fund” has the meaning assigned to it under the Retirement Benefit Act, 1997.

51. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.

52. Interest income generated from cashflows passed to the investor in the form of asset-backed securities.

53. Monthly or lumpsum pension granted to a person who is sixty-five years of age or more.

Finance Act 2016

53A. *Income from employment paid in the form of bonuses, overtime and retirement benefits:*

Provided that this paragraph shall only apply to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band provided under Head B of the Third Schedule.

Finance Act 2016

54. *Interest income on bonds issued by the East African Development Bank.*

Finance Act 2017

55. *Dividends paid by Special Economic Zone Enterprise, developers or operators to any non-resident person.*

Tax Laws
(Amendment) Act
2018

56. *Compensating tax accruing to a power producer under a power purchase agreement.*

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

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

Kenya Government $2\frac{3}{4}$ per cent Stock 1977/83,
Kenya Government $3\frac{1}{2}$ per cent Stock 1973/78,
Kenya Government $4\frac{1}{2}$ per cent Stock 1971/78,
Kenya Government 5 per cent Stock 1978/82,
Kenya Government $5\frac{1}{2}$ per cent Stock 1976/80,
Kenya Government $6\frac{1}{2}$ per cent Stock 1972/74,
Kenya Government 6 per cent Loan to finance
Development Programme 1957/60, 1960/63, 1980/93,
Nairobi City Council $3\frac{1}{4}$ 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 $5\frac{1}{2}$ 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)

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

Deductions.

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

- | | | |
|---|------|--|
| | (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, |
| Finance Act, 2009 | (cc) | in a case referred to in paragraph 1(1)(a) for the year of income commencing on or after 1st January 2010, ten per cent; |
| | (d) | in a case referred to in paragraph 5(1)(c) and 5(1)(e) for the year commencing on or after the 1st January 2007, one-tenth. |
| Finance Act, 2009 | (dd) | in a case referred to in paragraph 5(1)(e) for the year of income commencing on or after 1st January 2010, fifty per cent. |
| Finance Act, 2015 | | Provided that in the case of a building in use for the training of film producers, actors or crew, the rate of deduction shall be one hundred percent. |
| | (e) | in the case referred to in paragraph 5(1)(f) for the year commencing on or after 1st January 2008, five per cent. |
| Finance Act, 2009
Finance Act, 2010
Finance Act, 2012 | (ee) | in a case referred to in paragraph 5(1)(f) for any year of income commencing on or after 1st January 2010, where roads, power, water, sewers and other social infrastructure have been provided by the person incurring the capital expenditure, twenty-five percent |

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 -

- (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
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 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 and 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.

Interpretation

5.(1) Subject to this paragraph, in this Schedule
"industrial building" means -

- (a) a building in use -
 - (i) for the purposes of a business carried on in a mill, factory or other similar premises; or
 - (ii) for the purposes of a transport, dock, bridge, tunnel, inland navigation, water, electricity or hydraulic power undertaking; or
 - (iii) for the purposes of a business which consists in the manufacture of goods or materials or the subjection of goods or materials to any process; or
 - (iv) for the purposes of a business which consists in the storage of goods or materials -
 - (A) which are to be used in the manufacture of other goods or materials; or
 - (B) which are to be subjected, in the course of a business, to any process; or
 - (C) which, having been manufactured or produced or subjected, in the course of a business, to any process, have not yet been delivered to any purchaser; or
 - (D) on their arrival by sea or air into any part of Kenya; or
 - (v) for the purpose of a business consisting of ploughing or cultivating agricultural land

- as defined in paragraph 22 (other than land in the occupation of the person carrying on the business) or doing any other operation on 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 a particular instance within that class;
- (b) a prescribed dwelling-house, that is to say a dwelling-house constructed for and occupied by employees of a business carried on by the person owning 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).
 - (e) a building in use as a hostel or an educational building, or a building in use for training, provided such building has been certified by the Commissioner for the purposes of this paragraph;
 - (f) a building in use as a rental residential building where such building is constructed in a planned development area approved by the Minister for the time being responsible for matters relating to housing;

Finance Act, 2009
Finance Act, 2012

(ff) Deleted (Finance Act, December 2012)

(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, 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 harbor, 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.

Expenditure in respect of commercial building.

6.(1) A reference in this Part to the incurring of capital expenditure on the construction of a building does not include capital expenditure on the provision of machinery or on an asset which has been treated for a year of income as machinery.

(2) References in this Part to capital expenditure incurred on the construction of a building do not include capital expenditure on the acquisition of, or of rights in or over, land.

Finance Act 2012

6A.(1) Where a person incurs capital expenditure on the construction of a commercial building to be used in a business carried on by him or his lessee on or after the 1st January, 2013, and the person has provided roads, power, water sewers and other social infrastructure, there shall be deducted, in computing the gains or profits of that person for any year of income in which the building is so used, a deduction equal to twenty five percent per annum.

(2) For the purpose of this paragraph "commercial building" includes a building for use as an office, shop or showroom but shall not include a building which qualifies for deduction under any other paragraph or a building excluded for industrial building deduction under paragraph 5(3) of this Schedule.

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 -

	<ul style="list-style-type: none"> (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;
Finance Act, 2014	<ul style="list-style-type: none"> (cc) petroleum pipeline; and (d) all other machinery, including ships;
Finance Act 2015	<p>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 percent for the class of machinery in subparagraph (c), and 12.5 percent for the class of machinery in subparagraph (cc) or (d);</p>
Finance Act, 2009	<p>(4) For telecommunication equipment purchased and used by a telecommunication operator, other than machinery specified under subparagraph (3)(d), the amount of wear and tear for a year of income shall be twenty per cent of the amount of expenditure incurred.</p>
Ascertainment of written down value	<p>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 realised 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 realised for machinery of a class sold in a year of income exceeds that which, but for the deduction of that amount would be the written down value of machinery of that class at the end of that year of income, the</p>

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 realised 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 the 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.

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.

(6) Where capital expenditure of a kind referred to in sub-paragraph (1) is incurred on or after the 1st January 2006, that subparagraph shall be read as though the expression “two million shillings” were substituted for “thirty thousand shillings” wherever the latter expression occurs.

PART III Deleted (Finance Act, 2014)

PART IV DEDUCTIONS IN RESPECT OF CAPITAL

EXPENDITURE ON AGRICULTURAL LAND

Deductions in
response of capital
expenditure on
farm works

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-

- (a) 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;

- (b) Where in any year of income commencing on or after the 1st January 2007, the owner or tenant of agricultural land incurs capital expenditure on the construction of farm works, there shall be made, in computing his gains or profits for that year of income, a deduction equal to one-half of that expenditure
- (c) Where in any year of income commencing on or after 1st January 2011 the owner or tenant of agricultural land incurs capital expenditure on the construction of farmworks, there shall be made, in computing his gains or profits for that year of income, a deduction equal to a hundred percent 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 purposes of husbandry and partly other purposes, then only such proportion thereof as the Commissioner may determine to be just and reasonable shall be taken into account for the purposes of this paragraph.

(4) Where a person (the "transferor") would, if he continued to be the owner or tenant, as the case may be, of 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 a 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 the year of income in which the transfer takes place, shall be apportioned in such manner as the Commissioner may determine to be just and reasonable between the transferor and the transferee; and
- (b) the transferee shall, to the exclusion of the transferor, be entitled, where the interest transferred is in the whole of the land, to the whole of the deduction for any subsequent year of income, and where the interest transferred is in part only of the land, to so much of the deduction as the Commissioner may determine to be just and reasonable.

(5) For the purposes of subparagraph (4) 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, dikes, 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

Building 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 1 January 1992 on the construction of a building where the owner or

the lessee of that building uses the building for the purpose of manufacture; or

- (d) on or after the 1st January 1992 on the purchase and installation of machinery to be used for the purpose of manufacture; or
- (dd) on or after 1st January 2005, on the purchase of machinery which is subsequently leased and used for the purpose of manufacture.
- (e) on the construction of a hotel building which is certified as an industrial building under paragraph 5(1)(c);
- (f) on the construction of a building or purchase and installation of machinery outside the City of Nairobi or the Municipalities of Mombasa or Kisumu whereof the value of the investment is not less than two hundred million shillings;
- (g) on the purchase of filming equipment by a local film producer licensed by the Minister responsible for matters relating to communication;
- (h) ***on the construction of transportation and storage facilities for petroleum products by the Kenya Pipeline Company Limited.***

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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 (dd), or the building referred to in subparagraph (e), or the building or machinery referred to in subparagraph (f) or machinery referred to in paragraph (g), as

the case may be, a deduction referred to as an investment deduction.

(2) The amount of the investment deduction under subparagraph (1) shall –

(a) where the construction, installation or use, as the case may be, occurs outside the municipalities of Nairobi or Mombasa, be equal to the percentage of the capital expenditure applicable in accordance with the following table –

Where the year of first use is any year of income or accounting year commencing on or after	Percentage of the Capital Expenditure
1st January, 1988	60%
1st January, 1989	75%
1st January, 1990	85%
1st January, 1995	60%
1st July, 2000	100%
1st January, 2002	85%
1st January, 2003	70%
1st January, 2004	100%
1st January, 2005	100%
1st January, 2006	100%
1st January, 2007	100%
1st January, 2008	100%

(b) where the construction, installation or use, as the case may be, occurs within the municipalities of Nairobi and Mombasa, be equal to the percentage of the capital expenditure applicable in accordance with the following table –

Where the year of first use is any year of income or accounting year commencing on or after	Percentage of the Capital Expenditure
1st January, 1988	10%
1st January, 1989	25%

1st January, 1990	35%
1st January, 1995	60%
1st July, 2000	100%
1st January, 2002	85%
1st January, 2003	70%
1st January, 2004	100%
1st January, 2005	100%
1st January, 2006	100%
1st January, 2007	100%
1st January, 2008	100%

Finance Act, 2009

- (c) in the case of an investment referred to in sub paragraph (1)(f), be equal to one hundred and fifty percent of the capital expenditure;

Finance Act, 2009

- (d) in the case of the equipment referred to in subparagraph (1)(g), be equal to one hundred percent of the capital expenditure.

- (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 the purposes of manufacture;
- (b) where an existing building is extended by further construction, the extension shall be treated as a separate building;
- (c) capital expenditure incurred on the construction of a building does not include capital expenditure on the acquisition of, or of rights in or over, any land;

- (d) 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 the 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 the purposes of manufacture it includes the civil works and structures deemed to be part of an industrial building under paragraph 1(1A) of this Schedule;

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

"manufacture" means the making (including packaging) of goods or materials from raw or partly manufactured materials or other goods or the generation of electrical energy for supply to the national grid or the transformation and distribution of electricity through the national grid but does not extend to any activities which are ancillary to manufacture, such as design, storage, transport or administration;

"new" means not having previously been used by any person or acquired or held (other than by a supplier in the normal course of trade) by any person for use by the person incurring expenditure under this paragraph.

Capital expenditure on buildings and machinery for purposes of manufacture under bond.

24A. (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 purpose 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 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.

(2B) The amount of investment deduction under paragraph (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 on or after	Percentage of the Capital Expenditure
1st January, 1995	40%
1st July, 2000	NIL
1st January, 2002	15%
1st January, 2003	30%
1st January, 2004	40%
1st January, 2005	Nil
1st January, 2006	Nil
1st January, 2007	Nil
1st January, 2008	Nil

(3) The deduction allowable under subparagraph 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.

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.

Capital expenditure
on construction of
liquefied petroleum
gas storage
facilities
Statute Law
(Miscellaneous
Amendments) Act
2017

24C.(1) *Where capital expenditure is incurred on the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of a total value of fifteen thousand metric tonnes, there shall be deducted in computing the gains or profits of the person incurring that expenditure for the year of income in which the liquefied petroleum gas storage facilities were first used for storage of liquefied petroleum gas, a deduction referred to as an investment deduction.*

(2) *The amount of the investment deduction under subparagraph (1) shall be equal to one hundred and fifty per centum of the capital expenditure.*

Capital expenditure
on buildings and
machinery for use
in a Special
Economic Zone

24C. *Subject to this Schedule, where capital expenditure is incurred on the construction of a building or on the purchase and installation of machinery by or for a Special Economic Zone Enterprise for use by the enterprise in carrying out the business activities for which it was licensed, the enterprise shall be entitled to an investment deduction, equal to one hundred percent of the capital expenditure, against the gains or profits of that enterprise in the year in which the building or machinery is first used.*

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Capital expenditure
on buildings and
machinery for use
in a Special
Economic Zone
outside Nairobi and
Mombasa Counties

24D. *Subject to this Schedule, where capital expenditure is incurred on the construction of a building or on the purchase and installation of machinery by or for a Special Economic Zone Enterprise located outside Nairobi and Mombasa Counties, for use by the enterprise in carrying out the business activities for which it was licensed, the enterprise shall be entitled to an investment deduction, equal to one hundred and fifty percent of the capital expenditure, against*

Finance Act 2017

the gains or profits of that enterprise in the year in which the building or machinery is first used.

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 -

Finance Act, 2015 (a) on the purchase of a new and hitherto unused power-driven ship of more than 125 tons gross; or

Finance Act, 2015 (b) on the purchase, and subsequent refitting for the purposes of that business, of a used power-driven ship of more than 125 tons,

Finance Act, 2015 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 one hundred per cent of that capital expenditure, but -

(i) not more than one shipping investment deduction shall be allowed in respect of the same ship;

(ii) 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.

Finance Act, 2009
Finance Act, 2012

26. Where capital expenditure is incurred on the construction of a building to which paragraph 24(1)(a), (c), (e) or (f); 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 interest

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 purposes 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
- (b) 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 a part thereof -

- (a) where the transfer is of the whole business, the deductions thereafter shall be made to the transferee;
- (b) where the transfer is of part only of the business, item (a) shall have effect with respect to so much of the deduction as the Commissioner may determine is properly referable to the part of the business transferred.

(6) Where, when the contribution was made, the business was carried on or was to be carried on by 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.

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.

Finance Act, 2009
Finance Act, 2010

31A. Where a person incurs capital expenditure on the purchase of machinery or on the construction of roads, bridges or similar infrastructure under the concessionaire arrangement, the deduction shall be spread and claimed in equal proportion over the period of the concession:

Provided that the period of concession shall be deemed to commence-

- (a) In the case of machinery, in the year in which the machinery is first put into use;
- (b) In the case of road, bridge or similar infrastructure, in the year in which it is first put into use after completion.

Finance Act, 2009

31B. Subject to this Schedule, where a person incurs capital expenditure on the purchase or acquisition of the right to the use of a computer software, there shall be deducted, in computing his gains or profits for the year of income in which the software is first used and for subsequent years of income, an amount equal to one-fifth of that expenditure.

32.(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;

Finance Act, 2008

Provided that in the case of a body corporate, unless otherwise expressly provided for by the articles of association or other documents regulating it, "control" shall mean the holding of shares or voting power of twenty-five percent or more.

"income" includes an amount on which a charge to tax is authorised 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 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.

Finance Act, 2008

33. For the purposes of this Schedule, "hotel" means a hotel which has been classified as such by the Minister for the time being responsible for matters relating to tourism.

THIRD SCHEDULE

RATES OF PERSONAL RELIEFS AND TAX

HEAD A - RESIDENT PERSONAL RELIEFS

1. Personal Relief

Finance Act, 2016
Finance Act 2017

The amount of the personal relief shall be ***sixteen thousand eight hundred and ninety-six***;

2. Insurance Relief

The amount of insurance relief shall be fifteen percent of the amount of premiums paid but shall not exceed sixty thousand shillings per annum.

Tax Laws
(Amendment) Act
2018

3. Affordable housing relief.

The amount of affordable housing relief shall be 15% of the gross emoluments but shall not exceed Kshs. 108,000 per annum.

HEAD B - RATES OF TAX

1. The individual rates of tax shall be -

Finance Act, 2016
Finance Act 2017

	Rate in each shilling
<i>On the first Shs. 147,580</i>	<i>10%</i>
<i>On the next Shs. 139,043</i>	<i>15%</i>
<i>On the next Shs. 139,043</i>	<i>20%</i>
<i>On the next Shs. 139,043</i>	<i>25%</i>
<i>On all income over Shs. 564,709</i>	<i>30%</i>

Finance Act, 2016
Finance Act 2017

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

	Rate in each shilling
<i>On the first Shs. 147,580</i>	<i>10%</i>
<i>On the next Shs. 139,043</i>	<i>15%</i>
<i>On the next Shs. 139,043</i>	<i>20%</i>
<i>On the next Shs. 139,043</i>	<i>25%</i>
<i>On all income over Shs. 564,709</i>	<i>30%</i>

2. The corporation 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 | 7.00 |
| | up to and including the year of | |
| | income 1997 | |
| (vi) | for the year of income 1998 | 6.50 |
| | up to and including the year of | |
| | income 1999 | |
| (vii) | for the year of income 2000 | 6.00 |
| | and each subsequent year of | |
| | income | |

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 | 10.50 |
| | and each subsequent year of | |
| | income up to and including the year | |
| | of income 1989 | |
| (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 | 8.50 |
| | up to and including the year of | |
| | income 1997 | |
| (vi) | for the year of income 1998 | 8.00 |
| | up to and including the year of | |
| | income 1999 | |
| (vii) | for the year of income 2000 | 7.50 |
| | and each subsequent year of | |
| | income | |

Provided that for a non-resident company having a permanent establishment in Kenya 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.

- (c) in the case of a company newly listed on any securities exchange approved under the Capital Markets 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.
- (d) in the case of a company newly listed on any securities exchange approved under the Capital Market Act with at least thirty percent of its issued share capital listed, twenty five percent for the period of five years commencing immediately after the year of income following the date of such listing;
- (e) in the case of a company newly listed on any securities exchange approved under the Capital Markets Act which has at least forty percent of its issued share capital listed, twenty percent for the period of five years commencing immediately after the year of income following the date of such listing.
- (f) an export processing zone enterprise which does not engage in any commercial activities shall be exempted from paying any corporation tax for a period of ten years commencing with the year in which production, sales or receipts relating to the activities for which that enterprise has been licensed as an export processing zone enterprise commence; but the corporation rate of tax will be twenty five per cent for the period of ten years commencing immediately thereafter.

Provided that for purposes of this subparagraph, "commercial activities" include trading in, breaking bulk, grading, repacking or relabelling of goods and industrial raw materials.

- (g) (i) in the case of a company introducing its shares through listing or any securities exchange via introduction, twenty-five

percent for the period of five years commencing immediately after the year of income following the date of such listing.

- (ii) A gain on transfer of securities traded on any securities exchange licensed by Capital Markets Authority is not chargeable to tax under section 3(2)(f).

Finance Act 2015
Finance Act 2017

- (h) in the case of a special economic zone enterprise ***whether the enterprise sells its products to markets within or outside Kenya***, developer and operator, ten percent for the first ten years from date of first operation and thereafter fifteen percent for another ten years

Finance Act, 2016
Statute Law
(Miscellaneous
Amendments) Act
2017

- (i) ***in case of a company that constructed at least one hundred residential units annually, fifteen percent for that year of income, subject to approval by the Cabinet Secretary responsible for housing,***

Provided that where a company is engaged in multiple activities which include the ones specified in subparagraph (i), the rate of fifteen per cent shall be applied proportionately to the extent of the turnover arising from the housing activity.

Finance Act 2017

- (j) ***in the case of company whose business is local assembling of motor vehicles, fifteen per cent for the first five years from the year of commencement of its operations.***

Provided that the rate of fifteen per cent shall be extended for a further period of five years if the company achieves a local content equivalent to fifty per cent of the exfactory value of the motor vehicles.

Finance Act 2018

- (k) in the case of a company engaged in business under a special operating framework arrangement with the Government, the rate of

tax shall be to the extent provided in the arrangement.

3. The non-resident tax rates shall be -

Finance Act, 2008
Finance Act, 2014

- (a) in respect of management or professional fees or training fee, twenty per cent of the gross sum payable;

Finance Act 2017

Provided that—

(a) the rate applicable to any payments made by Special Economic Zone Enterprise, Developer or Operator to a non-resident person shall be 5% of the gross amount payable.

(b) the rate applicable to the citizen of the East African Community Partner States in respect of consultancy fee shall be fifteen per cent of the gross sum payable.

Finance Act, 2014

- (b) in respect of a royalty or natural resource income, twenty per cent of the gross amount payable;

Finance Act 2017

Provided that the rate applicable to any royalty paid by any Special Economic Zone Enterprise, Developer or Operator to a nonresident person shall be 5% of the gross amount payable.

- (c)(i) in respect of a rent, premium or similar consideration for the use or occupation of immovable property, thirty per cent of the gross amount payable;
- (ii) in respect of a rent, premium or similar consideration for the use of property other than immovable property, fifteen per cent of the gross amount payable.

Finance Act, 2007

- (d) in respect of a dividend, ten per cent of the amount payable;

Provided that the rate applicable to citizens of the East African Community Partner States in respect of dividend shall be five per cent of the gross sum payable.

Finance Act, 2014

- (e)(i) in respect of interest arising from a Government bearer bond of at least two years duration and interest and deemed interest, discount or original issue discount, fifteen percent 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.

Finance Act 2017

- (iii) ***in respect of interest paid by any Special Economic Zone Enterprise, Developer or Operator to a nonresident person, 5% 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;

Finance Act 2014
Tax Laws
(Amendment) Act
2018

- (i) **in respect of winnings, twenty percent.**
- (j) Deleted (Finance Act, 2014)

- (k) in respect of gains or profits from the business of a ship-owner which is chargeable to tax under section 9(1) of the Act, two and a half percent of the gross amount received.
 - (l) in respect of gains and profits from the business of transmitting messages by cable or radio communication, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet and satellite or any other similar method of communication which is chargeable to tax under section 9(2), five percent of the gross amount received.
- Finance Act, 2012
- (m) ***Deleted (Finance Act, 2016)***
 - (n) in the case of a special economic zone enterprise, developer and operator in respect of payments other than dividends made to non-residents at the rate of ten percent.
- Finance Act 2018
- (o) demurrage charges, paid to ship operators, twenty per cent of the gross amount payable;
- Finance Act 2018
- (p) an insurance premium, five per cent of the gross amount payable; and
4. Deleted (by 8 of 1978, s.9.
 5. The resident withholding tax rates shall be -
 - (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 per cent;

- (ii) Government bearer bond of at least two years duration and other sources, fifteen percent of the gross amount payable.
- (iii) Bearer bonds with a maturity of ten years and above, ten 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 person 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;
- (d)(i) in respect of a payment of a pension of any withdrawal made after the expiry of fifteen years from the date of joining the fund, or on the attainment of the age of fifty years, or upon earlier retirement on the grounds of ill health or infirmity of body and mind, from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund, in excess of the tax free amounts specified under section 8(4) and 8(5) in any one year, -

10% on the first Shs. 400,000

15% on the next Shs. 400,000

20% on the next Shs. 400,000

25% on the next Shs. 400,000

30% on any amount over Shs. 1,600,000 of the amount in excess of the tax free amount;

provided that the tax so deducted shall be final.

- (ii) in respect withdrawal before the expiry of fifteen years from the date of joining the fund, made from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund in

excess of the tax free amounts specified under section 8(4) and 8(5) in any one year, -

Finance Act 2017

<i>On the first Shs. 147,580</i>	<i>10%</i>
<i>On the next Shs. 139,043</i>	<i>15%</i>
<i>On the next Shs. 139,043</i>	<i>20%</i>
<i>On the next Shs. 139,043</i>	<i>25%</i>
<i>On all income over Shs 564,709</i>	<i>30%</i>

- (iii) 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.
- (f)(i) in respect of management or professional fee or training fee, other than contractual fees, the aggregate value of which is twenty-four thousand shillings in a month or more, five per cent of the gross amount payable;
- (ii) in respect of contractual fee the aggregate value of which is twenty four thousand shillings in a month or more, three percent of the gross amount payable.
- (g) in respect of a royalty or natural resource income, 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.

Finance Act 2010
Tax Laws
(Amendment) Act
2018

- (i) in respect of winnings, twenty percent

Provided that the tax paid under this subparagraph is final.

- (j) ***Deleted (Finance Act, 2016)***

Finance Act 2016

- (ja) in respect of a rent, premium or similar consideration for the use or occupation of immovable property, ***ten percent*** of the gross amount payable.

- (k) Deleted (Finance Act, 2015)

6. Deleted by No. 16 of 2014, s. 22.

7. The rate of presumptive income tax in respect of agricultural produce under subsection (1) of section 17A shall be two per cent of the gross amount of payment or the gross value of export.

8. The rate of advance tax under section 12A shall be-

- (a) for vans, pick-ups, trucks, prime movers, trailers and lorries; one thousand five hundred shillings per ton of load capacity per year or two thousand four hundred shillings per year, whichever is the higher;

Provided that advance tax shall not be imposed on tractors and trailers used for agricultural purposes.

- (b) for saloons, station-wagons, mini-buses, buses and coaches; sixty shillings per passenger capacity per month or two thousand four hundred shillings per year, whichever is the higher.

- (c) Deleted (Finance Act, 2010)

Finance Act 2018

~~9. The rate of tax in respect of turnover tax shall be three per cent of the gross receipts of the business of a taxable person under section 12C.~~

9. The rate of presumptive tax shall be an amount equal to fifteen percent of the amount payable for a business permit or trade licence issued by a County Government:

Provided that the tax charged shall be final.

Finance Act 2015

10. The rate of tax in respect of residential rental income shall be ten percent of the gross rental receipts of a taxable resident person under section 6A.

FOURTH SCHEDULE (Sections 15 and 35)

FINANCIAL INSTITUTIONS

Finance Act, 2008

A bank or a financial institution licensed under the Banking Act.

An insurance company licensed under the Insurance Act.

A building society registered under the Building Societies Act.

The National Housing Corporation established under the Housing Act.

A co-operative society registered under the Co-operative Societies Act.

The Kenya Post Office Savings Bank established by the Kenya Post Office Savings Bank Act.

The Agriculture Finance Corporation established by the Agricultural Finance Corporation Act.

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

FIFTH SCHEDULE (Section 2)**SCHEDULED PROFESSIONS AND SCHEDULED QUALIFICATIONS**

Profession	Qualifications
Medical	Any person who is registered as a medical practitioner under the Medical Practitioners and Dentists Act.
Dental	Any person who is registered as a dentist under the Medical Practitioners and Dentists Act.
Legal	Any person who is an advocate within the meaning of the Advocates Act.
Surveyors-	
(a)land surveyor	Any person licensed as a surveyor under the Survey Act
(b)surveyor	Any person who is a fellow or professional associate of the Royal Institution of Chartered Surveyors.
Architects or Quantity Surveyors	Any person who is registered as an architect or quantity surveyor under the Architects and Quantity Surveyors Act.
Veterinary Surgeons	Any person who is registered or licensed as a veterinary surgeon under the Veterinary Surgeons Act.
Engineers	Any person who is registered under the Engineers Registration Act.
Accountants	Any person who is registered as an accountant under the Accountants Act.
Certified Public Secretaries	Any person who is registered under the Certified Public Secretaries Act of Kenya (Section 133).

SIXTH SCHEDULE

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) References in this paragraph to things done or to be done under a provision include in particular, and without prejudice to the generality of the references, references to charges to tax, deductions, personal allowances reliefs, repayments, assessments, notices, or returns made, granted, served or furnished, or to be made, granted, served or furnished, under that provision.

4. Where the ascertainment of the total income of 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 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 the members thereof appointed for areas under section 97 of the Management Act shall continue to act according to the terms of the notices making 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 subsections (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**

Interpretation

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;

"land" includes -

- (a) buildings on land and anything attached to land or permanently fastened to anything attached to land (whether on or below the surface);
- (b) standing timber, trees, crops and other vegetation growing on land; and
- (c) land covered by water;

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

"property" –

- (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 not include a road vehicle;
- (b) in the case of an individual means -
 - (i) land situated in Kenya and any right or interest in or over that land, and
 - (ii) a marketable security situated in Kenya, other than an investment share as defined in Part II of this Schedule;

"transfer" has the meaning assigned thereto in paragraph 6;

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

- (2) For the purposes of this schedule –
 - (a) a reference to a transfer of property includes a reference to a part transfer of property; and
 - (b) there is a part transfer of property where, on a person making a transfer, any description of property derived from the transferred property remains undisposed of.
- (3) For the purposes of this Schedule two persons are "related persons" if -
 - (a) either person participates directly or indirectly in the management, control or capital of the business of the other; or
 - (b) 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, income in respect of which tax is chargeable under section 3(2)(f) is the whole of a gain which accrues to a company or an individual on or after 1st January 2015 on the transfer of property situated in Kenya, whether or not the property was acquired before 1st January 2015;

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).

(3) The gain which is exempt from tax under paragraph 36 of the First 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 realised by the person on the transfer of the property.

(3) A gain or loss realised by a person on the transfer of property shall be deemed to be realised by the person at the time of the transfer, whether or not the consideration is payable by instalments but a payment by way of interest on 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 realised 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 utilised to reinstate the property in essentially the same form and in the same place within one year of the loss, destruction or extinction of the property or within a longer period of time approved by the Commissioner; or
- (c) on the abandonment, surrender, cancellation or forfeiture of, or the expiration of substantially all rights to, property, including the surrender of shares or debentures on the dissolution of a company.

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

- (a) in the case of the transfer of property for the purpose only of securing a debt or a loan, or on a transfer by a creditor for the purpose only of returning property used as security for a debt or a loan;

- (b) in the case of the issuance by a company of its own shares or debentures;
- (c) by the vesting in the personal representative of a deceased person by operation of law of the property of that deceased person;
- (d) by the transfer by a personal representative of 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 on an intestacy or partial intestacy whether he takes beneficially or as a trustee;
- (e) by the vesting in the liquidator by an order of a court of the property of a company under section 240 of the Companies Act;
- (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
- (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.
- (h) ***by the transfer of assets-***
 - (i) ***between spouses;***
 - (ii) ***between former spouses as part of a divorce settlement or a bona fide separation agreement;***
 - (iii) ***to immediate family;***
 - (iv) ***to immediate family as part of a divorce or bona fide separation agreement; or***

(v) to a company where spouses or a spouse and immediate family hold 100% shareholding.

(i) Deleted (Finance Act, 2015)

Finance Act, 2015

(3) For the purposes of this paragraph, “immediate family” means children of the spouses or former spouses.

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.

Finance Act, 2014

(3) In a case where no amount is ascertainable under this Schedule as the transfer value of property the transfer value of the property shall be the market value as determined by the Commissioner;

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 deductions 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.

Finance Act 2015

8A. Notwithstanding any other provision of this Act, the deduction of costs of property shall not apply in the case of securities listed on any securities exchange approved under the Capital Markets Act.

Market value.

9.(1) Where property is acquired or transferred -

- (a) otherwise than by way of a bargain made at arm's 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 the consideration used in computing stamp duty payable on the transfer by which the property was acquired,

whichever is the lesser.

(2) Property is acquired or transferred by way of a bargain at arm's 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).

Finance Act, 2015

11A. The due date for tax payable in respect of property transferred under this Part shall be on or before the date of application for transfer of the property is made at the relevant Lands Office.

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 debentures 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 a dividend, the charge of a 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" Deleted (Finance Act, 2015)

"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” Deleted (Finance Act, 2015)

15. The gain subject to tax under this Part is the gross consideration payable and shall be subject to the withholding tax rate under paragraph (3) and (5) of the Third Schedule.

16.(1) Deleted (Finance Act, 2015)

(2) Deleted (Finance Act, 2014)

16 A. Deleted (Finance Act, 2015)

17. Deleted (Finance Act, 2015)

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).

Provided that this paragraph shall also apply to shares transferred under Part I of this Schedule.

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.

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.

21.(1) Where the transferor of investment shares is an unincorporated association or body of individuals of a public character which has been exempted from income tax under paragraph 10 of the First Schedule no deduction of income tax shall be made under this Part of this Schedule.

(2) Gains from a transfer of investment shares for or in 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 this Schedule.

Repealed by
Finance Act, 2014

NINTH SCHEDULE

TAXATION OF EXTRACTIVE INDUSTRIES

Interpretation

PART I – INTERPRETATION

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

“consideration”, in relation to disposal of an interest in a person, a mining or petroleum right, or a mining or petroleum information, means the total amount received or receivable for the disposal, including the fair market value of any amount in kind determined at the time of the disposal;

“contract area” means the area that is subject of a petroleum agreement and, if any part of that area is relinquished pursuant to the agreement, contract area means the contract area that was originally granted;

“contractor” means the person with whom the Government has a completed a petroleum agreement and includes any successor or assignee of the person;

“cost”, in relation to an interest in a person, a mining or petroleum right or a mining or petroleum information, means the total consideration given for the consideration given for the acquisition of the interest, right, or information, including the fair market value of any amount given in kind determined at the time the amount is given;

“de-commissioning plan” means a plan for the de-commissioning, abandonment, relocating or removal and, if applicable, redeployment of wells, flowlines, pipelines, facilities, infrastructure and assets related to upstream petroleum operations;

“development expenditure” means capital expenditure incurred by a contractor when undertaking operations authorised under a development plan, other than social

infrastructure or expenditure to which Part II of the Second Schedule applies, and includes expenditure whenever incurred in acquiring-

- (a) an interest in a petroleum agreement other than an interest referred to in paragraph (a) of the definition of “exploration expenditure”; or
- (b) petroleum information other than information referred to in paragraph (b) of the definition of “exploration expenditure”;

“development plan” means a development plan prepared and adopted under a petroleum agreement;

“disposal”, in-

- (a) relation to an interest in a person, a mining or petroleum right, or mining or petroleum information, means any change in the ownership of the interest, right, or information, including by way of sale, transfer, assignment, or exchange;
- (b) the case of an interest in a person includes the cancellation or redemption of the interest;

“exploration expenditure” means expenditure incurred by a contractor in undertaking exploration operations authorised under a petroleum agreement, other than social infrastructure expenditure or expenditure to which Part II of the Second Schedule applies, and includes expenditure incurred in acquiring-

- (a) an interest in a petroleum agreement from the Government or under a farm-out agreement; or
- (b) petroleum information relating to exploration operations from the Government or under a farm-out agreement;

“exploration operations” means work authorised under a petroleum agreement in the search for petroleum prior to the approval of a development plan and includes-

- (a) geological, geophysical, and geochemical surveys and analyses;
- (b) aerial mapping;
- (c) investigations of subsurface geology;
- (d) stratigraphic tests;
- (e) the drilling of wells to test a geological feature that has not already been determined to contain producible petroleum sufficient for commercial production; or
- (f) any other work that is necessarily connected with activities described in paragraphs (a) to (e);

“extraction expenditure” means capital expenditure incurred by a licensee when undertaking operations authorised under an extraction right, other than social infrastructure expenditure or expenditure to which Part II of the Second Schedule applies, and includes expenditure whenever incurred in acquiring-

- (a) an interest in a mining right other than an interest referred to in paragraph (a) of the definition of “prospecting expenditure”; or
- (b) mining information other than information referred to in paragraph (b) of the definition of “prospecting expenditure”;
- (c) a right to extract minerals issued or granted under the Mining Act; or
- (d) a right to extract geothermal resources issued or granted under the Geothermal Resources Act;

“farm-out agreement” means an agreement to which paragraph 13 applies;

“interest in a person” includes a share or other membership interest in a company, an interest in a partnership or trust, or any other ownership interest in a person;

“license area” means the area that is the subject a mining right;

“licensee” means a person who has been issued with, or granted, a mining right;

“minerals” has the meaning assigned to it in the Mining Act;

“mining information” means information relating to mining operations;

“mining operations” means authorised operations undertaken under a mining right;

“mining right” means a prospecting or extraction right;

“person” includes an individual, company, partnership, trust, government, or similar body or association;

“Petroleum agreement” has the meaning assigned to it in the Petroleum (Exploration and Production) Act;

“Petroleum (Exploration and Production) Act” means the petroleum (Exploration and Production) Act, or any successor legislation dealing with the exploration, development, production, and transportation of petroleum;

Finance Act 2015

“Petroleum information” means information relating to petroleum operations;

Finance Act 2015

“Petroleum operations” means authorized operations undertaken under a petroleum agreement;

“Prospecting expenditure” means expenditure incurred in undertaking operations authorised under a prospecting right, other than social infrastructure expenditure or expenditure to which part II of the second schedule applies, and includes expenditure incurred in acquiring-

- (a) an interest in a prospecting right from the Government or under a farm-out agreement; or
- (b) prospecting information from the Government or under a farm-out agreement;

“prospecting information” means mining information relating to the search for minerals under a prospecting right;

“prospecting right” means any of the following-

- (a) a right to prospect for minerals issued or granted under the Mining Act;
- (b) an authority of right to search for geothermal resources issued or granted under the Geothermal Resource Act;

“social infrastructure expenditure” means capital expenditure incurred by a licensee or contractor on the construction of a public school, hospital, road, or any similar social infrastructure;

“subcontractor” means a person supplying services other than a person supplying services as an employee to-

- (a) a licensee in respect of mining operations undertaken by the licensee; or
- (b) a contractor in respect of petroleum operations undertaken by the contractor;

“underlying ownership”, in relation to a person, means an interest in the person held directly, or indirectly through an interposed person or persons, by an individual or by a person not ultimately owned by the individuals.

(2) Unless the context otherwise requires, any term that is not defined in this Act but is defined in the Mining Act, Geothermal Resource Act, or Petroleum (Exploration and Production) Act, has the meaning assigned in the Mining Act, Geothermal Resource Act or Petroleum (Exploration and Production) Act, as the case may be.

(3) Where more than one person has signed a petroleum agreement, each person shall be considered as a contractor for the purposes of this Schedule.

(4) In case of a deduction on social infrastructure expenditure, section 15(2)(x) shall apply

PART II – MINING OPERATIONS

Taxation of
licensees.

2.(1) A licensee is subject to tax in accordance with this Act but subject to the modifications in this Schedule.

(2) Where there is any inconsistency between this Schedule and any other provision in this Act regarding the taxation of a licensee, this Schedule shall prevail.

(3) The corporate rate specified under paragraph 2 of Head B of Third Schedule shall be the rate of income tax applicable to a licensee that is a company.

Limitation of
deduction relating
to mining
operations

3.(1) Subject to subparagraph (5), a deduction for expenditure to the extent incurred by a licensee when undertaking mining operations in a licence area during a year of income shall only be allowed against the income derived by the licensee from the mining operations in the licence area during that year.

(2) If a licensee suffers a loss in respect of mining operations in a licence area for a year of income, the amount of the loss shall be carried forward and allowed as a deduction against income of the licensee derived from mining operations in the licence area in the next following year of income of the licensee.

(3) The amount of a loss for a year of income that is not deducted under subparagraph (2) shall be carried forward by the licensee to the next following year of income and be deductible in that year in accordance with subparagraph (2), and so on until the loss is fully deducted or the mining operations in the licence area cease.

(4) If a licensee has carried forward a loss for a licence area under subparagraph (2) for more than one year of income, the loss of the earliest year of income shall be allowed as a deduction first.

(5) If-

- (a) a licensee has ceased mining operations under a mining right in the licence area; and
- (b) the licensee suffers a loss in relation to the mining operations under the mining right in the licence area for a year of income that has not been deducted under subparagraph (2),

the licensee may elect, by notice in writing to the Commissioner, to treat the loss as a loss under subparagraph (2) in relation to another licence area in which the licensee undertakes mining operations if the area covered by the second-mentioned licence area falls wholly within the area covered by the first-mentioned license area.

(6) If-

- (a) a licensee has ceased mining operations under a mining right in a license area during a year of income and has a loss in relation to the mining operations under the mining right in the licence area for that year, and
- (b) subparagraph (5) does not apply to the licensee in respect of the ceased mining operations,

the licensee may elect, by notice in writing to the Commissioner, treat the loss as a loss relation to the mining operations undertaken by the licensee in the licence area in the previous year of income.

(7) The amount of a loss for a year of income that is not deducted under subparagraph (6) maybe carried back for not more than three years of income from the year in which the loss arose.

(8) A licensee has a loss in relation to mining operations in a licence area for a year of income if the total deductions of a licensee in respect of mining operations undertaken by the licensee in the licence area during the year exceed the total amount of income derived from such operations in the area for the year.

Prospecting
expenditure.

4.(1) A licensee shall be allowed a deduction for prospecting expenditure in the year of income in which the licensee incurred the expenditure.

- (2) Subject to paragraph 13, If the licensee-
- (a) disposes of an interest in a mining right or information the cost of which was deducted as prospecting expenditure under subparagraph (1); or
 - (b) otherwise recovers or recoups an amount deducted as prospecting expenditure under subparagraph (1),

the consideration for the disposal or the amount recovered or recouped, is income of the licensee charged to tax under section 3(2)(a)(i) in the year of income in which the interest is disposed of or the amount is otherwise recovered or recouped.

(3) For the purposes of Part II of the Second Schedule, the rate of depreciation for machinery first used to undertake operations under a prospecting right is one hundred per cent.

Extraction
expenditure.

5.(1) Subject to subparagraph (2) and (3), a licensee shall be allowed a deduction for extraction expenditure in the year of income in which the licensee incurred the expenditure and in the following years of income until the expenditure has been fully deducted and the deduction for each year of income is twenty per cent of the amount of the expenditure.

(2) If a licensee incurs extraction expenditure before the commencement of commercial production, subparagraph

(1) shall apply on the basis that the expenditure was incurred at the commencement of commercial production.

(3) The amount of the deduction allowed under subparagraph (1) for the year of income in which the commencement of commercial production occurs is computed according to the following formula-

$$A \times B/C$$

Where: -

A is the amount of expenditure;

B is the number of days in the period beginning on the date of commencement of commercial production and ending on the last day of the year of income in which commercial production commenced; and

C is the number of days in the year of income in which commercial production commenced.

(4) The total deductions allowed to a licensee under this paragraph for extraction expenditure for the current year of income and all previous years of income shall not exceed the amount of the expenditure.

(5) Subject to paragraph 13, if a licensee disposes of an interest in a mining right or information the cost of which was deducted as extraction expenditure under subparagraph (1) during a year of income, no deduction shall be allowed for the extraction expenditure for that year and-

- (a) if the consideration for the disposal exceeds the written down value of the interest or information at the time of disposal, the amount of the excess is income of the licensee charged to tax under section 3(2)(a)(i) in the year of income in which the disposal occurred; or
- (b) if the written down value of the interest or information at the time of disposal exceeds the consideration for the disposal, the licensee shall

be allowed a deduction for the amount of the excess in the year of income in which the disposal occurred.

(6) Except where subparagraph (5) applies, if a licensee recovers or recoups an amount deducted as extraction expenditure under subparagraph (1), the amount recovered or recouped shall be income of the licensee charged to tax under section 3(2)(a)(i) in the year of income in which the amount is recovered or recouped.

(7) In this paragraph-

“commencement of commercial production” means the first period of thirty consecutive days during which the average level of production on the twenty five highest production days in the thirty-day period reaches such production level as may be determined by the Cabinet Secretary responsible for mining; and

“written down value”, in relation to an interest in a mining right or information of a licensee, means the cost of the right or information reduced by the deductions allowed to the licensee in respect of the right or information under this paragraph.

Rehabilitation
expenditure.

6.(1) A contribution made by a licensee to a rehabilitation fund in accordance with an approved rehabilitation plan relating the licensee’s mining operations shall be allowed as a deduction for the year of income in which the contribution was made.

(2) An expenditure incurred by a licensee in carrying out work required by an approved rehabilitation plan in respect of the licensee’s mining operations shall be allowed as a deduction for the year of income in which the expenditure is incurred:

Provided that the work is not paid for, directly, or indirectly, from money made available out of the licensee’s rehabilitation fund for the licensee’s mining operations.

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(3) An amount accumulated in or withdrawn from a rehabilitation fund to meet expenditure incurred under an approved plan and interest income and investment income in respect of a rehabilitation fund shall be exempt from tax.

(4) Subject to subparagraph (5), an amount withdrawn from a rehabilitation fund and returned to the licensee shall be considered as income of the licensee and shall be charged to tax under section 3(2)(a)(i) in the year of income in which the amount was returned to the licensee.

(5) Any surplus rehabilitation fund of a licensee at the time of completion of rehabilitation shall be considered as income of the licensee and shall be charged to tax under section 3(2)(a)(i) in the year of income in which rehabilitation is completed.

(6) In this paragraph “approved rehabilitation plan” means a plan for the rehabilitation of a mine site approved by the Cabinet Secretary responsible for mining; and

“Rehabilitation fund” means a fund or account required to be established under a mining right to provide for the future payment of remedial work to a the licence area covered by the mining right and is managed jointly by the Cabinet Secretary responsible for mining and the licensee.

PART III – PETROLEUM OPERATIONS

Taxation of
Contractors.

7.(1) A contractor is subject to tax in accordance with this Act but subject to the modifications in this Schedule.

(2) If there is any inconsistency between this Schedule and any other provision Act, in relation to the taxation of a contractor, this Schedule shall prevail.

(3) The rate of income tax applicable to a contractor is-

(a) in the case of a resident company, thirty per cent; or

- (b) in the case of a non-resident company, thirty seven and a half per cent.

Limitations of
Deductions relating
to Petroleum
operations.

8.(1) A deduction for expenditure to the extent incurred by a contractor in undertaking petroleum operations in a contract area during a year of income shall not be allowed only against the income derived by the contractor from the petroleum operations in the contract area during the year.

(2) If a contractor suffers a loss in respect of petroleum operations in a contract area for a year of income, the amount of the loss shall be carried forward and allowed as deduction against the income of the contractor derived from petroleum operations in the contract area in the next following year of income of the contractor.

(3) The amount of a loss for a year of income that is deducted under subparagraph (2) shall be carried forward by the contractor to the next following year of income and be deductible in that year in accordance with subparagraph (2), and so on until the loss is fully deducted or the petroleum operations in the contract area cease

(4) If a contractor suffers a loss carried forward for a contract area under subparagraph (2) for more than one year of income, the loss of the earliest year of income shall be allowed as a deduction first.

(5) If a contractor has ceased petroleum operations under a petroleum agreement in a contract area during a year of income and the contractor has a loss in relation to the petroleum operations under the petroleum agreement in the contract area for that year the contractor may elect, by notice in writing to the Commissioner, to treat the loss as a loss in relation to the petroleum operations undertaken by the contractor in the contract area in the previous year of income.

(6) The amount of a loss for a year of income that is not deducted under subparagraph (5) may be carried back for not more than three years of income from the year in which the loss arose.

(7) A contractor suffers a loss in relation to petroleum operations in a contract area for a year of income if the total deductions of a contractor in respect of petroleum operations undertaken by the contractor in the contract area during the year exceed the total amount of income derived from such operations in the area for the year.

Exploration
Expenditure

9.(1) A contractor shall be allowed a deduction for exploration expenditure in the year of income in which the contractor incurred the expenditure.

(2) Subject to paragraph 13, if a contractor-

- (a) disposes of an interest in a petroleum agreement or information the cost of which was deducted as exploration expenditure under subparagraph (1); or
- (b) otherwise recovers or recoups an amount deducted as exploration expenditure under subparagraph (1),

the consideration for the disposal, or the amount recovered or recouped, shall be considered as income of the contractor and be charged to tax under section 3(2)(a)(i) in the year of income in which the interest is disposed of or the amount is otherwise recovered or recouped.

(3) For the purposes of Part II of the Second Schedule, the rate of depreciation for machinery first used to undertake exploration operations shall one hundred per cent.

Development
Expenditure.

10. (1) Subject to subparagraphs (2) and (3), a contractor shall be allowed a deduction for development expenditure in the year of income in which the contractor incurred the expenditure and in following years of income until the expenditure has been fully deducted and the deduction for each year of income shall be twenty per cent of the amount of the expenditure.

(2) If a contractor incurs development expenditure before the commencement of commercial production, subparagraph (1) shall apply on the basis that the expenditure

was incurred at the time of commencement of commercial production.

(3) The amount of the deduction allowed under subparagraph (1) for the year of income in which commencement of commercial production occurs shall be computed according to the following formula:

$$A \times B/C$$

Where-

A is the amount of expenditure;

B is the number of days in the period beginning on the date of commencement of commercial production and ending on the last day of the year of income in which commercial production commenced; and

C is the number of days of the year of income in which commercial production commenced.

(4) The total deductions allowed to a contractor under this paragraph for development expenditure for the current year of income and all previous years of income shall not exceed the amount of the expenditure.

(5) Subject to paragraph 15, if a contractor disposes of an interest in a petroleum agreement or information the cost of which was deducted as development expenditure under subparagraph (1) during a year of income, no deduction shall be allowed for the development expenditure for that year and-

- (a) the consideration for the disposal exceeds the written down value of the interest or information at the time of disposal, the amount of the excess shall be considered income of the contractor charged to tax under section 3(2)(a)(i) in the year of income which the disposal occurred; or
- (b) the written down value of the interest or information at the time of disposal exceeds the consideration for the disposal, the contractor

shall be allowed a deduction for the amount of the excess in the year of income in which the disposal occurred.

(6) Except where subparagraph (5) applies, if a contractor recovers or recoups an amount deducted as development expenditure under subparagraph (1), the amount recovered or recouped shall be considered income of the contractor charged to tax under section 3(2)(a)(i) in the year of income in which the amount is recovered or recouped

(7) In this paragraph-

“commencement of commercial production” means the first day of commercial production as determined under the petroleum agreement; and

“written down value”, in relation to an interest in a petroleum agreement or information of a contractor, means the acquisition cost of the interest or information reduced by the deductions allowed to the contractor in respect of the interest or information under this paragraph.

Decommissioning
expenditure

11.(1) A contractor shall be allowed a deduction for the amount that the contractor transfers to an escrow account during a year of income a required under an approved decommissioning plan for a contract area made under a petroleum agreement to finance expenditure expected to be incurred by the contractor in the abandonment and decommissioning of petroleum operations undertaken under the petroleum agreement.

(2) Subject to subparagraph (3), a contractor shall be allowed a deduction for expenditure incurred by the contractor under an approved decommissioning plan in the abandonment and decommissioning of petroleum operations in a contract area.

(3) A deduction shall not be allowed under subparagraph (2) for expenditure incurred in the abandonment and decommissioning of petroleum operations in a contract area if the expenditure is paid for, directly or indirectly, from money made available out of the escrow account established

under the decommissioning plan for the contract area to finance such expenditure.

(4) An amount accumulated in an escrow account, or an amount withdrawn from an escrow account to meet expenditure incurred under an approved decommissioning plan for a contract area, shall be exempt from tax.

(5) An amount withdrawn from the escrow account and returned to the contractor shall be considered income of the contractor charged to tax under section 3(2)(a)(i) in the year of income in which the amount was returned to the contractor.

(6) Any surplus in an escrow account established under an approved decommissioning plan for a contract area by contractor at the time of completion of decommissioning of the contract area to which the account relates is included in the income of the contractor for the year of income in which decommissioning is completed.

(7) In this section-

“approved decommissioning plan” has the meaning assigned to it under the Petroleum (Exploration and Production) Act

Paid-on-behalf.

12(1) This paragraph shall apply where the portion of profit oil and gas that the Government is entitled to take and receive under a petroleum agreement is inclusive of taxes payable by the contractor under this Act.

(2) For avoidance of doubt, where this paragraph applies, the portion of profit oil and gas that the Government is entitled to take and receive under a petroleum agreement with a contractor shall be inclusive only of the taxes payable by the contractor under this Act directly in relation to the petroleum operations undertaken by the contractor and shall exclude-

(a) the tax payable on any gain made by the contractor or any other person on a disposal, directly or indirectly, of an interest in the petroleum agreement; or

- (b) any tax that the contractor is liable under the Act to deduct from a payment made by the contractor.

PART IV-COMMON RULES APPLICABLE TO MINING AND PETROLEUM OPERATION

Farm-outs

13.(1) This paragraph shall apply where-

- (a) a licensee or contractor has entered into an agreement (referred to as a “farm-out agreement”) with a person (referred to as the “transferee”) for the transfer of an interest in a mining right or petroleum agreement; and
- (b) the consideration given by the transferee for the interest wholly or partly includes the transferee undertaking some or all of work commitments of the licensee or contractor under the right or agreement.

(2) If this paragraph applies, and the transfer of the of the interest occurs at the time the farm-out agreement is entered into, the consideration received by the licensee or contractor for the interest shall not include the value of any work undertaken by the transferee on behalf of the licensee on behalf of the licensee or contractor.

(3) If this paragraph applies and the transfer of the interest is deferred until the transferee completes some or all of the work commitments of the licensee or contractor under the mining right or petroleum agreement-

- (a) any amount in money payable under the farm-out agreement before the transfer of the interest shall be included in the income of the contractor charged to tax under section 3(2)(a)(i) in the year of income in which the amount is payable; and
- (b) the value of any work undertaken by the transferee on behalf of the licensee or contractor shall be excluded in-

- (i) the consideration received by the licensee or contractor for the transfer of the interest; or
- (ii) the income of the contractor charged to tax under this Act.

(4) If an interest referred to in subparagraph (3) is subsequently transferred, the consideration received by the licensee or contractor shall not include any amount included in the income of the licensee or contractor charged to tax under subparagraph (3)(a).

Indirect transfer of interests

14.(1) A licensee or a contractor shall immediately notify the Commissioner, in writing, if there is a ten per cent or more change in the underlying ownership of a licensee or contractor.

(2) If the person disposing of the interest to which the notice under subparagraph (1) relates is a non-resident person, the licensee or contractor shall be liable, as agent of the non-resident person, for any tax payable under this Act by the non-resident person in respect of the disposal.

Taxation of subcontractors

15.(1) Subject to subparagraph (3), a non-resident subcontractor who derives a fee for the provision of services (referred to in this paragraph as a “services fee” to a licensee or contractor in respect of mining or petroleum operations shall be liable to pay non-resident withholding tax at the rate specified in subparagraph (2) on the gross amount of the services fee.

(2) The rate of withholding tax under subparagraph (1) is-

- (a) for a service fee paid by a contractor, 5.625 per cent; or
- (b) for a service fee paid by a licensee, 5.625 per cent.

Finance Act 2015

(3) Subparagraph (1) shall not apply if the subcontractor provides the services giving rise to the fee through a permanent establishment in Kenya.

(4) A services fee to which subparagraph (3) applies shall be deemed to be income that accrued in or was derived from Kenya for the purposes of section 3 and be assessed to the subcontractor under section 44.

(5) A licensee or contractor paying a services fee to a non-resident subcontractor that is subject to non-resident withholding tax under subparagraph (1) shall deduct tax from the gross amount paid at the rate specified in subparagraph (2).

(6) A licensee or contractor to whom subparagraph (5) applies shall deduct withholding tax at the earlier of-

- (a) the time the licensee or contractor credits the services fee to the account of the non-resident subcontractor; or
- (b) the time the fee is actually paid.

(7) Section 35(5) and (6) shall apply to non-resident withholding tax that a licensee or contractor is required to deduct under subparagraph (5) on the basis that the tax is tax deducted under section 35(1)

(8) Non-resident withholding tax imposed under subparagraph (1) shall be final tax on the services fee and shall not be included in the calculation of the total income of the subcontractor.

(9) In this section, "non-resident subcontractor" mean a subcontractor that is not a resident and includes a subcontractor that is a foreign government or foreign government body.

Deduction of
withholding tax by
contractor

16. The rate of withholding tax to be deducted by a contractor under section 35(1) is-

- (a) in the case of dividends, ten per cent of the gross amount of the dividend payable;

- Finance Act, 2015
- (b) in the case of interest, fifteen per cent of the gross amount of the interest payable;
 - (c) in the case of royalties or a natural resource income twenty per cent of the gross amount of the royalty payable or natural resource income; or
 - (d) in the case of management, training or professional fees, twelve and a half per cent of the gross amount of the management or professional fee payable.

Source of Income

17. An amount that is by virtue of this Schedule charged to tax under section 3(2)(a)(i) shall be deemed to be income that accrued in or was derived from Kenya.

Deductibility
of Interest.

18. Section 16(2)(j)(i) applies to a contractor or licensee on the basis that the reference to “three” is treated as a reference to “two”.

Hedging
transactions.

19.(1) Subject to subparagraph (2), hedging transactions entered into by a licensee or contractor shall be treated as a specified source of income for the purposes of section 15(7).

(2) Subparagraph (1) does not apply to an approved hedging transaction entered into by a licensee or contractor that has an annual turnover of less than ten million shillings as required to obtain project finance and approved by the Commissioner.

(3) In this paragraph, “hedging transaction” means a transaction entered into by a licensee or contractor to manage commodity price risk.

TENTH SCHEDULE**AGRICULTURAL PRODUCE AND ITS AUTHORISED AGENTS**

Produce	Authorized Agents
Maize (grain)	Kenya Seed Company Limited. National Cereals and Produce Board Millers.
Wheat (grain)	Kenya Seed Company Limited. Kenya Grain Growers Co-operative Union. National Cereals and Produce Board Millers.
Barley (grain)	Kenya Breweries Limited.
Rice (paddy)	National Irrigation Board.
Cut Sugar-cane	Miwani Sugar Mills Limited. Chemilil Sugar Co. Limited. Mumias Sugar Co. Limited. Associated Sugar Co. Limited. Sony Sugar Company Limited. Muhoroni Sugar-Cane Farmers Co-operative Union Limited.
Pyrethrum Flower (Wet and dry)	Pyrethrum Board of Kenya.
Tobacco Leaf	BAT (Kenya) Limited. Mastermind Tobacco (K) Limited.
Tea Leaf	Kenya Tea Development Authority. James Finlays P.L.C. Brooke Bond Kenya Limited. Eastern Produce Africa Limited. Sasini Tea and Coffee Limited. George Williamson (K) Limited.

	Pannel Bellhouse Mwangi & Co. (Kaisugu Ltd.) Kosagat Tea Estate. Theta Group Limited (Kibwari Tea Estate Limited). Mitchel Cotts & Co. (E.A.) Limited (Nandi Tea Estates Limited). Estate Services Limited (Siret Tea Co. Limited). Karirana Estates Limited Livingstone Registrars Limited (Ngorongo Tea Factory Limited). African Highlands Produce Company.
Coffee	Coffee Board of Kenya.
Raw Cashew nuts	Kenya Cashewnuts Limited. National Cereals and Produce Board.
Pigs	Farmers Choice Limited. Uplands Bacon Factory Limited.
Raw Cotton	Mwea Ginnery. Kibos Ginnery. Hola Ginnery. Makueni Ginnery. Meru Ginnery. Salawa Ginnery. Malindi Ginnery. Homa Bay Ginnery. Kendu Bay Ginnery. Nambale Ginnery. Samia Ginnery. Malakisi Ginnery. Ndere Ginnery. Lamu Ginnery. Kitui Ginnery.
Hides and Skins	Kamiti Tanners Limited. Aziz Din Nabi Bux.

New Market Leather Factory Limited.
Bulleys Tanneries Limited.
Nakuru Chrome Tanning Co. Limited.
Nakuru Tanners Limited.
Bata Shoe Co. Limited.
Sagana Tanneries Limited.
Alpharama Limited.
Barbar Tannery Limited.
Othor Tanneries.
Furs & Wool Limited.
Kitale Tanneries Limited.
Garissa Tanners Limited.
Leather Industries of Kenya Limited.
East African Leather Factory Limited.
Lake Tanners Limited
Deras Limited.

ELEVENTH SCHEDULE (s. 4B)

TAXATION OF EXPORT PROCESSING ZONE ENTERPRISES

1. In this Schedule, unless the context otherwise requires, "export processing zone enterprise" has the same meaning as that ascribed to it in the Export Processing Zones Act, 1990.

2. An export processing zone enterprise shall maintain its business accounts in a convertible foreign currency of its choice provided that the Commissioner's consent of that choice has been requested and obtained.

3. During the period in which an export processing zone enterprise is exempt from corporation tax according to paragraph 2(f) of the Third Schedule -

- (a) the enterprise shall be deemed to be a non-resident subject to a non-resident rate of withholding tax on payments made to such an

enterprise and, where such payments are made by a person who is not an export processing zone enterprise, the tax shall be a final tax; and

- (b) payments by an export processing zone enterprise to any person other than a resident person shall be deemed to be exempted from tax.

4. Notwithstanding that an export processing zone enterprise will be exempted from paying any corporation tax for the period specified in subparagraph 2(f) of the Third Schedule, the enterprise will nonetheless be required to comply with Part VIII of the Act and will submit an annual return of income under Section 52 or a return of income, together with a self assessment of tax under section 52B and business accounts under Section 54 as is the case with all liable enterprises, and in the event of failure to submit a return or late submission of a return, the enterprise will be liable to a penalty of two thousand shillings per day for as long as the failure continues.

5. The penalty imposed under paragraph (4) shall, for the purposes of the provisions of the Act relating to the deduction and recovery of the tax, be deemed to be tax.

6. The employees and directors, other than non-residents, of an export processing zone enterprise shall be liable to personal income tax and the export processing zone enterprise employing them will be required to comply with rules and regulations concerning the deduction of tax from their employment income.

7. Where an export processing zone enterprise contracts out manufacturing services to a related resident company that is not an export processing zone enterprise, all income derived from the sale by the export processing zone enterprise of the goods produced shall be treated as the income of the related resident company, unless the Commissioner is satisfied that, the services provided to the export processing zone were paid for at a fair market price.

8. Where the related resident company that is not an export processing zone enterprise provides services other than manufacturing services to an export processing zone enterprise, the related resident company shall not deduct the cost of providing such

services unless the Commissioner is satisfied that the services were provided at a fair market price.

9. For purposes of this Schedule, two companies are related when one company owns whether directly or indirectly twelve and one-half percent or more of the voting shares of the other company.

TWELFTH SCHEDULE (s. 12 (2))

PROVISIONS RELATING TO INSTALMENT TAX

1.(a) Except as specified under paragraph (b), instalment tax payable by all persons under section 12 shall be reduced under the provisions of section 12(4) and be payable on the due dates as required under section 92 in the proportions specified as follows -

Proportions of the amount
calculated under section 12 payable
on or before the twentieth day of
the following months in the
accounting period of the current
year of income:

*For persons with
accounting
periods
commencing on or
after*

	<i>Fourth Month</i>	<i>Sixth Month</i>	<i>Ninth Month</i>	<i>Twelfth Month</i>
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:

<i>For persons with accounting periods commencing on or after</i>	<i>Sixth Month</i>	<i>Ninth Month</i>	<i>Twelfth Month</i>
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 name he is assessable that the instalment payment is a full and true estimate to the best of his knowledge and belief.

THIRTEENTH SCHEDULE (*Repealed Finance Act, 2016*)

THE INCOME TAX (LOCAL COMMITTEE) RULES (Repealed by the Tax Appeals Tribunal Act, No. 40 of 2013)

THE INCOME TAX (TRIBUNAL) RULES (Repealed by the Tax Appeals Tribunal Act, No. 40 of 2013)

THE INCOME TAX (APPEALS TO THE HIGH COURT) RULES (Repealed by the Tax Procedures Act, No. 29 of 2015)

Rules under section 130

Citation.

THE INCOME TAX (PAYE) RULES

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 authorised, 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 authorised in writing by the Commissioner to exercise and perform functions conferred upon the Commissioner under these Rules;

"emoluments" means -

- (a) gains or profits from employment or services rendered which are payable in money; and
- (b) the value of housing provided by an employer ascertained under section 5 (3) of the Act; and
- (c) the value of benefit or facility provided by the employer, where the total value exceeds **three** thousand shillings per month; and
- (d) Deleted (Finance Act,2009)

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 authorised 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 authorised 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.

Legal Notice No. 54
of 2011

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.

Provided that an employee shall be entitled to a relief from only one employer.

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 a 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 a payment to the employee in any month of, or on account of, emoluments from which tax is to be deducted in accordance with these Rules, the amount of tax deducted by the employer shall be in accordance with the calculation by the employer until the employer is notified by the Commissioner of his decision with respect to the objection.

(5) Where an amount of tax has been deducted in excess of the amount payable by reason of a decision of the Commissioner under this rule, the Commissioner shall refund that amount to the employee.

9. 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.

9A. Before the 10th day of the month following the end of each quarter, an employer shall render to the Commissioner a return of emoluments made to each employee in each of the three months, the tax deducted and such other particulars as the Commissioner may require.

Provided that an employer who furnishes the returns of emoluments on a monthly basis using information technology shall not be required to furnish quarterly returns under this paragraph.

Payments 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 authorised 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.

Provided that in the case of a director, the due date shall be before the tenth day following the end of the month in which payment was made to the director, or on or before the last day of the fourth month after the accounting date, whichever is the earlier.

(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 of
tax.

12. For the 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. Deleted

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

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.

THE INCOME TAX (DISTRAINT) RULES

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

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

"distrainee" means the debtor named in an order;

"distrainment agent" means a person appointed as a distrainment 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 authorised 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 distrainment agents to assist distrainors in the execution of orders, but no person shall be appointed a distrainment 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 realise 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 on an agent of the distrainee empowered to accept service, or on an adult member of the family of the distrainee who is residing with him.

(2) A person served with a copy of an order under this rule shall endorse on the order an acknowledgement of service and if that person refuses to make endorsement the 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 realised 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 a 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 realised 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 and 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 realised 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 RATES OF REMUNERATION

1. DISTRAINOR'S CHARGES

Where no distress is levied and the distress debt and **any** costs and expenses incurred by the distrainor are paid by the distrainee on demand or within thirty minutes thereafter the distrainee shall pay the distrainor the following costs-

	Shs
(a) Where the distress debt does not exceed Shs 3,000	300
(b) Where the distress debt exceeds Shs 3,000	120

2. DISTRAINT AGENT'S CHARGE

- (a) Where no distress is levied and the distress debt and any costs and expenses incurred by the distrainor are paid by the distrainee on demand or within thirty minutes thereafter the distraint agent shall be entitled to a remuneration of 120
- (b) For attaching goods or attaching and keeping possession thereof for ten days or part thereof, when the estimated value of the property, or the sum of the distress debt and costs and expenses, whichever is the less -
- (i) does not exceed **Shs30,000** 4 percent thereof
- (ii) exceeds **Shs 30,000** 4 percent thereof

Where the goods or **any** part thereof are sold by public auction, the distraint agent's charges shall instead be calculated in the manner **directed in Paragraph (b)** above by reference to the total amount realised on the sale after deduction of the auctioneer's commission under rule 15.

- (c) For keeping possession of any attached goods after the expiration of ten days from the date of attachment-

for each day, or part thereof 1/4 per cent of the value of the goods with a maximum of Shs.60.

- (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.

THE INCOME TAX (PRESCRIBED DWELLING-HOUSE) RULES

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

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 23 of that Act.

THE INCOME TAX (RETIREMENT BENEFITS AMENDMENT) RULES, 2008

Citation

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

Interpretation.

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 pension fund.

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 registered with Retirement Benefit Authority
- (b) provides that all moneys payable thereunder shall be paid in Kenya; and
- (c) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and
- (d) provides that in the case of a defined contribution pension fund where a surplus is identified by the audit required under subparagraph (j)(I), such surplus shall be allocated to the respective accounts of the members of the fund in lieu of new contributions by the employer in the year and subsequent years until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions by the employer; and
- (e) Deleted

- (f) provides that the payment of pension shall not commence -
 - (i) until the retirement of the employee from service with the employer on or after the employee attains the age of fifty years; or
 - (ii) except upon earlier retirement on account of infirmity of mind or body; and
- (g) does not provide for the payment of sums on the death of an employee except a lump sum payable to the estate, or a lump sum or an annuity or both whether directly or indirectly payable to the widow or widower or dependants, of that employee; and
- (h) does not provide for the payment of an annuity, to the widow or widower of an employee, other than annuity for a term certain or during the life of that widow or widower or during the minority of a dependant of that employee; and
- (i) provides that all benefits derived from contributions made by an employee shall vest immediately in the employee; and
- (j) provides that -
 - (i) in the case of a defined contribution pension fund, an audit shall be carried out once every year during which all assets shall be valued at their current market prices and all surplus funds not allocated to the account of a member of the fund identified;
 - (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.
- (k) provides that, in the case of a defined contribution pension fund that maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, disability or death, as the case may be, in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the fund at that time.

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 the purposes of the Act if he is satisfied that it -

- (a) is registered with the Retirement Benefits Authority.

- (b) provides that all sums payable thereunder shall be paid in Kenya; and
- (c) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and
- (d) provides that in the case of a provident fund where a surplus is identified by the audit required under subparagraph (g)(i) such surplus shall be allocated to the account of members of the fund in lieu of contributions by the employer in the year and each subsequent year until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions of the employer.
- (e) 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 sub-paragraphs (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.
- (f) provides that all benefits derived from contributions made by an employee shall vest immediately in the employee; and
- (g) provides that -
 - (i) an audit shall be carried out once every year during which all assets shall be valued at their market prices and all surplus funds not allocated to the account of a member of the fund identified;
 - (ii) the audited accounts shall be sent to the Commissioner of Income Tax, the Commissioner of Insurance, and all members of the fund notified of its availability for scrutiny at the offices of the fund manager, not later than thirty days from the date of completion of the audit.
- (h) provides that, in the case of a provident fund that maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, disability or death, as the case may be, in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the fund at that time.

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 registered with the Retirement Benefits Authority; and
- (b) provides that all sums payable thereunder shall be paid in Kenya; and
- (c) provides that the only contributions received shall be-
 - (i) funds transferred from another registered fund or registered individual retirement fund under section 22A (5) of the Act where the Commissioner has been duly informed of the transfer of funds; or
 - (ii) contributions by or on behalf of an individual who qualifies for a deduction under section 22B of the Act; and
- (d) provides that the fund shall be invested in qualifying assets; and
- (e) provides that no loan or other benefit shall be provided out of the fund to the beneficiary or any person not dealing at arm's length with that beneficiary; and
- (f) provides that an individual beneficiary can direct that all funds in his individual retirement fund be transferred to another such account with the same or another qualified institution without unreasonable delay and with notification of the Commissioner; and
- (g) provides the payment of pensions shall not commence until retirement after the attainment of the age of fifty years or upon earlier retirement on the grounds of ill health or

infirmity of body or mind or on leaving the country permanently;

- (h) Deleted.
- (i) provides that upon the death of the beneficiary the funds shall be distributed or transferred as legally required; and
- (j) provides that all benefits derived from contributions by or on behalf of an individual shall vest in that individual immediately.

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

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- (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 fulfil any conditions of registration imposed under that rule; or
- (e) a registered pension scheme or registered trust scheme the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer fulfils the conditions under which it was approved under the Management Act except where those conditions have been varied by these Rules; or

- (f) a scheme the accounts of which fail or cease to be maintained to the satisfaction of the Commissioner.

(2) A withdrawal of registration under this rule shall take effect from the beginning of the year of income in which the grounds for that withdrawal arose or such later date as the Commissioner may determine.

11. The Income Tax (Retirement Benefit) Rules, (1993) are revoked.

THE INCOME TAX (INVESTMENT DUTY SET OFF) (REVOCATION) RULES, 2009

1. These rules may be cited as the Income Tax (Investment Duty Set Off) (Revocation) Rules, 2009.

2. The Income Tax (investment Duty Set Off) Rules, 1996 are revoked.

Made on the 11th June, 2009

UHURU KENYATTA

Deputy Prime Minister and Minister for Finance

THE INCOME TAX (REGISTERED HOME OWNERSHIP SAVING 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.

(3) 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 either the trust deed, or any rules or other documents 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 ;
- (b) the trust deed, rules or other document constituting the Plan,

provided that –

- (i) all sums held on account of a depositor shall be used to purchase or construct a permanent house in Kenya;
- (ii) no deposit made or benefit accruing or payable to the depositor shall be pledged as security for a loan or shall be capable of assignment unless the depositor dies;
- (iii) upon the death of the depositor, the balance of the funds in his account shall be transferred to his spouse, any of his children who have attained the age of eighteen years or any relative of the depositor who is a qualifying individual without closing the account;
- (iv) only qualifying deposits may be made by a depositor under the plan;
- (v) Deleted (LN NO 82 OF 2007).
- (vi) no loan or other benefits 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 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 therefore, if it is not acceptable; or
- (b) the year of income in respect of which the registration is first to take effect, if it is not 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.

Withdrawal of
registration.

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.

**THE INCOME TAX (VENTURE CAPITAL ENTERPRISE) RULES,
1997**

Citation and
commencement

1. These rules may be cited as the Income Tax (Venture Capital Enterprise) Rules, 1997 and shall be deemed to come into operation on the 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;

“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 enterprise;

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

Registration of
venture capital
companies

3. A venture capital enterprise shall, upon application under rule 5, be registered by the Commissioner for the purposes of this Act if the Commissioner is satisfied that -

- (a) it is incorporated in Kenya; and
- (b) it is incorporated for the purposes of investing in new or expanding venture enterprises companies; and
- (c) it is registered by the 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 by way of equity or quasi-equity investment in venture capital enterprises; and

- (f) the primary activities of the venture capital enterprise in which it has invested are approved activities.

Prohibited
Activities.

4. The primary activities of a venture capital enterprise shall not include –

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

Registration
procedure.

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

- (a) two copies each of the company's -
 - (i) memorandum and articles of association;
 - (ii) certificate of incorporation;
 - (iii) certificate of registration by the Capital Markets Authority;
 - (iv) Personal Identification Number Card;
- (b) the fund manager's licence under the Capital Markets Authority Act;
- (c) any other information as may be required by the Commissioner.

(2) The Commissioner shall, as soon as practicable after considering the application, notify the fund manager in writing whether the venture capital 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.

THE INCOME TAX (WITHHOLDING TAX) RULES, 2001

Citation and commencement

1. These 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 authorised in writing by the Commissioner to exercise the powers or to perform functions conferred upon the Commissioner under these Rules;

“payee” means a person who receives income from a payer after deduction of withholding tax;

“payer” means a person who deducts withholding tax for the purposes of these Rules;

“withholding tax” means that subject to deduction as determined in accordance with the provisions of the Act and these Rules;

“withholding tax rate” means the respective rate of tax set out in the Third Schedule as applicable to the specified class of income;

“withholding tax deduction card” means a deduction card, in such form as the Commissioner may provide, or such

other document corresponding to a withholding tax deduction card as may be authorised by the Commissioner in any particular case, and on which the information that the Commissioner may direct with respect to tax is recorded.

Application of
section 128 of the
Act.

3. Section 128 of the Act shall apply to a notice or other document which is authorised or required to be given, served or issued by the Commissioner under these Rules.

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 rate 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 authorised by the Commissioner, record such particulars as the Commissioner may direct in respect of that payment.

(3) Any person who fails to comply with 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 person 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 the 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 authorise in respect of each person to whom payment is made at any time during the year, showing such particulars as the Commissioner may require.

(2) Where a person ceases to carry on business before the end of any year of income, he shall carry out the requirements of this rule within one month of cessation.

(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.

12.(1) A person liable to pay withholding tax shall, when called upon to do so by the Commissioner, 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 it appears from the documents and records produced that the person would have been liable to pay under rule 8 for the period covered by the inspection had he complied with the provisions of these rules;
- (b) the tax which, to the best of his knowledge and belief, has not been paid as the Commissioner had directed.

(3) The production of the certificate referred to in paragraph (2) shall be sufficient evidence that the person is liable to pay, in respect of the period mentioned in the certificate, the amount shown therein pursuant to paragraph (2)(b), and a document purporting to be such certificate shall be deemed to be such certificate until the contrary is proved.

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 a change in the payer, the payer after the change shall in relation to a matter arising after such change, be liable to do anything which the payer before the change would have been liable to do under these rules if the change had not taken place.

General penalty.

14A. For the purposes of Section 35(6) of the Act, where a person, when under obligation to do so, fails-

- (a) to make the deduction described in section 35 (6)(a) of the Act, in accordance with rule 4; or

- (b) to remit an amount of tax deducted, as described in section 35(6)(b) of the Act, in accordance with rule 8,

the Commissioner may impose a penalty equal to ten percent of the amount of tax involved, subject to a maximum penalty of one million shillings

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.

THE INCOME TAX (REGISTERED UNIT TRUSTS/ COLLECTIVE INVESTMENT SCHEMES) RULES, 2003

1. These Rules may be cited as the Income Tax (Registered Unit Trusts/Collective Investment Schemes) Rules, 2003.

2. A unit trust or collective investment scheme shall, upon application being made under rule 3, be registered by the Commissioner for the purposes of section 20 of the Act if he is satisfied that-

- (a) the unit trust or collective investment scheme shall undertake portfolio investment in accordance with the policies and guidelines under the Capital Markets Act;
- (b) the sole purpose of the unit trust or collective investment scheme is to carry on investments on behalf of the unit holders or shareholders;
- (c) after six months of commencement of the unit trust or collective investment scheme no unit holder or shareholder shall own or be capable of holding more than twelve and one half per cent (12½%) of the units or shares in any one unit trust or collective investment scheme; and

- (d) it will, within six months of its commencement and thereafter, maintain at least twenty-five unit holders or shareholders.

3.(1) Application for the registration of a unit trust or collective investment scheme shall be made by the manager or trustee of the unit trust or collective investment scheme to the Commissioner in writing and shall be accompanied by two copies of the trust deed and a copy of the licence issued under Capital Markets Act.

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

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

5. The Income Tax (registered unit Trusts) Rules, 1990, are revoked.

Dated 10th April 2003

DAVID MWIRARIA,
Minister for Finance

THE INCOME TAX (LEASING) AMENDMENT RULES, 2008

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 but excludes land and buildings

Finance Act, 2007

“Commissioner” includes an officer authorized in writing by the Commissioner to exercise the powers or to perform functions conferred upon the Commissioner under these Rules;

“cross-border lease” means a leasing contract entered into between a person resident in Kenya and another person resident in a different tax jurisdiction;

“finance lease” means a contract which the lessor agrees to lease assets to the lessee for a specified period of time where the risks and rewards associated with ownership of the assets are substantially transferred from the lessor to the lessee, but with the title to the assets always remaining with the lessor;

“hire purchase” means a contract under which the lessor agrees to lease the assets to the lessee for a specified period of time, with the intention of transferring ownership on the expiry of the lease;

“lease” means a contract by which a person owning assets grants to a lessee the right to possess, use and enjoy such assets for a specified period of time in exchange for periodic payments; Provided that any contract whose term is less than six months or a hire purchase shall not to be deemed to be a lease;

“lessee” means a person who leases from the owner or lessor of the assets and in return for use of such assets pays periodic payments to the lessor;

“lessor” means a person who leases an asset to a lessee;

“operating lease” means a contract under which the lessor agrees to lease the assets to the lessee for specified periodical payments where the title to the assets and the risks and rewards associated with ownership substantially remain with the lessor.

Income chargeable
to tax.

3(1) All income accruing to a lessor from payments made in respect of an operating or finance lease shall be chargeable to tax in accordance with the provisions of the Act.

(2) All income accruing under paragraph (1) shall be subject to withholding tax at the rates applicable to resident persons under 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 of 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) For the purposes of these Rules assets to which these Rules relate shall be capitalized in the books of the lessor, and where the same are sold off upon 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 of assets

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

7. Deleted

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 with effect from the date of the commencement of the lease and appropriate adjustments made for each year of income when the lease payments were claimed.

(2) Where an acquisition is deemed under paragraph (1) the lessee shall be allowed to depreciate the amount recovered based on the wear and tear deduction applicable to the class of asset which shall be computed on the total lease payments recovered under paragraph (1), with effect from the year of income in which the lease commenced.

(3) Where a lessee is allowed wear and tear as computed under paragraph (2), similar adjustments shall be made in the tax computation of the lessor to bring to charge the wear and tear previously claimed by the lessor.

9. Deleted.

10.(1) Where a lessor in Kenya enters cross-border lease, the gross lease payments made to the lessor shall be deemed to be income chargeable to tax.

(2) Where a lessee in Kenya enters into a cross-border lease, the gross lease payments made by such lessee shall be deemed to be income derived from Kenya and shall be subject to withholding tax in accordance with the Act.

Dated the 9th April, 2012
C.M. OBUKE
Minister for Finance

Citation and
commencement

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

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. These rules, unless context otherwise requires: -

‘Board of Trustees’ means the National Social Security Fund Board of Trustees constituted under section 4 of the National Social Security Fund Act;

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

“Commissioner” means the Commissioner of Income Tax;

‘National Social Security Fund’ means the National Social Security Fund established under section 3 of the National Social Security Fund Act 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 per cent of the market value of the Fund in the year of audit.
- (c) the Board of Trustees shall allocate the surplus amount to the respective accounts of the 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 the least two newspapers of national circulation within nine months of the end of accounting period of the Fund and shall include a full listing of the assets of the Fund at the book and market values

the Board of Trustees shall submit the annual audit report to the Commissioner within nine months at 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.

Cap 485A

LEGAL NOTICE NO. 51

**THE INCOME TAX ACT
(Cap. 470)**

EXEMPTION

IN EXERCISE of the powers conferred by section 13(2) of the Income Tax Act, the Minister for Finance directs that the interest earned on asset backed securities issued by a company or a trust under Section 33C of the Capital Markets Act shall be exempt from tax.

Made on the 8th June 2005.

DAVID MWIRARIA
Minister for Finance

LEGAL NOTICE NO. 53

**THE INCOME TAX ACT
(Cap. 470)**

PRESCRIBED LIMIT OF MEDICAL BENEFIT

IN EXERCISE of the powers conferred by section 5(4)(B) of the Income Tax Act, the Minister for Finance prescribes the sum of one million shillings to be the maximum limit for the purposes of that paragraph.

This notice shall come into effect on the 1st January 2006.

Made on the 8th June 2005.

DAVID MWIRARIA
Minister for Finance

DECLARATION OF CROPS

IN EXERCISE of the powers conferred by section 2 (1) of the Income Tax Act, the Minister for Finance declares avocados and mangoes to be permanent or semi-permanent crops for the purposes of the Act.

Made on the 15th June 2006.

AMOS KIMUNYA
Minister for Finance

THE INCOME TAX (TRANSFER PRICING) RULES, 2006

IN EXERCISE of the powers conferred by section 18(8) of the Income Tax Act, The Minister for Finance makes the following Rules-

Citation and
commencement

1. These Rules may be cited as the Income Tax (Transfer Pricing) Rules and shall come into operation on the 1st July 2006.

Interpretation

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

“arm’s length price” means the price payable in a transaction between independent enterprises;

“comparable transactions” means transactions between which there are no material differences, or in which reasonably accurate adjustments can be made to eliminate material differences;

“controlled transactions” means a transaction which is monitored to ensure payment of an arm’s length price for goods or services;

“related enterprises” means one or more enterprises whereby-

- (a) one of the enterprises participates directly or indirectly in the management, control or capital of the other; or

	(b)	a third person participates directly or indirectly in the management, control or capital of both.
Purpose of rules.	3.	The purposes of these Rules are- (a) to provide guidelines to be applied by related enterprises, in determining the arm's length prices of goods and services in transactions involving them, and (b) to provide administrative regulations, including the types of records and documentation to be submitted to the Commissioner by a person involved in transfer pricing arrangements.
Person to choose method	4.	The taxpayer may choose a method to employ in determining the arm's length price from among the methods set out in rule 7.
Scope of guidelines.	5.	The guidelines referred to in rule 3 shall apply to- (a) transactions between related enterprises within a multinational company, where one enterprise is located in, and is subject to tax in, Kenya, and the other is located outside Kenya; (b) transactions between a permanent establishment and its head office or other related branches, in which case the permanent establishment shall be treated as a distinct and separate enterprise from its head office and related branches.
Legal Notice No.52 of 2011	6.	The transactions subject to adjustment of prices under these Rules shall include- (a) the sale or purchase of goods; (b) the sale, purchase or lease of tangible assets; (c) the transfer, purchase or use of intangible assets;
Transactions subject to Rules		

- (d) the provision of services;
- (e) the lending or borrowing of money; and
- (f) any other transactions which may affect the profit or loss of the enterprise involved.

Application of
Methods

7. The methods referred to in rule 4 are the following-

- (a) the comparable uncontrolled price (CUP) method, in which the transfer price in controlled transaction is compared with the prices in an uncontrolled transaction and accurate adjustments made to eliminate material price differences;
- (b) the resale price method, in which the transfer price of the produce is compared with the resale prices at which the product is sold to an independent enterprise;

Provided that in the application of this method the resale price margin shall be reduced by the resale price margin (the profit margin indicated by the reseller);

- (c) the cost plus method, in which costs are assessed using the costs incurred by the supplier of a product in a controlled transaction, with a mark-up added to make an appropriate profit in light of the functions performed, and the assets used and risks assumed by the supplier;
- (d) the profit split method, in which the profits earned in very closely interrelated controlled transactions are split among the related enterprises depending on the functions performed by each enterprise in relation to the transaction, and compared with a profit split among independent enterprises in a joint venture;

- (e) the transactional net margin method, in which the net profit margin attained by a multinational enterprise in a controlled transaction is compared to the net profit margin that would have been earned in comparable transactions by an independent enterprise; and
- (f) Such other method as may prescribed by the Commissioner from time to time, where in his opinion and in view of the nature of the transactions, the arm's length price cannot be determined using any of the methods contained in these guidelines.

8.(1) The methods set out in rule 7 shall be applied in determining the price payable for goods and services in transactions between related enterprises for the purposes of section 18(3) of the Act.

(2) A person shall apply the method most appropriate for his enterprise, having regard to the nature of the transaction, or class of transaction, or class of related persons or function performed by such persons in relation to the transaction.

(3) The commissioner may issue guidelines specifying conditions and procedures to guide the application of the methods set out in rule 7.

Power of
commissioner to
request for
information

9.(1) The Commissioner may, where necessary, request a person to whom these Rules apply for information, including books of accounts and other documents relating to transactions where the transfer pricing is applied.

(2) The documents referred to in paragraph (1) shall include documents relating to-

- (a) the selection of the transfer pricing method and the reasons for the selection;
- (b) the application of the method, including the calculations made and price adjustment factors considered;

- (c) the global organization structure of the enterprise;
- (d) the details of the transaction under consideration;
- (e) the assumptions, strategies, and policies applied in selecting the method; and
- (f) such other background information as may be necessary regarding the transaction.

(3) The books of accounts and other documents shall be prepared in, or be translated into, the English language, at the time the transfer price is arrived at.

Application of arm's length pricing

10. Where a person avers the application of arm's length pricing, such person shall-

- (a) develop an appropriate transfer pricing policy;
- (b) determine the arm's length price as prescribed under the guidelines provided under these Rules; and
- (c) avail documentation to evidence their analysis upon request by the Commissioner.

Certain provisions of Act to apply

11. The provisions of the Act relating to fraud, failure to furnish returns and underpayment of tax shall apply with respect to transfer pricing.

Unpaid to be deemed additional tax.

12. Any tax due and unpaid in a transfer pricing arrangement shall be deemed to be additional tax for purposes of section 94 and 95 of the Act.

Made on the 15th June 2006
AMOS KIMUNYA
Minister for Finance

THE INCOME TAX (TURNOVER TAX) RULES, 2007

Citation and
commencement

1. These rules may be cited as the Income Tax (Turnover Tax) Rules, 2007 and shall come into operation on the 1st January 2008.

Interpretation

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

“income from business” includes gross receipts, gross earnings, revenue, takings, yield, proceeds or other income chargeable to tax under section 12C.

“person” includes partnership;

“return of income” means a return of income furnished by a person under rule 9;

“tax period” means every three calendar months commencing 1st January every year;

“turnover tax” means tax payable under section 12C of the Act.

Persons liable to
turnover tax

3. (1) Any person whose income from business exceeds five hundred thousand shillings and does not exceed five million shillings in a year of income shall be liable to pay turnover tax.

(2) Paragraph (1) of this rule shall not apply to -

- (a) any person whose annual income from business does not exceed five hundred thousand shillings per year;
- (b) any person whose income is exempt from tax under the First Schedule to the Act;
- (c) any person whose income is subject to withholding tax as a final tax.

Elections to be
excluded from
turnover tax

4.(1) A person may elect to be exempt from the provisions of section 12C of this Act.

(2) A person who elects to be exempted shall make an application for exemption in writing to the Commissioner.

(3) Where the Commissioner approves the application for exemption, under paragraph (2), a person who has been exempted shall be subject section 3 of the Act;

(4) The exemption approved by the Commissioner shall take effect in the subsequent year of income.

Turnover tax as a
final tax.

5. Any income from a business that is subject to turnover tax shall not be liable to any other tax under this Act.

Registration.

6.(1) A person whose income from business does not exceed or is not expected to exceed five million shillings per annum shall be required to apply for turnover tax registration in the prescribed form.

(2) Notwithstanding paragraph (1), a person whose income from business does not exceed five hundred thousand shillings per annum shall no apply for registration.

(3) Where the Commissioner is satisfied that a person is required to be registered, the Commissioner shall issue a certificate of registration in the prescribed form.

(4) A person whose income from business falls below five hundred thousand shillings in any year of income shall apply to the Commissioner for de-registration.

(5) Where the Commissioner is satisfied that the income of an applicant has fallen below five hundred thousand shillings, the Commissioner shall de-register that person.

Change of status.

7. (1) Where the income from the business of a person registered under rule 6 exceeds five million shillings during a year of income, that person shall notify the Commissioner of the change of status.

(2) Where the Commissioner is satisfied by the notification under paragraph (1), the Commissioner shall grant approval for the change.

(3) The approval granted by the Commissioner under paragraph (2) shall be effected in the subsequent year of income.

Keeping of records.

8. (1) A person registered under rule 6 shall be to keep records necessary for the determination and ascertainment of tax, including daily sales summary in a prescribed form and any other document or record that the Commissioner may from time to time direct to be maintained having regard to the type and nature of the business being undertaken.

(2) Notwithstanding paragraph (1), where a business is in possession of an Electronic Tax Register records as provided under the Value Added Tax Act (Electronic Tax Register) Regulations, 2004, the records shall be sufficient.

Submission of
returns and
payment of tax

9. (1) A person subject to turnover shall calculate the tax due, remit the tax due to the Commissioner by cash or bank guaranteed cheques or electronic fund transfers and submit a return in the prescribed form, in each tax period, to the Commissioner on or before 20th of the month following the end of the tax period.

(2) A person may remit the tax due on monthly basis and offset the tax paid in the tax return.

(3) Where a business does not have income chargeable to turnover tax in any tax period, the business shall submit a nil return.

Penalties and
interest.

10.(1) Any person who fails to submit a tax return under regulation (9) is liable to a default penalty of two thousand shillings.

(2) Any person who submits a return within the required period but fails to pay the tax due is liable to a default penalty of two thousand shillings.

(3) Any person who fails to pay tax due, or part thereof, under rule 9 is liable to pay interest at the rate of two per centum per month, on the unpaid tax.

(4) The Commissioner -

- (i) may remit whole or part of any penalty or late payment interest in accordance with the provisions of section 94 of this Act.
- (ii) shall have the powers conferred under section 123 of this Act, to refrain from assessing to tax or recovering tax any person liable to turnover tax.

Inspection of records.

11. For purposes of obtaining full information in respect of accounting for turnover tax, the Commissioner may be notice require any person to -

- (a) produce books and records relating to the calculation of turnover tax.
- (b) appear at such time and place as may be specified in the notice,

Appointment of Agents

12. For purposes of collection, recovery and enforcement of tax, the Commissioner may appoint any person under section 96 of the Act to be an agent.

Capital Allowances

13. No expenditure or capital allowances shall be granted against the turnover tax.

Dispute resolution

14. Any dispute arising from the administration of these Rules as regards any assessment to tax shall be dealt with in accordance with the provision of section 84 of the Act.

Dated the 24th December 2007

AMOS KIMUNYA
Minister for Finance

LEGAL NOTICE NO. 37
THE INCOME TAX ACT (Cap. 470)

GUIDELINES ON ALLOWABILITY OF BAD DEBTS

PURSUANT to section 15 (2) (a) of the Income Tax Act, the Commissioner-General issues the guidelines set out in the Schedule hereto on allowability of bad debts for tax purposes.

SCHEDULE

1. A debt shall be considered to have become bad if it is proved to the satisfaction of the Commissioner to have become uncollectible after all reasonable steps have been taken to collect it.

2. A debt shall be deemed to have become uncollectable under paragraph (1) where—

- (a) the creditor loses the contractual right that comprises the debt through a court order;
- (b) no form of security or collateral is realisable whether partially or in full;
- (c) the securities or collateral have been realized but the proceeds fail to cover the entire debt;
- (d) the debtor is adjudged insolvent or bankrupt by a court of law;
- (e) the costs of recovering the debt exceeds the debt itself; or
- (f) efforts to collect the debt are abandoned for another reasonable cause.

3. A bad debt shall be a deductible expense only if it is wholly and exclusively incurred in the normal course of business.

4. For the purposes of these guidelines, a bad debt which is of a capital nature shall not be an allowable expense.

M. G. WAWERU,
Commissioner-General,
Kenya Revenue Authority.

LEGAL NOTICE NO. 68

THE INCOME TAX ACT
(Cap. 470)

EXEMPTION

IN EXERCISE of the powers conferred by section 13(2) of the Income Tax Act, the Minister for Finance directs that the income of the Policyholder's Compensation Fund established under section 179(2) of the Insurance Act shall be exempt from tax.

Made on the 15th June 2006.

AMOS KIMUNYA
Minister for Finance

LEGAL NOTICE NO. 101

THE INCOME TAX ACT
(Cap. 470)

IN EXERCISE of the powers conferred by section 130 of the Income Tax Act, the Minister for Finance makes the following Regulations-

Citation

THE INCOME TAX (CHARITABLE DONATIONS) REGULATIONS, 2007

1. These Regulations may be cited as the Income Tax (Charitable Donations) Regulations, 2007, and shall be deemed to have come into force on 1st January 2007.

Interpretation

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

“approved project” means a project approved by the Minister;

“cash donation” includes a donation given in form of a cheque; and

“charitable organisation” means a non-profit making organisation established in Kenya and which-

- (a) is of a public character; and
- (b) has been established for purposes of the relief of poverty or distress of the public, or advancement of education.

Proof of donation

3.(1) A person who makes a claim for a donation to be allowed under section 15 (2) (w) of the Act shall provide proof of the donation to the Commissioner.

(2) The proof of the donation required in accordance with paragraph (1) shall be in form of a receipt of the donation and shall be accompanied by-

- (a) a copy of the exemption certificate issued by the Commissioner to the charitable organisation, or the Minister’s approval of the project to which donation is made;
- (b) a declaration from the donee that the donation shall be used exclusively for the objects of charity.

Donations generally

4. For purposes of these Regulations, donations made shall-

- (a) be in cash and shall not be repayable or refundable to the donor under any circumstance;
- (b) not confer any direct or indirect benefit to the donor or any person associated to the donor;

- (c) Under no circumstances be revoked once conferred upon a charitable organization, unless there is approval by the Commissioner in which case shall be due and payable.

Contents of receipt
of
Proof

5. The receipt produced as proof of a donation shall have the following details-

- (a) the full names and address of the donee;
- (b) the Personal Identification Number (PIN) of the donee;
- (c) date of donation;
- (d) purpose for which the donation is made;
- (e) amount of donation.

Made on the 14th June 2007

AMOS KIMUNYA
Minister for Finance

Legal Notice No. 62

THE INCOME TAX ACT

(Cap.470)

EXEMPTION

IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Cabinet Secretary for the National Treasury directs that management or professional fees payable to non-resident persons in connection with any National Government security issued outside Kenya, by the Republic of Kenya under the Public Finance Management Act shall be exempt from tax.

Legal Notice No. 55 of 2014 is revoked.

Dated the 28th May, 2014.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.

LEGAL NOTICE NO. 55**THE INCOME TAX ACT**

(Cap.470)

EXEMPTION

IN EXERCISE of the powers conferred by section 13(2) of the Income Tax Act, the Cabinet Secretary for the National Treasury directs that the fees payable to the Barclays Bank PLC, J. P. Morgan Securities PLC and Standard Bank PLC for the consultancy services rendered to the National Treasury to facilitate the issuance of the bond outside Kenya by the Government of Kenya shall be exempt from tax.

Dated the 22nd 2014

HENRY ROTICH,
Cabinet Secretary for the National Treasury.

LEGAL NOTICE No. 56**THE INCOME TAX ACT**

(Cap.470)

EXEMPTION

IN EXERCISE of the powers conferred by section 13(2) of the Income Tax Act, the Cabinet Secretary for the National Treasury directs that the interest payable on the bond issued outside Kenya by the Government of Kenya shall be exempt from tax,

Dated the 22nd May, 2014.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.

LEGAL NOTICE No. 87**THE INCOME TAX ACT**

(Cap.470)

EXEMPTION

IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Cabinet Secretary for the National Treasury directs that management or professional fees payable to non-resident persons in connection with any National Government security issued outside Kenya by the Republic of Kenya under the Public Finance Management Act shall be exempt from tax.

Legal Notice No. 62 of 2014, is revoked.

Dated the 18th June, 2014.

HENRY ROTICH,
Cabinet Secretary for the National Treasury,

LEGAL NOTICE No. 86**THE INCOME TAX ACT**

(Cap. 470)

EXEMPTION

IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Cabinet Secretary for the National Treasury directs that interest payable on the bond issue outside Kenya by the National Government shall be exempt from tax.

Legal Notice No. 56 of 2014, is revoked.

Dated the 18th June, 2014.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.

CHAPTER 469**THE KENYA REVENUE AUTHORITY ACT**

Commencement: 1st July 1995

An Act of Parliament to establish the Kenya Revenue Authority as a central body for the assessment and collection of revenue, for the administration of enforcement of the laws relating to revenue and to provide for connected purposes.

Short title and
Commencement

ENACTED BY THE Parliament of Kenya as follows:-

PART I – PRELIMINARY

1. This Act may be cited as the Kenya Revenue Authority Act, 1995 and shall come into force on a date to be appointed by the Minister by a notice in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires

—

“Authority” means the Kenya Revenue Authority established in Section 3;

“Board” means the Board of Directors established in section 6;

“Chairman” means the Chairman of the Board;

“Commissioner” means a Commissioner appointed under section 13(1).

“financial year” means the period from 1st July of any year to 30th June of the following year;

“member” means a member of the Board of Directors and includes the Chairman;

“Minister” means the Minister for the time being responsible for finance;

“revenue” means taxes, duties, fees, levies, charges, penalties, fines or other monies collected or imposed under the written laws set out in the First Schedule.

PART II – ESTABLISHMENT, POWERS AND FUNCTIONS OF THE AUTHORITY

Establishment of
Authority

3. (1) There is established an Authority to be known as the Kenya Revenue Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, subject to this Act, be capable in its corporate name of –

(a) suing and being sued:

Provided that any legal proceedings against the Authority arising from the performance of the functions or the exercise of any of the powers of the Authority under section 5 shall be deemed to be legal proceedings against the Government within the meaning of the Government Proceedings Act;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing or lending money;

(d) doing or performing all other things or acts for the furtherance of the provisions of this Act, which may be lawfully done or performed by a body corporate.

Seal of authority.

4.(1) The seal of the Authority shall be authenticated by the signature of the Commissioner-General and the Secretary to the Board.

(2) In the absence of the Commissioner-General a Commissioner designated by him for the purpose may authenticate the seal in his place, and in the absence of the Secretary to the Board, the person for the time being

Functions of
Authority

performing the functions of the Secretary may authenticate the seal in his place.

5.(1) The Authority shall, under the general supervision of the Minister, be an agency of the Government for the collection and receipt of all revenue.

(2) In the performance of its functions under subsection (1), the Authority shall –

(a) administer and enforce –

(i) all provisions of the written laws set out in Part I of the First Schedule and for that purpose, to assess, collect and account for all revenues in accordance with those laws:

(ii) the provisions of the written laws set out in Part II of the First Schedule relating to revenue and for that purpose to assess, collect and account for all revenues in accordance with those laws;

(b) advise the Government on all matters relating to the administration of, and the collection of revenue under the written laws or the specified provisions of the written laws set out in the First Schedule; and

(c) perform such other functions in relation to revenue as the Minister may direct.

(3) The Minister may, by notice in the Gazette, amend the First Schedule.

5A (1). The Commissioner-General may upon the recommendation of a Commissioner reward any person for information leading to the identification or recovery of unassessed taxes or duties:

Provided that this section shall not apply to any officer of the Authority.

- be-
- (2) The reward payable under subsection (1) shall
 - (a) in the case of information leading to the identification of unassessed duties or taxes, one per centum of the duties or taxes so identified or one hundred thousand shillings, whichever is the less; and
 - (b) in the case of information leading to the recovery of unassessed duties or taxes, five per centum of the taxes or duties so recovered or two million shillings, whichever is the less.

PART II – ESTABLISHMENT AND FUNCTIONS OF THE BOARD OF DIRECTORS

Board of Directors. 6. (1) There is established a Board of Directors which shall be the governing body of the Authority.

- (2) The Board shall comprise the following members
-
- (a) a Chairman to be appointed by the President;
 - (b) the Commissioner-General;
 - (c) the Permanent Secretary, Ministry of Finance or his representative;
 - (d) the Attorney-General or his representative;
 - (e) six other persons appointed by the Minister by virtue of their knowledge and experience in accountancy, commerce, law, taxation, business administration or public administration.
- (3) No person shall be appointed as the chairman of the Board or as a member of the Board under paragraph (e) of subsection (2) if such person is a public officer or has been a public officer within the immediately preceding twelve months.

(4) Representatives of the members of the Board under paragraphs (c) and (d) of subsection (2) shall be persons with knowledge or experience in matters relating to tax policy or legislation.

(5) Deleted (Finance Act, 2014).

(6) The Board shall be responsible for-

- (a) the approval and review of the policy of the Authority;
- (b) the monitoring of the performance of the Authority in carrying out its functions; and
- (c) the discipline and control of all members of staff of the Authority appointed under this Act.

Tenure of office of
Chairman and
Members.

7. (1) A member of the Board, other than an ex-officio member: -

- (a) shall hold office on such terms and conditions including remuneration as are specified in his instrument of appointment, and for a period not exceeding three years; and
- (b) shall be eligible for reappointment for one further term of three years.

(2) A member of the Board, other than an ex-officio member, may resign his office by written notification under his hand addressed to the Minister.

Termination of
appointment of
Chairman and
members.

8. The appointment of a member, other than an *ex-officio* member may be terminated, in the case of the Chairman by the President, and in the case of any other member by the Minister, on any of the following grounds: -

- (a) for his inability to perform functions of his office by reason of mental or physical infirmity;
- (b) if he is declared or becomes bankrupt or insolvent;

- (c) if he is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) if, without reasonable cause to the satisfaction of the Minister, he is absent from six meetings of the Board in any financial year;
- (e) if in any particular case, he fail to comply with the provisions of section 9;
- (f) for such other sufficient cause as the Minister may, by notice in the Gazette, specify.

Disclosure of
interests by
Chairman and
members.

9.(1) A member of the Board who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall as soon as possible after the relevant facts concerning the matter have come to his knowledge disclose the nature of his interest to the Board.

(2) A disclosure of interest made by a member of the Board under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall not unless the Board otherwise determines in respect of that matter:-

- (a) be present during any deliberations on the matter by the Board; or
- (b) take part in the decision of the Board on the matter.

(3) For the purpose of the Board making a determination under subsection (2) in relation to a member who has made a disclosure under subsection (1), such member shall not:-

- (a) be present during the deliberations of the Board nor take part in the making of such determination by the Board; or
- (b) influence any other member to take part in the making of such determination by the Board.

Meetings of the
Board.

10.(1) The provisions of the Second Schedule shall apply to the meetings of the Board and other matters provided for in that Schedule.

(2). The Board may co-opt any person to participate in its deliberations, but a person so co-opted shall have no right to vote.

(3). The Minister may, by notice in the Gazette, amend the Second Schedule.

PART IV – COMMISSIONER-GENERAL, OFFICERS AND STAFF

Commissioner-
General

11.(1) There shall be a Commissioner-General of the Authority who shall be appointed by the Minister upon the recommendation of the Board on such terms and conditions as are specified in his instrument of appointment.

(2) The Commissioner-General shall be the chief executive of the Authority and, subject to the general supervision and control of the Board, shall be responsible:-

- (i) for the day-to-day operations of the Authority;
- (ii) for the management of funds, property and affairs of the Authority; and
- (iii) for the administration, organisation and control of the staff of the Authority.

(3) The Minister may, after consultation with the Board, terminate the appointment of the Commissioner-General for:-

- (a) misbehaviour in terms of the code of conduct and discipline prescribed under section 21;
- (b) the Commissioner-General's inability to perform the functions of his office by reason of mental or physical infirmity; or
- (c) any other sufficient cause.

(4) The Commissioner-General may, with the approval of the Board, by notice in the Gazette, delegate any of his powers or functions under the Act or any other written law to a Commissioner.

Secretary to the Board.

12.(1) There shall be Secretary to the Board who shall be appointed by the Board.

(2) The Secretary shall be responsible for arranging the business of the Board's meetings, keeping records of the Board's meetings, keeping records of the proceedings of the Board, and shall perform such other duties as the Board may direct.

Appointment of commissioners and other officers.

13.(1) The Board shall appoint to the service of the Authority such Commissioners as may be deemed necessary.

(2) The Commissioner-General shall, with the approval of the Board, appoint such heads of the departments as may be required for the efficient performance of the functions of the Authority.

(3) The Commissioner-General shall appoint all other members of staff as may be required by the Authority for efficient performance of its functions.

(4) The terms and conditions for all persons employed by the Authority shall be determined by the Board.

(5) Except as may otherwise be determined by the Board in any particular case, an officer referred to in subsection (1), or in his absence the immediate deputy, shall be entitled to attend and participate in the deliberations of any meeting of the Board but shall have no right to vote.

Transfer of functions and merger of departments.

13A. The Commissioner-General may, with the approval of the Minister, transfer the functions of departments of the Authority or merge departments of the Authority.

Employees to be personally liable for wrongful acts or omissions.

14. Any person employed by the Authority shall be personally liable for any act or omission done or committed in the performance of his functions under this Act, if having regard to the circumstances of the case such act or omission:-

- (a) is done or committed wilfully or dishonestly by such persons;
- (b) is attributable to the negligence of such person; or
- (c) is done or committed by such person in contravention of any provision of this Act or regulations made thereunder or any other written law.

PART V – FINANCIAL PROVISIONS

Revenue to be paid
into Consolidated
Fund

15. All revenues collected by, or due and payment to, the Authority under this Act shall be paid into the Consolidated Fund.

Provided that all revenues collected by the Authority in respect of any fund established under an Act of parliament shall be paid into that Fund after deducting the expenses incurred by the Authority for the collection of such revenue.

Funds of the
Authority

16.(1) The funds of the Authority shall consist of:-

- (a) such amount not exceeding two per cent of the revenue estimated in the financial estimates for each financial year to be collected by the Authority under this Act as may be determined by the Minister in each financial year;
- (b) three per cent of the revenue actually collected in each successive three-month period in the financial year in excess of the amount estimated to be collected in respect of that period;
- (c) loans and grants received by the Authority with the approval of the Minister; and
- (d) any other monies as may, with the approval of the Minister, be received by or made available to the Authority for the purpose of performing its functions.

- (2) The funds of the Authority:-
 - (a) specified in subsection (1) (a) shall be payable to the Authority in equal monthly instalment on or before the beginning of each month.
 - (b) specified in subsection (1) (b) shall be payable to the Authority within one month after the end of the three month period.

(3) Any funds received by the Authority in respect of a financial year which are not expended by the end of that financial year shall be placed in a reserve fund to be expended subject to the budget of the Authority for the ensuing financial year approved by the Board.

(4) Notwithstanding any other provision of this section, the capital projects of the authority shall be funded separately.

Estimates of
income and
expenditure of the
Authority

17.(1) The Commissioner-General shall, not later than three months before the end of each financial year, prepare and submit to the Board for its approval, estimates of the income and expenditure of the Authority for the next ensuing financial year and may at any time before the end of each financial year, prepare and submit to the Board for approval any estimates supplementary to the estimates for that financial year.

(2) No expenditure shall be made out of the funds of the Authority unless that expenditure is part of the expenditure approved by the Board according to the estimates for the financial year in which the expenditure is to be incurred or in the supplementary estimates for that year.

Accounts, audit and
annual reports.

18.(1) The Authority shall keep accounts and records of its transactions and affairs and shall ensure that all moneys received are properly brought to account, all payments out of its funds are correctly made and properly authorised and that adequate control is maintained over its property and liabilities and Authority may incur under this Act.

(2) The annual accounts of the Authority shall be audited by the Controller and Auditor-General.

(3) The Commissioner-General shall, within three months after the end of each financial year submit to the Minister and the Board an annual report in respect of that year, containing:-

- (i) financial statements of the Authority;
- (ii) the Authority's performance indicators and any other related information;
- (iii) a report on the operations of the Authority; and
- (iv) such other information as the Board may deem fit; and
- (v) to the Controller and Auditor-General, the accounts of the Authority for the financial year; and the annual report referred to in paragraph (a).

(4) The Controller and Auditor-General shall audit the accounts of the Authority within two months after he has received them and submit his report thereon to the Minister and the Board.

(5) The Minister shall cause copies of the annual report together with copies of the Controller and Auditor-General's report to be laid before the National Assembly after he has received them, whichever is the earlier.

(6) The Commissioner-General shall, within six months after the end of each financial year, cause the audited accounts of the Authority to be published in the Gazette and in such other manner as the Board may determine and may avail copies thereof to members of the public at such minimal fee for expenses as the Board may determine.

Internal audit and quarterly audit reports.

19.(1) In addition to any other functions assigned to him by the Board or the Commissioner-General, the head of internal audit shall be responsible for the internal audit of the

Authority's accounts and shall submit to the Commissioner-General a report on the accounts in respect of every three months of a financial year.

(2) The Commissioner-General shall submit every report referred to in subsection (1) to the Board for its consideration at the next meeting of the Board after he has received the report and shall also submit copies of the report to the Minister and the Controller and Auditor-General.

PART VI – MISCELLANEOUS PROVISIONS

20. The Authority shall be exempted from the State Corporations Act.

21. The Board may make regulations for the carrying into effect the provisions of this Act, and in particular but without prejudice to the foregoing make regulations-

- (a) respecting the terms and conditions of service, including pensions, gratuities and other retirement benefits, of all members of staff of the Authority;
- (b) Prescribing the procedure for the appointment of all members of the staff of the Authority;
- (c) Prescribing the code of conduct and discipline;
- (d) Respecting the administration and management of the funds of the Authority;
- (e) Respecting the performance targets of the Authority.

Vesting of assets and liabilities, subsisting contracts, and pending proceedings

22.(1) All property, except any such property as the Minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Departments of Customs and Excise, Income Tax and Value Added Tax for purposes of the written law set out in the First Schedule, shall on the commencement of this Act, and without further assurance, vest in the Authority subject to all

interests, liabilities, charges, obligations and trusts affecting such property.

(2) Except as otherwise provided in subsection (1) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the Departments of Customs and Excise, Income Tax and Value Added Tax before the commencement of this Act shall remain vested in the Government and may be enforced by or against the Government.

(3) Subject to Section 2, all legal proceedings and claims which before the commencement of this Act are pending in respect of revenue to which the written law set in the First Schedule apply shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced if this Act had not been enacted.

(4) Unless the Board otherwise determines, all persons being public officers, who before the commencement of this Act are employed by the Government for the purposes of written laws specified in the First Schedule shall, on the commencement of this Act, be deemed to be on secondment to the Authority until they are employed in the service of the Authority in accordance with this Act or their secondment with the Authority otherwise ceases in accordance with the terms of the secondment.

Construction and
modification of
other written laws.

23.(1) On and after the coming into force of this Act:-

- (a) all references to the Commissioner of Customs and Excise, Commissioner of Income Tax or the Commissioner of Value Added Tax in any written law, be construed as references to the Commissioner-General of the Authority;
- (b) Deleted.
- (c) any reference to Customs and Excise Department, Income Tax Department or Value Added Tax Department in any written law or in any other law shall be deemed to be reference to the Authority.

- (d) Except as provided in paragraph (a) any reference to an officer of the Customs and Excise Department Income Tax Department or Value Added Tax Department howsoever designated in any written laws or in any other law shall be deemed to be reference to such officer of the Authority.

24. Deleted (Tax Procedures Act, 2015).

24A. Deleted (Tax Procedures Act, 2015).

25. Deleted (Tax Procedures Act, 2015).

FIRST SCHEDULE

WRITTEN LAWS RELATING TO REVENUE

PART I

1. The Income Tax Act (Cap. 470).
2. The Customs and Excise Act (Cap.472).
3. The Value Added Tax Act (Cap. 476).
4. Road Maintenance Levy Fund Act, 1993 (No.9 of 1993).
5. Air Passenger Service Charge Act (Cap. 475).
6. The Entertainment Tax Act (Cap. 479).
7. The East African Community Customs Management Act, 2004
8. The Annexes to the Protocol on the Establishment of the East African Community Customs Union

PART II

1. The Traffic Act (Cap.403).
2. The Transport Licensing Act (Cap. 404).
3. Second-Hand Motor Vehicle Purchase Tax Act (Cap. 484).
4. The Civil Aviation Act (Cap. 394).
5. The Widows' and Children's Pensions Act (Cap. 195).
6. The Parliamentary Pensions Act (Cap. 196).
7. The Betting, Lotteries and Gaming Act (Cap. 731).
8. The Stamp Duty Act (Cap. 480).

Finance Act 2015

9. The Horticultural Crops Development Authority (imposition of fees and charges) Order, 1995 (L.N. 228 of 1995);
10. The Standards Levy Order, 1990 (L.N. 267 of 1990).
11. The Government Lands Act (Cap 280)
12. The Sugar Act (No. 10 of 2001)
13. The National social security fund Act, 2013

PART III

1. The Income Tax Act (Cap. 470)
2. The Customs and Excise Act (Cap.472)
3. The Value Added Tax Act (Cap. 476)
4. The Entertainment Tax Act (Cap. 479)
5. The East African Customs Management Act, 2004
6. The Annexes to the Protocol on the Establishment of the East African Community Customs Union.

SECOND SCHEDULE

Meeting of the board.

1.(1) The first meeting of the Board shall be convened by the Chairman and, subsequently, the Board shall meet as often as necessary for the transaction of business at such places and at such time as may be decided upon by the Board but it shall meet at least once every month.

(2) The Chairman shall preside at every meeting of the Board and in his absence the members present may appoint a member from among themselves to preside at that meeting.

(3) The Chairman or, in his absence a member appointed by the Board to act in his place, may at any time call a special meeting upon a written request by a majority of the members.

(4) Notice of every meeting of the Board shall be given in writing to each member at least five days before the day of the meeting.

Quorum

2. (1) subject to subparagraph (2), five members, excluding the ex-officio members shall constitute a quorum for the conduct of business at any meeting of the Board.

(2) When there is no quorum at, or for the continuation of, a meeting of the Board only because of the exclusion of a member under section 9 of the Act from the deliberations on a matter in which he has disclosed a personal interest, the other members present may if they deem it expedient so to do:-

- (a) postpone the consideration of that matter until there is a quorum without that member; or
- (b) proceed to consider and decide the matter as if there was a quorum.

Decisions of
the Board.

3.(1) All questions proposed at a meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(2) A decision may be made by the Board without a meeting by circulation of the relevant papers among the members of the Board and by the expression of the views of the majority of the members in writing but any member shall be entitled to require that the decision be deferred and the matter on which a decision is sought be considered at a meeting of the Board.

4.(1) The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Board at the next meeting of the Board and signed by the Chairman or the person presiding at the meeting.

(2) The Chairman of the Board shall submit to the Minister a copy of the minutes of each meeting of the Board as soon as the minutes have been confirmed

5. Subject to the provisions of the Act, the Board may regulate its own procedure.

TAX LAWS (AMENDMENT) ACT 2018

Section as per VAT Act	Content	Amendment	Effective date
2	Interpretation	Deletion of the definition of the expression "winnings" and substitution therefor the following definition – "winnings" means the positive difference between payouts made and stakes placed in a given month, for each player, payable to punters by bookmakers licenced under the Betting, Lotteries and Gaming Act.	1 July 2018
10	Income from management or professional fees, royalties, interest and rents	Insertion of the following new paragraph immediately after paragraph (f) – (g) winnings	1 July 2018
22C (2)	Registered home ownership savings plan	Deletion of – (a) the expression "forty-eight" and substituting therefor the expression "ninety-six" (b) the word "four" and substituting therefor the word "eight".	1 July 2018
30A	Affordable housing relief	Insertion of the following new section immediately after section 30 – 30A. (1) A resident individual who relief satisfies the Commissioner that in a year of income that the person (a) is eligible to make an application under an affordable housing scheme; (b) has applied and is awaiting the allocation of a house under an affordable housing scheme; and (c) is saving for a purchase under an affordable housing scheme approved by the Cabinet Secretary in charge of housing, shall for that year of income be entitled to a personal relief in this Act referred to as the affordable housing relief. (2) A person who has been allocated a house under the affordable housing scheme and has been subject to an affordable housing relief under subsection (1) shall not be re-eligible for a subsequent relief.	1 July 2018
34	Rates of Tax	Insertion of the following new paragraph immediately after paragraph (l) in subsection (1)– (m) winnings	1 July 2018
		Insertion of the following new paragraph immediately after paragraph (h) in subsection (2)– (i) winnings	1 July 2018
35		Insertion of the following new paragraph immediately after paragraph (h) in subsection (1)–	1 July 2018

	Deduction of tax from certain income	(i) winnings	
		Insertion of the following new paragraph immediately after paragraph (g) in subsection (3)– (h) winnings	1 July 2018
First Schedule, Part I	Income accrued in, derived from or received in Kenya which is exempt from tax	Insertion of the following new paragraph immediately after paragraph 55 – 56. Compensating tax accruing to a power producer under a power purchase agreement.	1 July 2018
Third Schedule, Head A	Affordable housing relief	Insertion of the following new paragraph immediately after paragraph 2 – 3. The amount of affordable housing relief shall be 15% of the gross emoluments but shall not exceed KShs. 108,000 per annum.	1 July 2018
Third Schedule, Head B	Rates of tax	Insertion of the following new subparagraph immediately after subparagraph (h) in paragraph 3 – (i) in respect of winnings, twenty percent	1 July 2018
		Insertion of the following new subparagraph immediately after subparagraph (h) in paragraph 5 – (i) in respect of winnings, twenty percent Provided that the tax paid under this subparagraph is final.	1 July 2018

FINANCE ACT 2018 AMENDMENTS

Section as per ITA Act	Content	Amendments	Section as per Finance Act 2018	Effective date
2	Interpretation	Insertion of the following new definition in proper alphabetical sequence – " demurrage charges " means the penalty paid for exceeding the period allowed for taking delivery of goods or returning of any equipment used for transportation of goods."	2	1 July 2018
		Deletion of the definition of the word "winnings" and substituting therefor the following definition – " winnings " includes winnings of any kind and a reference to the amount or the payment of winnings shall be construed accordingly.		

7	Income from Dividends	<p>Deleting subsection (1) and substituting therefor the following new subsection –</p> <p>(1) For the purpose of section 3(2)(b)-</p> <p>(a) a dividend paid by a resident company shall be deemed to be income of the year of income in which it was payable;</p> <p>(b) an amount shall be deemed to be a dividend distributed by a company to a shareholder where –</p> <ul style="list-style-type: none"> (i) any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder or any person related to that shareholder; (ii) the shareholder or any person related person to that shareholder is discharged from any obligation measurable in money which is owed to that company by that shareholder or related person; (iii) the amount is used by that company in any other manner for the benefit of the shareholder or any related person to that shareholder; (iv) any debt owed by the shareholder or any person related to that shareholder to any third party is paid or settled by that company; (v) the amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or related person to such shareholder, resulting from an adjustment. 	3	1 July 2018
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7A	Dividend distributed out of untaxed gains or profits	<p>Repealing section 7A and replacing it with the following new section –</p> <p>7A. Where a dividend is distributed out of gains or profits on which no tax is paid, the company distributing the dividend shall be charged to tax in the year of income in which the dividends are distributed at the resident corporate rate of tax on the gains or profits from which such dividends are distributed:</p> <p>Provided that this section shall not apply to registered collective investment schemes.</p>	4	1 January 2019
10	Income from management or professional fees, royalties, interest and rents	<p>Amended in subsection (1) by adding the following new paragraphs immediately after paragraph (h)-</p> <p>(i) demurrage charges; and</p> <p>(j) an insurance premium.</p>	5	1 July 2018

12C	Presumptive tax.	<p>Repealing section 12C and replacing it with the following new section –</p> <p>12C. (1) Notwithstanding any other provision of this Act, a tax to be known as presumptive tax shall be payable by a resident person whose turnover from business does not exceed five million shillings during a year of income.</p> <p>(2) The presumptive tax shall apply to all persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income.</p> <p>(3) A person liable to pay tax under subsection (1) may, by notice in writing, addressed to the Commissioner, elect not to be subject to the provisions of this section in which case the other provisions of this Act shall apply to such person.</p> <p>(4) The due date for payment of tax under subsection (1) shall be at the time of payment for the business permit or trade license or renewal of the same.</p> <p>(5) Notwithstanding subsection (1), presumptive tax shall not apply to income derived from—</p> <ul style="list-style-type: none"> (a) management and professional services; or (b) rental business; or (c) incorporated companies. 	6	1 January 2019
15	Deductions allowed	<p>In subsection (2) by inserting the following new paragraph immediately after paragraph (aa)–</p> <p>(ab) thirty percent of electricity cost incurred by manufacturers in addition to the normal electricity expense, subject to conditions set by the Ministry of Energy.</p>	7	1 January 2019

19	Ascertainment of income of insurance companies	Inserting the following new subsection immediately after subsection (6A) – (6B) For the avoidance of doubt, the gains arising from the transfer of property by an insurance company other than property connected to life insurance business shall be taxed in accordance with the provisions of the Eighth Schedule.	8	1 July 2018
34	Rates of tax	In subsection (2) by inserting the followings immediately after paragraph (m) – (n) demurrage charges; or. (o) an insurance premium except insurance premium paid for insurance of aircraft.	9	1 July 2018
35	Deduction of tax from certain income.	In subsection (1) by inserting the following paragraph immediately after paragraph (l) – (m) demurrage charges; (n) an insurance premium except insurance premium paid for insurance of aircraft; Inserting the following new subsection immediately after subsection (5) – (5A) The Commissioner shall pay the tax deducted from winnings under subsection (1)(i) and (3)(h) into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, 2012.	10	1 July 2018
Third Schedule Head B	Rates of Tax	(a) in paragraph (2), by adding the following new subparagraph immediately after subparagraph (j)- (k) in the case of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax shall be to the extent provided in the arrangement. (b) in paragraph 3, by inserting the following new subparagraphs immediately after subparagraph (n)- (o) demurrage charges, paid to ship operators, twenty per cent of the gross amount payable;	11	1 January 2019

		(p) an insurance premium, five per cent of the gross amount payable; and		
		(c) by deleting paragraph 9 and substituting therefor the following new paragraph— 9. The rate of presumptive tax shall be an amount equal to fifteen percent of the amount payable for a business permit or trade licence issued by a County Government: Provided that the tax charged shall be final.		

FINANCE ACT 2017 AMENDMENTS

Section as per ITA	Content	Proposed Amendment	Section of the Finance Act 2017	Effective date
2	Interpretation of terms	<p>Insertion of the following definitions:</p> <p>"Islamic finance arrangement" means all financial arrangements, including transactions, instruments, products or related activities that are structured in accordance with Islamic law;</p> <p>"Islamic finance return" means any amount received or paid in relation to Sukuk or an Islamic finance arrangement;</p> <p>"Sukuk" has the meaning assigned to it in the Public Finance Management Act 2012.</p>	11 (a)	3 rd April 2017
2	Interpretation of terms	Insertion of the words "or an Islamic finance return" at the end of the definition of the word "interest".	11 (b)	3 rd April 2017
15(2)	Deductions allowed	Insertion of new paragraph "aa" after paragraph "z" which reads "expenditure incurred in that year of income on donations to the Kenya Red Cross, county governments or any other institution responsible for the management of national disasters to alleviate the effects of a national disaster declared by the President"	12	3 rd April 2017

18	Ascertainment of gains or profits of business carried on between a resident in a preferential tax regime and a resident in a non-preferential tax regime	Insertion of section 18(A) (1) Where a resident entity operating in a preferential tax regime carries on business- (a) with a related resident person not operating in a preferential tax regime; and (b) the business produces to the resident person not operating in a preferential tax regime either no profits or less than the ordinary profits which would have been 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. (2) For the purpose of this section, the expression "preferential tax regime", with respect to an item of income or profit, means any legislation, regulation or administrative practice which provides a preferential rate of taxation to such income or profit, including reductions in the tax rate or tax base.	13	3 rd April 2017
108	Additional penalties	Repealing of section 108 as it refers to Section 72 (A) which was deleted by the Tax Procedures Act, 2015	14	3 rd April 2017
First Schedule Part I	Dividend payments exempt from tax	Insertion of paragraph 55 that states "Dividends paid by Special Economic Zone enterprise, developers or operators to any non-resident person"	15	1 st January 2018
Second Schedule Part V	Investment deduction	Amendment under paragraph 24 by inserting a new subparagraph "h" which provides for investment deduction on expenditure on the construction of transportation and storage facilities for petroleum products by the Kenya Pipeline Company Limited.	16	1 st January 2018

Second Schedule Part V	Investment deduction	Insertion of paragraph 24C which allows investment deduction of 100% where capital expenditure is incurred on the construction of a building or purchase and installation of machinery by a SEZ enterprise for furtherance of business. The investment deduction is against the gains or profits of that enterprise in the year the building or machinery is first used	17	1 st January 2018
Second Schedule Part V	Investment deduction	Insertion of paragraph 24D which allows investment deduction at 150% where capital expenditure is incurred on buildings and machinery for use in an SEZ outside Nairobi and Mombasa Counties. The ID shall be granted in the year of first use.	17	1 st January 2018
Third Schedule Item 1 of Head A	Resident personal relief	Deleting KES 15,360 and substituting the amount of personal relief to KES 16,896	18 (a)	1 st January 2018
Third Schedule Item 1 of Head B	Rates of tax	Deleting item 1 and substituting as follows: Individual rate of tax shall be: 10% for the first 147,580, 15% for the next 139,043, 20% for the next 139,043, 25% for the next 139,043, and 30% for all income above 564,709	18 (b) (i)	1 st January 2018
Third Schedule Item 1A of Head B	Rates of tax	Deleting item 1A and substituting as follows: Wife's employment, wife's professional and wife's self-employment income rates of tax shall be: 10% for the first 147,580, 15% for the next 139,043, 20% for the next 139,043, 25% for the next 139,043, and 30% for all income above 564,709	18 (b) (i)	1 st January 2018
Third Schedule Item 2 of Head B	Rates of tax	Insertion of the expression "whether the enterprise sells its products to markets within or outside Kenya" immediately after the word enterprise appearing in paragraph (h)	18 (b) (ii) (a)	1 st January 2018

Third Schedule Item 2 of Head B	Rates of tax	Insertion of subparagraph (j) which introduces a lower corporate tax rate of 15% in case of a company whose business is local assembling of motor vehicles for the first 5 years of commencement of operations and extends the 15% corporate tax by an additional 5 years if the company achieves local content of 50% of the ex-factory price of the motor vehicles.	18 (b) (ii) (b)	1 st January 2018
Third Schedule Item 3 of Head B	Non-resident tax rates	Deleting the proviso and substituting as follows: Provided that- (a) the rate applicable to any payments made by SEZ enterprise, developer, or operator to a non-resident person shall be 5% of the gross amount payable. (b) the rate applicable to citizen of the East African Community partner states in respect of consultancy fee shall be 15% of the gross sum payable	18 (c) (i)	1 st January 2018
Third Schedule Item 3 of Head B	Non-resident tax rates	Provided that the rate applicable to any royalty paid by any SEZ enterprise, developer, or operator to a non-resident shall be 5% of the gross amount payable	18 (c) (ii)	1 st January 2018
Third Schedule Item 3 of Head B	Non-resident tax rates on interest	Insertion of the following at the end of paragraph (e) – (iii) in respect of interest paid by any SEZ enterprise, developer or operator to a non-resident person, 5% of the gross amount payable.	18 (c) (iii)	1 st January 2018
Third Schedule Item 5 of Head B	Resident withholding tax rates on pensions	In paragraph 5(d)(ii) by deleting the tabulation of rates and income bands at the end in respect of withdrawals and substituting therefor the following new rates and income bands: 10% for the first 147,580, 15% for the next 139,043, 20% for the next 139,043, 25% for the next 139,043, and 30% for any income above 564,709	18 (c) (iv)	1 st January 2018

FINANCE ACT 2016 AMENDMENTS

Section as per ITA Act	Content	Amendments	Section as per Finance Act 2016	Effective date
2	Interpretation	In Subsection (1) by inserting the following definition in proper alphabetical sequence – " deemed interest " means an amount of interest equal to the average ninety-one-day Treasury Bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the nonresident, where such loan is provided free of interest.	2	9 th June 2016
6A	Imposition of residential rental income tax	In subsection (1) by deleting the words "does not exceed" and inserting the words "is in excess of one hundred and forty-four thousand shillings but does not exceed".	3	9 th June 2016
10	Interpretation of terms	deleting paragraph (g).	4	1 st January 2017
12	Imposition of instalment tax.	Inserting the word "or" immediately before the expression "37";	5 (a)	9 th June 2016
12	Imposition of instalment tax.	Deleting the expression "or 17A" and all the words appearing thereafter.	5(b)	9 th June 2016
15	Deductions allowed	In subsection (2) by inserting the following new paragraph immediately after paragraph (y)– "(z) expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports";	6 (a)	1 st January 2017
15	Deductions allowed	In subsection (3) (b) by deleting the words "one hundred and fifty" and substituting therefor the words "three hundred".	6 (b)	1 st January 2017
16	Deductions not allowed	In subsection (3) by deleting the definition of the expression "deemed interest".	7	9 th June 2016
34	Rates of tax	In subsection (1) by deleting paragraph (m)	8 (a)	1 st January 2017

34	Rates of tax	In subsection (2) by deleting the following paragraph (i) – (i) winnings payable by bookmakers to punters (players).	8 (b)	1 st January 2017
35	Deduction of tax from certain income.	In subsection (1) by deleting paragraph (j);	9 (a)	9 th June 2016
35	Deduction of tax from certain income.	In subsection (3) – (i) by inserting the words "subject to subsection (3A)" at the beginning thereof; (ii) by deleting paragraph (i); (iii) by inserting the following new paragraph immediately after paragraph (i)- (j) rent, premium or similar consideration for the use or occupation of immovable property;	9 (b)	9 th June 2016
35	Deduction of tax from certain income.	Inserting the following new subsection immediately after subsection (3)- (3A) Notwithstanding the provisions of subsection (3), only a person appointed for that purpose by the Commissioner, in writing, shall deduct tax under paragraph (j) of that subsection.	9 (c)	9 th June 2016
35	Deduction of tax from certain income.	Deleting subsection (6)	9 (d)	9 th June 2016
37	Deduction of tax from emoluments.	Deleting subsection (6)	10 (a)	9 th June 2016
37	Deduction of tax from emoluments.	Deleting subsection (7)	10(b)	9 th June 2016
51A	Returns, records etc to be in official languages	Repealing section 51A	11	9 th June 2016
72	Additional tax in event of failure to furnish return or fraud in relation to a return	Repealing section 72	12	9 th June 2016
75A	Assessment of certain cases	Repealing section 75A	13	9 th June 2016
98	Collection of taxes from persons leaving or having left Kenya	Repealing section 98	14	9 th June 2016

105	Refund of tax overpaid	Repealing section 105	15	9 th June 2016
First Schedule Part I	Income accrued in, derived from or received in Kenya which is exempt from tax	by adding the following new paragraphs in proper numerical sequence- 53. Income from employment paid in the form of bonuses, overtime and retirement benefits: Provided that this paragraph shall only apply to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band provided under Head B of the Third Schedule. 54. Interest income on bonds issued by the East African Development Bank.	16	1 st July 2016
Third Schedule Head A	Residential personal Relief	In Item 1 of Head A (Resident Personal Relief), by deleting the expression "thirteen thousand nine hundred and forty-four" and substituting therefor the expression "fifteen thousand three hundred and sixty";	17 (a)	1 st January 2017
Third Schedule Head B	Rates of Tax	Deleting item 1 and 1 A of Head B (Rates of Tax) and substituting therefor the following new items- 1. The individual rates of tax shall be— Rate in each shilling On the first Shs.134,164 -10% On the next Shs.126,403 -15% On the next Shs.126,403 -20% On the next Shs.126,403 -25% On all income over Shs.513,373 3-0% Rate in each shilling On the first Shs.134,164 -10% On the next Shs.126,403 -15% On the next Shs.126,403 -20% On the next Shs.126,403 -25% On all income over Shs.513,373 30%	17 (b)	1 st January 2017

Third Schedule Head B	Rates of Tax	In paragraph (2), by inserting the following new subparagraph immediately after subparagraph (h) — (i) in the case of a company that constructed at least four hundred residential units annually, fifteen per cent for that year of income, subject to approval by the Cabinet Secretary responsible for housing, provided that where a company is engaged in multiple activities which include the ones specified in subparagraph (i), the rate of fifteen per cent shall be applied proportionately to the extent of the turnover arising from the housing activity.	17 (c)	1 st January 2017
Third Schedule Head B	Rates of Tax	In paragraph 5, by deleting the expression "twelve per cent" appearing in subparagraph (ja) and substituting therefor the expression "ten per cent";	17 (d)	1 st January 2017
Third Schedule Head B	Rates of Tax	(i) In paragraph 3 by deleting subparagraph (m); (ii) In paragraph 5 by deleting subparagraph (j).	17 (e)	1 st January 2017
Eighth Schedule Paragraph 6	Meaning of transfer.	Deleting subparagraph (2)(h) and substituting thereof a new subparagraph as follows — (h) by the transfer of assets — (i) between spouses; (ii) between former spouses as part of a divorce settlement or a bona fide separation agreement; (iii) to immediate family; (iv) to immediate family as part of a divorce or bona fide separation agreement; or (v) to a company where spouses or a spouse and immediate family hold 100% shareholding.	18	9 th June 2016
Thirteenth Schedule	Transaction for which Personal Identification Number (PIN) will be required	Repealing the Thirteenth Schedule	19	9 th June 2016

FINANCE ACT 2015 AMENDMENTS

Section as per ITA Act	Content	Amendments	Section of the Finance Act 2015	Effective date
Section 2	Definition	<p>Addition of the following provisos immediately after the following definitions-</p> <p>(a) "training fees"- Provided that training fee shall not include fees paid for educational services provided by (a) a pre-primary, primary, or secondary school; (b) a technical college or university; (c) an institution established for the promotion of adult education, vocational training or technical education.</p> <p>(b) "winnings" Provided that this definition shall only apply in case of winnings payable to punters (players) bookmakers</p>	7	1 st January 2016
Section 6 A	Residential rental income	<p>Insertion of the following new section immediately after section 6-</p> <p>6A. (1) Notwithstanding any other provision of this Act, a tax to be known as residential rental income tax shall be payable with effect from the 1st January, 2016 by any resident person from income which is accrued in or derived from Kenya for the use or occupation of residential property, and which does not exceed ten million shillings during any year of income</p> <p>Provided that this section shall not apply where a person who would otherwise pay tax under this section, by notice in writing addressed to the Commissioner, elects not to be subject to residential rental income tax, in which case the other provisions of this Act shall apply to such a person.</p> <p>(2) The Minister may, by notice in the Gazette, prescribe regulations for the better carrying out the provisions of this section.</p>	8	1 st January 2016
Section 10	Income from management fees	<p>In subsection (1) by deleting paragraph (g) and substituting therefor the following new paragraph- "(g) winnings payable by bookmakers to punters (players)'.</p>	9	1 st January 2016

Section 15	Deductions allowed	(a) in subsection (4), by deleting the word "four" and substituting therefor the word "nine"; (b) in subsection (5), by deleting the words "five years" and substituting therefor the words "ten years"; (c) in subsection (5A) by- (i) deleting paragraph (a); and (ii) deleting the expression "(b) for any other case". (d) in subsection (7) (a), by deleting the words "six sources" and substituting therefor the words "seven sources"	10	1 st January 2016
Section 34	Rates of tax	(a) in subsection (1) (i) deleting paragraph (i); (ii) by inserting the following new paragraphs immediately after paragraph (j)- "(k) tax upon gross rental receipts of a person chargeable to tax (under section 6A shall be charged at the resident rate specified under the Third Schedule for that year of income." (l) the transfer of interest in a person shall be charged as per provisions of the Ninth Schedule. (m) tax upon the gross winnings payable by bookmakers to punters (players) shall be charged at the resident rate for that year of income"; (b) in subsection (2)- (i) by deleting paragraph (k); (ii) by deleting paragraph (i) and substituting therefor the following paragraph- (i) winnings payable by bookmakers to punters (players).	11	1 st January 2016

Section 35	Deduction of tax from certain income	<p>(a) in subsection (1), by deleting paragraph (j) and substituting therefor the following new paragraph- (j) winnings payable by bookmakers to punters (players);</p> <p>(b) by inserting the following new subsection immediately after subsection (1)- (1A) Subsection (1) shall not apply to payments made by filming agents and filming producers approved by the Kenya Film Commission to actors and crew members approved for purposes of paragraphs (g) and (h).</p> <p>(c) in subsection (3)- (i) by deleting paragraph (j); (ii) by deleting paragraph (i) and substituting therefor the following new paragraph- (i) winnings payable by bookmakers to punters (players).</p>	12	1 st January 2016
Section 39B	Set off of tax rebate for apprenticeship	<p>Insertion of the following new section immediately after section 39A -</p> <p>39B. (1) Any employer who engages at least ten university graduates as apprentices for a period of six to twelve months during any year of income shall be eligible for tax rebate in the year subsequent to the year of such engagement.</p> <p>(2) The Cabinet Secretary may by notice in the Gazette make regulations for the better carrying out of the provisions of this section.</p>	13	1 st January 2016
Section 117	Officer may appear on prosecution	Deletion of the expression "Attorney-General" and substituting therefor the expression "Director of Public Prosecutions".	14	1 st January 2016

Section 123C	Commissioner to refrain from assessing or recovering tax in some cases	<p>Insertion of the following new section after section 123B-</p> <p>123C. (1) Subject to subsection (2) but notwithstanding any other provisions of this Act, the Commissioner shall, with effect from the 1st July, 2015, refrain from assessing or recovering-</p> <p>(a) taxes, penalties or interest thereon in respect of any period before and during the 2013 year of income-</p> <p>(b) penalties or interest thereon in respect of the 2014 and 2015 years of income where-</p> <p>(i) the income is in respect of gains or profits for the use or occupation of immovable property earned by a person, and</p> <p>(ii) the returns or amended returns for the 2014 and 2015 years of income are submitted and the tax paid on or before the 30th June, 2016.</p> <p>(2) This section shall not apply in respect of any tax where the person who should have paid the tax-</p> <p>(a) has been assessed in respect of the tax or any matter relating to the tax,</p> <p>or</p> <p>(b) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.</p> <p>(3) Where a person has no documentation to support expenditure, such person shall be allowed a deduction of forty percent of the gross rent, premium or similar consideration for the use or occupation of immovable property.</p>	15	1 st January 2016
First Schedule	Exemptions	<p>(a) in paragraph 36 by</p> <p>(i) deleting the expression "thirty thousand shillings" appearing in paragraph d (i) and substituting therefor the words "three million shillings";</p> <p>(ii) deleting the expression "one hundred acres" appearing in sub-paragraph d (ii) and substituting therefor the expression "fifty acres";</p> <p>(iii) inserting the following proviso immediately after paragraph (f)-</p> <p>Provided that where there is a court case regarding such estate the period of transfer or sale under this paragraph shall be two years from the date of the finalization of such court case.</p> <p>(b) in paragraph 46 by inserting the words "special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act" after the words "venture capital company".</p>	16	1 st January 2016

Second Schedule	Deductions in respect of capital expenditure on certain buildings	<p>(a) in paragraph 1, by inserting the following proviso at the end of subparagraph (1) (dd)- Provided that in the case of a building in use for the training of film producers, actors or crew, the rate of deduction shall be one hundred percent.</p> <p>(b) in paragraph 25-</p> <p>(i) deleting the expression "495 tons" wherever it appears and substituting therefor the expression "125 tons";</p> <p>(ii) deleting the expression "forty per cent" and substituting therefor the expression "one hundred per cent".</p> <p>(c) in paragraph 7 (3) by-</p> <p>(i) deleting the expression "subparagraph (cc) or (d)" and substituting therefor the expression "subparagraph (a)".</p> <p>(ii) deleting the expression "subparagraph (d) and substituting therefor the expression "subparagraph (cc) or (d)".</p>	17	1 st January 2016
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Third Schedule	Head B-Rates of tax	<p>(a) in paragraph 2, by adding the following subparagraphs immediately after subparagraph 2 (f)-</p> <p>(g) (i) in the case of a company introducing its shares through listing or any securities exchange via introduction, twenty-five percent for the period of five years commencing immediately after the year of income following the date of such listing.</p> <p>(ii) A gain on transfer of securities traded on any securities exchange licensed by the Capital Markets Authority is not chargeable to tax under section 3 (2) (f).</p> <p>(h) in the case of a special economic zone enterprise, developer and operator, ten percent for the first ten years from date of first operation and thereafter fifteen percent for another ten years.</p> <p>(b) in paragraph 3-</p> <p>(i) by deleting subparagraph (m) and substituting therefor the following new subparagraph (m)-</p> <p>(m) in the case of winnings of bookmakers, the withholding tax rate shall be seven and a half percent of the gross profit.</p> <p>(ii) by deleting subparagraph (n).</p> <p>(iii) inserting the following new subparagraph after subparagraph (m)-</p> <p>(n) in the case of a special economic zones enterprise, developer and operator in respect of payments other than dividends made to non-residents at the rate of ten percent.</p> <p>(c) in paragraph 5 by-</p> <p>(i) deleting the proviso at the end of paragraph (j) and substituting therefor the following new proviso- Provided that-</p> <p>(i) the tax so deducted shall be final; and</p> <p>(ii) in the case of bookmakers, the withholding tax shall be seven and a half percent of the gross profit.</p> <p>(ii) inserting the following new paragraph after paragraph (j)-</p> <p>(ja) in respect of a rent, premium or similar consideration for the use or occupation of immovable property, twelve percent of the gross amount payable</p> <p>(iii) by deleting subparagraph (k).</p> <p>(d) by inserting the following new paragraph immediately after paragraph (9)-</p> <p>"(10) The rate of tax in respect of residential rental income shall be ten percent of the gross rental receipts of a taxable resident person under section 6A".</p>	18	1 st January 2016
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Eighth schedule	Accrual and computation of gains from transfer of property other than investment shares transferred by individuals.	<p>(a) in paragraph 6-</p> <p>(i) by inserting the words "or their immediate family" immediately after the words "or former spouses" appearing in subparagraph (2) (h);</p> <p>(ii) by deleting subparagraph (2) (i);</p> <p>(iii) by inserting the following sub-paragraph immediately after sub-paragraph (2)-</p> <p>(3) For the purposes of this paragraph, "immediate family" means children of the spouses or former spouses.</p> <p>(b) by inserting the following new paragraph immediately after paragraph 8-</p> <p>8A. Notwithstanding any other provision of this Act, the deduction of costs of property shall not apply in the case of securities listed on any securities exchange approved under the Capital Markets Act.</p> <p>(c) in paragraph 14-</p> <p>(i) by deleting the definition of "adjusted cost"</p> <p>(ii) by deleting the definition of "Transfer value"</p> <p>(d) by deleting paragraph 15 and substituting therefor the following new paragraph-</p> <p>15. The gain subject to tax under this Part is the gross consideration payable and shall be subject to the withholding tax rate under paragraph (3) and (5) of the Third Schedule.</p> <p>(e) by deleting paragraphs 16, 16A and 17;</p> <p>(f) by inserting the following proviso at the end of paragraph 18-</p> <p>Provided that this paragraph shall also apply to shares transferred under Part I of this Schedule.</p> <p>(g) by inserting the following new paragraph immediately after paragraph 11-</p> <p>11A. The due date for tax payable in respect of property transferred under this Part shall be on or before the date of application for transfer of the property is made at the relevant Lands Office.</p>	19	1 st January 2016
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Ninth Schedule	Taxation of petroleum companies	<p>(a) by inserting the following new definitions in paragraph (1) in proper alphabetical sequence- "petroleum information" means information relating to petroleum operations; "petroleum operations" means authorized operations undertaken under a petroleum agreement;</p> <p>(b) by deleting subparagraph 6 (3) and substituting therefor the following new subparagraph- (3) An amount accumulated in or withdrawn from a rehabilitation fund to meet expenditure incurred under an approved plan and interest income and investment income in respect of a rehabilitation fund shall be exempt from tax.</p> <p>(c) by deleting the word "twenty" in subparagraph (2)(b) of paragraph 15 and substituting therefor the word expression "5.625";</p> <p>(d) by deleting the expression "management or professional fees" appearing on paragraph 16 (d) and substituting therefor the expression "management, training or professional fees".</p>	20	1 st January 2016
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FINANCE ACT 2014 AMENDMENTS

Section as per ITA Act	Content	Amendments	Section as per Finance Act 2014	Effective date
Section 2	Definition	<p>(a) deleting the words "provisional assessment" appearing in the definition of "assessment";</p> <p>(b) deleting the definition of "permanent establishment" and substituting therefore the following new definition - "permanent establishment" in relation to a person, means a fixed place of business and includes a place of management, a branch, an office, a factory, a workshop, and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, a building site, or a construction or installation project which has existed for six months or more where that person wholly or partly carries on business:</p> <p>Provided that-</p> <p>(a) the permanent establishment of the person shall be deemed to include the permanent establishment of the person's dependent agent;</p> <p>(b) in paragraph (a), the expression "dependent agent" means an agent of the person who acts on the person's behalf and who has, and habitually exercises, authority to conclude contracts in the name of that person;</p> <p>(c) deleting the following definitions-</p> <p>(i) "provisional return of income";</p> <p>(ii) "specified mineral"; and</p> <p>(iii) "oil company"</p> <p>(d) inserting the following new definition in proper alphabetical sequence-</p> <p>"natural resource income" means-</p> <p>(i) an amount including a premium or such other like amount paid as consideration for the right to take minerals or a living or non-living resource from land or sea; or</p> <p>(ii) an amount calculated in whole or in part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea.</p>	2	1 st January 2015

Section 3	Charging Section	<p>(a) in subsection (2) , by-</p> <p>(i) deleting paragraph (g) and substituting therefor the following new paragraph- "(g) subject to section 15(5A), the net gain derived on the disposal of an interest in a person, if the interest derives twenty per cent or more of its value, directly or indirectly, from immovable property in Kenya; and</p> <p>(ii) inserting the following new paragraph immediately after paragraph (g) "(h) a natural resource income";</p> <p>(b) in subsection (3), by-</p> <p>(i) deleting the word "and" appearing at the end of paragraph (a);</p> <p>(ii) deleting paragraph (c) and substituting therefor the following new paragraph - "(c) for the purposes of subsection (2)(g) and section 15(5A) -</p> <p>(i) "immovable property" means a mining right, an interest in a petroleum agreement, mining information or petroleum information;</p> <p>(ii) "net gain", in relation to the disposal of an interest in a person, means the consideration for the disposal reduced by the cost of the interest; and</p> <p>(ii) the terms "consideration", "cost", "disposal", "interest in a person", "mining information", "mining right", "person", "petroleum agreement", and "petroleum information" have the meaning assigned to them in the Ninth Schedule."</p>	3	1 st January 2015
Section 4	Income from Businesses	Deletion of paragraph (f) and substituting therefor the following new paragraph- (f) in computing the gains or profits of a "licensee" "contractor" or subcontractor" as defined in the Ninth Schedule, the provisions of that Schedule shall apply.	4	1 st January 2015

Section 5	Income from Employment	<p>In subsection (4) by-</p> <p>(a) inserting the following new paragraph immediately after paragraph (a)- (aa) expenditure on vacation trips to destinations in Kenya paid by the employer on behalf of an employee: Provided that-</p> <p>(i) this paragraph shall cease to apply on the 1st July, 2015;</p> <p>(ii) the period of vacation shall not exceed seven days; and</p> <p>(iii) the term "employee" shall include the immediate family members of the employee;</p> <p>(b) deleting the words "low income employees in a canteen or cafeteria operated or established by the employer (whether the meals are supplied by the employer or not) within his premises" appearing in paragraph (f) and substituting therefor the words "employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer (whether the meals are supplied in the premises of the employer or the premises of the third party) where the value of the meal does not exceed the sum of forty-eight thousand shillings per year per employee";</p> <p>(c) deleting the definition of "low income employees" appearing in subparagraph (b) (ii) of the proviso to paragraph (g).</p>	5	1 st January 2015
Section 10	Income from Management or professional fees	<p>(a) inserting the words "or natural resource income" immediately after the word "royalty" appearing in paragraph (b) ;</p> <p>(b) deleting paragraph (h);</p> <p>(c) deleting the word "section" wherever it appears in the proviso and substituting therefor the word "subsection";</p> <p>(d) inserting the following new paragraph immediately after paragraph (ii) of the proviso- (iii) for the avoidance of doubt, the expression "non-resident person" shall include both head office and other offices of the non- resident person.</p> <p>(e) re-numbering the existing provision as subsection (1) and inserting the following new subsection -</p> <p>(2) A net gain referred to in section 3(2)</p>	6	1 st January 2015

		(g) is deemed to be income that accrued in or was derived from Kenya.		
Section 15	Deductions allowed	<p>(a) in subsection (2), by deleting paragraph (m);</p> <p>(b) by renumbering subsection (4A) as subsection (5) and inserting the following new subsection-</p> <p>(5A) For the purpose of section 3(2)(g), the amount of the net gain to be included in income chargeable to tax is- (a) if the interest derives more than fifty per cent of its value, directly or indirectly, from immovable property in Kenya, the full amount of the net gain; or</p> <p>(b) for any other case, the amount computed according to the following formula- $A \times B / C$</p> <p>Where -</p> <p>A is the amount of the net gain;</p> <p>B is the value of the interest derived, directly or indirectly, from immovable property in Kenya; and</p> <p>C is the total value of the interest.</p> <p>(c) in subsection (7), by inserting the following new paragraph immediately after paragraph (ivA)-</p> <p>(ivB) income of a licensee from one licence area or a contractor from one contract area as determined in accordance with the Ninth Schedule.</p>	9	1 st January 2015
Section 16	Deductions not allowed	In subsection (2) by deleting the expression "section 5(4)(a)" appearing in paragraph (aXiii) and substituting therefor the expression "section 5(4)(a) and (aa)".	8	13 th June 2014
Section 18	Ascertainment of gains in relation to certain non-residents	<p>(a) Insertion of the words "or through its permanent establishment" immediately after the words "resident person" wherever they occur in subsection (3);</p> <p>(b) Deleting the words "the foreign head office or other offices of a non-resident person" appearing in subsection (5) and substituting therefor the words "the non-resident person";</p> <p>(c) Inserting the following proviso immediately after the subsection -Provided that for the avoidance of doubt, the expression "non-resident person" shall include both the head office and other offices of the non-resident person.</p> <p>(d) Deleting subsection (7).</p>	9	1 st January 2015

Section 34	Rates of Tax	<p>(a) In subsection (1), by inserting the following new paragraph immediately after paragraph (i)- "(j) tax upon the capital gains of a person charged under section 3(2)(f) shall be charged at the rate of five percent and shall not be subject to further taxation";</p> <p>(b) by deleting subsections (1A) and (1B);</p> <p>(c) in subsection (2), by inserting the words "or natural resource income" immediately after the word "royalty" appearing in paragraph (b)</p>	10	1 st January 2015
section 35	Deductions of tax from certain income	<p>(a) In subsection (1), by- (i) inserting the words "or natural resource income" immediately after the word "royalty" appearing in paragraph (b); and (ii) deleting paragraph (k);</p> <p>(b) In subsection (3), by inserting the words "or natural resource income" immediately after the word "royalty" appearing in paragraph (g);</p> <p>(c) deleting subsections (3A) and (3B).</p>	11	1 st January 2015
section 41	Special arrangements for relief from double taxation	<p>(a) In subsection (1), by deleting the words "notwithstanding anything" and inserting the words "subject to subsection (5) but notwithstanding any other provision"; and</p> <p>(b) By inserting the following new subsections immediately after subsection (4) - (5) Subject to subsection (6), where an arrangement made under this section provides that income derived from Kenya is exempt or excluded from tax, or the application of the arrangement results in a reduction in the rate of Kenyan tax, the benefit of that exemption, exclusion, or reduction shall not be available to a person who, for the purposes of the arrangement, is a resident of the other contracting state if fifty per cent or more of the underlying ownership of that person is held by an individual or individuals who are not residents of that other contracting state for the purposes of the agreement. (6) Subsection (5) shall not apply if the resident of the other contracting state is a company listed in a stock exchange in that other contracting state. (7) In this section, the terms "person" and</p>	12	1 st January 2015

		"underlying ownership" have the meaning assigned to them in the Ninth Schedule.		
Section 53	Provisional returns	By repealing section 53	13	1 st January 2015
Section 54A	Keeping of records of receipts, expenses	By inserting the following new subsection immediately after subsection (1)- (1A) For the purposes of this section, the carrying on of business includes any activity giving rise to income other than employment income.	14	1 st January 2015
Section 54B	Supply of information upon change of particulars	By inserting the following new section immediately after section 54A- 54B. Every person carrying on a business shall notify the Commissioner of any changes in the following particulars within thirty days of the occurrence of the change- (a) the place of business, trading name and contact address; (b) in the case of- (i) an incorporated person, of the persons with shareholding of ten per cent or more of the issued share capital; (ii) a nominee ownership, to disclose the beneficial owner of the shareholding; (iii) a trust, full identity and address details of trustees, settlors and beneficiaries of the trust; (iv) a partnership, the identity and address of all partners; or (v) cessation or sale of business, all relevant information regarding liquidation or details of new ownership.	15	1 st January 2015
Section 72	Additional tax in event of failure to furnish return or fraud in relation to a return	In subsection (1) by deleting paragraph (b).	16	1 st January 2015
Section 74	Provisional assessments	By repealing section 74	17	1 st January 2015
Section 74A	Instalment assessment	By deleting the expression "and 74" appearing in subsection (1)	18	1 st January 2015

Section 92	Time within which payment to be made	By deleting subsection (3)	19	1 st January 2015
First Schedule	Exemptions	By deleting the words "local authority" appearing in paragraph 8 and substituting therefor the words "county government"	20	13 th June 2014
Second Schedule	Deductions in respect of capital expenditure on certain buildings	(a) in paragraph 7(3), by- (i) inserting the following new subparagraph immediately after subparagraph (c)- (cc) petroleum pipeline; and (ii) deleting the expression "subparagraph (a)" and substituting therefor the expression "subparagraph (cc) or (d)", (b) deleting Part III; (c) inserting the words "or machinery referred to in paragraph (g)" immediately after the expression "machinery referred to in subparagraph (f) appearing in paragraph 24(1).	21	1 st January 2015
Third Schedule	Rates of personal relief and taxes	(a) in paragraph 3, by - (i) deleting the words "other than management or professional fee deductible under paragraph 5(2)(g) of the Ninth Schedule" appearing in subparagraph (a); (ii) inserting the words "or natural resource income" immediately after the word "royalty" appearing in subparagraph (b); (iii) deleting the words "other than interest which is deductible under paragraph 5(2)(h) of the Ninth Schedule" appearing in paragraph (e)(i); (iv) deleting subparagraph (i); (v) deleting subparagraph (j); (b) in paragraph 5, by inserting the words "or natural resource income" immediately after the word "royalty" appearing in subparagraph (g); (c) by deleting paragraph 6	22	1 st January 2015
Eight Schedule	Accrual and computation of gains from transfer of property other than investment shares transferred by individuals	(a) By deleting paragraph 2 and substituting therefor the following new paragraph - "2. Subject to this Schedule, income in respect of which tax is chargeable under section 3(2)(f) is the whole of a gain which accrues to a company or an individual on or after 1 st January, 2015 on the transfer of property situated in Kenya, whether or not the property was acquired before 1 st	23	1 st January 2015

		<p>January,2015";</p> <p>(b) in paragraph 3, by adding the following new subparagraph immediately after subparagraph (2)- "(3) The gain which is exempt from tax under paragraph 36 of 'the First Schedule is not chargeable to tax under section 3(2)(f)";</p> <p>(c) in paragraph 6, by adding the following new subparagraphs immediately after subparagraph (2)(g)-</p> <p>(h) by the transfer of an asset between spouses, or former spouses, as part of a divorce settlement or bona fide separation agreement;</p> <p>(i) by the compensation for property acquired by the Government for infrastructure development which is subject to tax under section 3(2)(i);</p> <p>(d) in paragraph 7, by deleting the words "deemed to be nil" appearing at the end of subparagraph (3) and substituting therefor the words "the market value as determined by the Commissioner";</p> <p>(e) by deleting Part III.</p>		
Ninth Schedule	Taxation of petroleum companies	Repealing the Ninth Schedule and substituting therefor the new Ninth schedule set out in the Schedule to this Act	24	1 st January 2015
Thirteenth Schedule	Transactions for which personal identification number (PIN) will be required	<p>(a) deleting the item "Local Authorities - Approval of plans and payment of water deposits" and;</p> <p>(b) inserting thereof the following new items-</p> <p>County Government - payment of services falling under County Finance Act</p> <p>Water service providers - payment of water deposit and connection of water meters.</p>	25	13 th June 2014

FINANCE ACT 2013 AMENDMENTS

Section as per ITA	Content	Amendment	Section of the Finance Act 2013	Effective date
2	Interpretation	Subsection (1) is amended - (a) by inserting the words " or an agreement for the exchange of tax information under section 41A" at the end of the definition of " specified arrangement"; (b) by inserting the following new definitions in proper alphabetical sequence- "Minister" means the Cabinet Secretary for the time being responsible for matters relating to finance; "oil company" means a petroleum company within the meaning of the Ninth Schedule; "winnings" has the meaning assigned to it in the Betting, Lotteries and Gaming Act.	9	1 st January 2014
5	Income from employment etc.	Subsection (2) is amended by deleting paragraph (f) and substituting therefor the following new paragraph- (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: Provided that this paragraph shall not apply where such an amount is paid- (i) to a registered or unregistered pension scheme, pension fund or individual retirement fund; or (ii) for group life policy cover, unless such a cover confers a benefit to the employee or any of his dependants.	10	1 st January 2014
10	Income from management or professional fees, royalties, interest and rents.	The following new paragraph is inserted immediately after paragraph (f)- "(g) winnings from betting and gaming".	11	1 st January 2014
19A	Co-operative Societies	Section 19A is amended in subsection (1) by deleting the expression "section 86" appearing and substituting therefor with the expression "section 92".	12	1 st January 2014

25	Income settled on children	Subsection (1) is amended by deleting the word "nineteen" appearing in paragraph (ii) of the proviso and substituting therefor the word "eighteen", (b) in subsection (7) by deleting the word "nineteen" appearing in paragraph (a) and substituting therefor the word "eighteen".	13	1 st January 2014
34	Rates of Tax	Section 34 is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (h) — "(i) winnings from betting and gaming".	14	1 st January 2014
35	Deduction of tax from certain income	(a) Subsection (1), is amended by inserting the following new paragraph immediately after paragraph (i) - " (j) winnings from betting and gaming". (b) Subsection (3), by inserting the following new paragraph after paragraph (h)- "(i) winnings from betting and gaming".	15	1 st January 2014
84	Notice of objection to assessment	Section 84 is amended by deleting subsection (3) and substituting therefor the following new subsections- (3) A person aggrieved by the refusal of the Commissioner to admit a notice of objection under subsection (2) may, on paying to the Commissioner that part of the amount of tax assessed that is not in dispute and thirty percent of the tax in dispute, and on paying any interest due under section 94, appeal against the refusal to a local committee whose decision shall be final. (3A) An appeal under subsection (3) shall be determined within six months from the date the appeal is lodged. (3B) If an appeal under subsection (3) is determined in favour of a taxpayer, the thirty percent of the tax in dispute paid under subsection (3) shall be refunded to the taxpayer within ninety days from the date of determination of the appeal.	16	1 st January 2014

114	Power of Commissioner to compound offences	Subsection (l) is deleted and substituted therefor with the following new subsection - (l) The Commissioner may, where he is satisfied that a person has committed an offence under this Act, other than an offence under section 126 of this Act, in respect of which a penalty of a fine is provided, or in respect of which anything is liable to forfeiture, compound the offence and may order that person to pay such sum of money, not exceeding the amount of the fine to which he would have been liable if he had been prosecuted and convicted of the offence, as he may deem fit; Provided that the Commissioner shall not exercise his powers under this section unless the person admits in writing that he has committed the offence and requests the Commissioner to deal with the offence under this section.	17	1 st January 2014
114	Power of Commissioner to compound offences	By inserting the following new subsection immediately after subsection (2)- (2A) For the purposes of subsection (1), the Commissioner shall constitute a committee of not less than three officers to consider applications for the compounding of offences.	17	1 st January 2014
116	Offences by corporate bodies	Section 116 of the Income Tax Act is amended by renumbering the existing section as subsection (1) and inserting the following new subsection- (2) A person convicted of an offence under subsection (1) may be ordered by the court to make payment to the Commissioner of the whole or such part as remains unpaid of the tax assessed by the Commissioner either in addition to, or in substitution of, any other penalty.	18	1 st January 2014
119	Power to search and seize	Section 119 is amended by- Deleting the operational part and substituting therefor the following - "(1) For the purpose of inquiring into the affairs of a person under this Act, the Commissioner or an authorized officer may, with warrant exercise all or any of the following powers, where the person has or is reasonably suspected of committing an offence under this Act-"	19	1 st January 2014

119	Power to search and seize	Inserting the following new section immediately after subsection (1) "(1A) Notwithstanding subsection (1), the Commissioner or an authorized officer may, prior to obtaining a warrant, secure the premises for a maximum period of four days for purposes of ascertaining whether this Act is being complied with".	19	1 st January 2014
124	Exercise of powers, etc	Section 124 is amended by deleting the expression " sections 114 and 123" and substituting therefor the expression " section 123".	20	1 st January 2014
125	Official Secrecy	Section 125 is amended in subsection (4) by inserting the words " or for the exchange of information relating to income tax or taxes of a similar character", immediately after the words " tax in Kenya".	21	1 st January 2014
First Schedule	Exemptions	Paragraph 26 is amended by deleting subparagraph (a).	22	1 st January 2014
Third Schedule , Head B	Rates of Tax	Head B of the Third Schedule is amended - (a) in paragraph 3 by inserting the following new subparagraph immediately after subparagraph (l)- (m) in respect of winnings from betting and gaming, twenty percent;	23	1 st January 2014
Third Schedule , Head B	Rates of Tax	(b) in paragraph 5- (i), by inserting the following new subparagraph immediately after subparagraph (i)- (j) in respect of the winnings from betting and gaming, twenty percent: Provided that the tax so deducted shall be final. (ii) by inserting the words " except in the case of oil companies, in respect of assignment of rights", at the end of the proviso to paragraph (k).	23	1 st January 2014

FINANCE ACT NO.4 OF 2012 AMENDMENTS

Section as per Income Tax Act	Content	Amendments	Section as per Finance Act No. 4 of 2012	Effective date
2	Interpretation	Insertion of the following definitions in proper alphabetical sequence- "real estate investment trust" shall have the meaning assigned to it in the Capital Markets Act; "winnings" shall have the meaning assigned to it in the Betting, Lotteries and Gaming Act.	9	1 st January 2012
4	Income from businesses	Deletion of the expression "respect of" in paragraph (c).	10	9 th June 2011
5	Income from employment etc.	In subsection 4 insertion of the words "or his beneficiaries" immediately after the words "full time employee" wherever they occur in paragraph (b).	11(a)	9 th June 2011
5	Income from employment etc.	In subsection 4 deletion of paragraph (h) and substituting therefor the following new paragraph - (h) For the purposes of this subsection - (i) "beneficiaries" means the full time employee's spouse and not more than four children whose age shall not exceed twenty-one years; and (ii) "low income employee" means an employee whose taxable income is not subject to tax at the rate of more than twenty per cent under Head B of the Third Schedule to this Act.	11(b)	9 th June 2011
10	Income from management or professional fees, royalties, interest, and rents.	In paragraph (c) insertion of the words "and deemed interest" immediately after the word "interest".	12(a)	9 th June 2011

10	Income from management or professional fees, royalties, interest, and rents.	Insertion of the following new paragraph immediately after paragraph (f) - (g) winnings from betting and gaming.	12(b)	Pending Minister's Gazette Notice
16	Deductions not allowed.	Insertion of the following new subsection immediately after subsection (4)- (5) The Commissioner shall prescribe the form and manner in which the deemed interest shall be computed and the period for which it shall be applicable.	13	9 th June 2011
20	Unit trusts	Insertion of the following paragraph immediately after paragraph (b) - "(c) a real estate investment trust"	14	1 st January 2012
34(2)	Rates of tax	Insertion of the following new paragraph immediately after paragraph (h) - (i) winnings from betting and gaming.	15	Pending Minister's Gazette Notice
35 (1)	Deduction of tax from certain income.	(i) Deletion of the words "aircraft or aircraft engines" appearing in paragraph (c) of subsection (1) and substituting therefor the words "aircraft, aircraft engines, locomotives or rolling stock"; (ii) Insertion of the words "and deemed interest" immediately after the word "interest" wherever it occurs in paragraph (e) of subsection (1) (iii) Insertion of the following new paragraph immediately after paragraph (i) of subsection (1) - (j) winnings from betting and gaming.	16(a)	9 th June 2011
35(3)	Deduction of tax from certain income.	Insertion of the following new paragraph immediately after paragraph (h) of subsection (3)- (i) winnings from betting and gaming.	16(b)	Pending Minister's Gazette Notice

41A	Agreements for exchange of information	Insertion of a new section immediately after Section 41 as follows - 41A. The Minister may, by notice in the Gazette, from time to time declare that arrangements specified in the notice, being arrangements made with the government of any country with the view of exchanging information relating to income tax or other taxes of a similar character imposed by the laws of that country, shall, notwithstanding anything to the contrary in this Act or any other written law, have effect in relation to income tax, and that notice shall, subject to the provisions of this section, have effect accordingly.	17	1 st January 2012
Part VIII- Returns and Notices	Returns, records, etc. to be in official languages	Insertion of the following new section immediately before section 52 - 51A. (1) For the purposes of this Act - (a) any return, record or other document required to be kept or produced shall be in either of the official languages; (b) the unit of currency in any such return, record or other document shall be the Kenya shilling. (2) In subsection (1)(a), the expression "official languages" shall have the meaning assigned to it in Article 7 of the Constitution.	18	9 th June 2011
52B	Final return with self-assessment.	Deletion of the proviso to subsection (1) and replacing it with the following new proviso - " Provided that an employee who is employed by or renders service to one employer shall not be required to give a return under paragraph (a) - (i) if the employee had no income chargeable to tax for that year of income other than emoluments, and (ii) the tax payable in respect of those emoluments had been recovered by deduction under section 37."	19	9 th June 2011
72C (2)	Penalty on underpayment of instalment tax.	Deletion of the words " five hundred thousand shillings" appearing in paragraphs (a) and (b) of the proviso and substituting therefor the words "one million five hundred thousand shillings".	20	9 th June 2011

132	Personal identification numbers.	Addition of the following new subsection immediately after subsection (7) - (8) Without prejudice to any penalty that may be imposed under subsection (7), the Commissioner may, forthwith, register and issue a personal identification number to a person who fails to obtain such number as required by the Commissioner under subsection (2).	21	9 th June 2011
Paragraph 3, Third Schedule	Rates of tax.	(i) Insertion of the words "and deemed interest" immediately after the words "and interest" appearing in subparagraph (e) (i); (ii) Insertion of the following new subparagraph immediately after subparagraph (l) - (m) in respect of winnings from betting and gaming. twenty percent.	22	9 th June 2011
Paragraph 5, Third Schedule	Rates of tax.	Insertion of the following new subparagraph immediately after subparagraph (i)- (j) in respect of winnings from betting and gaming, twenty percent: Provided that the tax so deducted shall be final.	22	1 st January 2012

FINANCE ACT NO. 57 OF 2012 AMENDMENTS

Section as per Income Tax Act	Content	Amendments	Section as per Finance Act No. 57 of 2012	Effective date
2(1)	Interpretation	Deletion of the definition of "winnings".	13	9 th January 2013
3(2)	Charge of tax	Insertion of the following new paragraph immediately after paragraph (f) – (g) the amount or value of the consideration from the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies.	14(a)	9 th January 2013
3(3)	Charge of tax	Insertion of the following new paragraph immediately after paragraph (b) – (c) "sale of property or shares" includes the assignment of rights, sale of companies and businesses, and takeovers or any other non-inventory assets.	14(b)	9 th January 2013
10	Income from management or professional fees, royalties, interest, and rents.	Deletion of paragraph (g).	15(a)	9 th January 2013
10	Income from management or professional fees, royalties, interest, and rents.	Insertion of the following paragraph – (h) the amount or value of the consideration from sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies.	15(b)	9 th January 2013
34(1)	Rates of tax	Insertion of the following new paragraph immediately after paragraph (h) – (i) tax upon the amount or value of the consideration from sale of property or shares of a resident person charged under section 3(2)(g) shall be charged at the rate provided for under paragraph 5 of the Third Schedule.	16(a)	9 th January 2013

34(2)	Rates of tax	<p>(i) Deletion of the paragraph relating to "winnings from betting and gaming";</p> <p>(ii) Insertion of the following new paragraphs immediately after paragraph (i) -</p> <p>(j) a payment in respect of gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2).</p> <p>(k) the amount or value of the consideration from the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies.</p>	16(b)	15 th June 2012
35(1)	Deduction of tax from certain income.	<p>(i) Deletion of paragraph (j).</p> <p>(ii) Insertion of the following new paragraph -</p> <p>(k) the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies;</p> <p>(iii) Insertion of the following new paragraph immediately after paragraph (k) —</p> <p>(l) gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2).</p>	17(a)	15 th June 2012
35(3)	Deduction of tax from certain income.	<p>(i) Deletion of paragraph (i);</p> <p>(ii) Insertion of the following new paragraph at the end thereof -</p> <p>(j) the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies.</p>	17(b)	9 th January 2013
52B (1)	Final return with self-assessment.	Deletion of the provision.	18	1 st July 2013
54	Documents to be included in return of income.	Deletion of subsections (4A) and (4B).	19	1 st January 2013

82	Local Committees	<p>Insertion of the following new subsections immediately after subsection (2)—</p> <p>(2A) A person shall be qualified for appointment as a member of the local committee if the person —</p> <p>(a) holds a degree in taxation, finance, accounting or law from a university recognized in Kenya and has at least five years' experience in a related field;</p> <p>(b) has met all tax obligations and has not been subject to an order for compounding tax offences;</p> <p>(c) is of high moral character and integrity;</p> <p>(d) is not an employee of the Kenya Revenue Authority; and</p> <p>(e) in the case of a former public servant, has completed three years since leaving employment.</p> <p>(2B) A person shall cease to be a member of the local committee if the person —</p> <p>(a) resigns from office by notice in writing addressed to the Minister;</p> <p>(b) becomes an employee of the Kenya Revenue Authority;</p> <p>(c) is absent for three consecutive sittings of the local committee without written notification to the Chairman;</p> <p>(d) is adjudged bankrupt by a court of competent jurisdiction;</p> <p>(e) is convicted of a criminal offence or of an offence under any tax law;</p> <p>(f) is unable to perform the duties of the office by reason of physical or mental infirmity; or</p> <p>(g) conducts himself in a manner inconsistent with continued membership of the local committee.</p>	20	1 st January 2013
83	The Tribunal.	<p>Insertion of the following new subsection immediately after subsection (7) —</p> <p>(8) The qualifications and disqualifications set out in sections 82(2A) and (2B) shall, with the necessary modifications, apply with</p>	21	1 st January 2013

		respect to the members of the Tribunal.		
128	Service of notices, etc.	Inserting the following new paragraph immediately after paragraph (c) — (d) by public notice through print media of national circulation.	22	9 th January 2013
Paragraph 3 of First Schedule	Exemptions.	Deletion of paragraph 3	23(a)	1 st January 2013
Paragraph 10 of First Schedule	Exemptions.	Addition of the following immediately after paragraph (iii) — "and provided further that an exemption under this paragraph — (A) shall be valid for a period of five years but may be revoked by the Commissioner for any just cause; and (B) shall, where an applicant has complied with all the requirements of this paragraph, be issued within sixty days of the lodging of the application.	23(b)	1 st January 2013
Paragraph 37 of First Schedule	Exemptions.	Deletion of paragraph 37	23 (c)	1 st January 2013
Second Schedule	Deductions.	Deletion of the expression "or 5(1) (ff)" appearing in item "ee" of subparagraph 1(1).	24(a)	1 st January 2013
Second Schedule	Interpretation	Deletion of the item "ff" in subparagraph 5(1).	24(b)	1 st January 2013

Second Schedule	Expenditure in respect of commercial building	<p>Insertion of the following new paragraph immediately after paragraph 6 —</p> <p>6A. (1) Where a person incurs capital expenditure on the construction of a commercial building to be used in a business carried on by him or his lessee on or after the 1st January, 2013, and the person has provided roads, power, water, sewers and other social infrastructure, there shall be deducted, in computing the gains or profits of that person for any year of income in which the building is so used, a deduction equal to twenty five percent per annum.</p> <p>(2) For the purpose of this paragraph "commercial building" includes a building for use as an office, shop or showroom but shall not include a building which qualifies for deduction under any other paragraph or a building excluded for industrial building deduction under paragraph 5(3) of this Schedule.</p>	24(c)	1 st January 2013
Paragraph 26 of the Second Schedule	Sale of buildings prior to use.	Deletion of the expression "24(1)(a), (c) or (f)" and substituting therefor the expression "24(1)(a), (c), (e) or (f)".	24(d)	1 st January 2013
Head B of the Third Schedule	Rates of tax	<p>In item 3 -</p> <p>(i) Insertion of the words "which is chargeable to tax under section 9(2)" immediately after the words "method of communication" appearing in paragraph (l);</p> <p>(ii) by deleting paragraph (m);</p> <p>(iii) by adding the following new paragraph at the end thereof -</p> <p>(n) in respect of the amount or value of the consideration from sale of property or shares, in respect of oil companies, mining companies or mineral prospecting companies, twenty percent of the gross amount payable.</p>	25(a)	15 th June 2012

Head B of the Third Schedule	Rates of tax	In item 5 – (i) Deletion of paragraph (j); (ii) Insertion of the following new paragraph - (k) in respect of the amount or value of the consideration from sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies, ten percent of the gross amount payable: Provided that the tax so deducted shall be final.	25(b)	15 th June 2012
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FINANCE ACT 2010 AMENDMENTS

Section as per ITA	Content	Amendments	Section of the Finance Act 2010	Effective date
5	Income from employment etc.	Subsection (4), is amended by adding the following paragraph immediately after paragraph (f)- (g) an amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered , which is paid into a registered pension scheme: Provided that - (a) this paragraph shall only apply in respect of amounts not exceeding two hundred and forty thousand shillings for each year of service; (b) this paragraph shall not apply to any person who is eligible for deductions under section 22A.	21	1 st January 2011
5	Income from employment etc.	By renumbering the existing paragraph (ff) as paragraph (h).	21	1 st January 2011
12A	Imposition of advance tax	Subsection (1), is amended by deleting the words "and in the case of a vehicle used for carriage of members of the public for hire or reward in respect of every driver and conductor thereof".	22	11 th June 2010
16	Deductions not allowed	Subsection (2), is amended by inserting the words "or an amount of deemed interest" before the words " where the company " appearing immediately after paragraph j (ii);	23	11 th June 2010
16	Deductions not allowed	Deleting subsection (3), and inserting the following new subsection- (3) For the purposes of subsection (2), the expressions - "all loan" means loans, overdrafts, ordinary trade debts, overdrawn current accounts or any other form of indebtedness for which the company is paying a financial charge, interest, discount or premium"; "deemed interest" means an amount of interest equal to the average ninety- one day Treasury Bill rate, deemed to be payable by a resident in respect of any outstanding loan provided or secured by the non-resident, where such loans have been provided free of interest.	23	11 th June 2010

18	Ascertainment of gains or profits of business in relation to certain non-resident persons	Section 18 is amended - (a) in subsection (3), by deleting the words "so arranged" and substituting therefor the word "such"; (b) in subsection (6), by adding the following paragraph immediately after paragraph (b)- (c) an individual, who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to an individual who participates in the management, control or capital of the business of the other.	24	11 th June 2010
35	Deduction of tax from certain income	Section 35 is amended - (a) in subsection (1), by adding the words "or aircraft engines" immediately after the word "aircraft" appearing at the end of paragraph (c); (b) in subsection (3), by deleting paragraph (h); (c) by adding the following new subsection immediately after subsection (6C) - (6D) A person aggrieved by the imposition, by the Commissioner, of a penalty under this section may, by notice in writing to the Commissioner, object to the imposition within thirty days of the date of service of the notice of the imposition. (6E) The provisions of this Act in respect of objections shall, mutatis mutandis, apply to objections under this section.	25	11 th June 2010
37	Deduction of tax from emoluments	The following new subsections are added immediately after subsection (5)- (5A) An employer aggrieved by the imposition of a penalty by the Commissioner or any other decision taken by the Commissioner under this section may, by notice in writing to the Commissioner, within thirty days, object to such imposition or decision. (5B) The provisions of this Act in respect of objections shall, mutatis mutandis, apply to objections under this section.	26	11 th June 2010

72D	Penalty on unpaid tax	<p>Section 72D is amended by deleting the proviso and substituting thereof the following new proviso-</p> <p>Provided that-</p> <p>(a) in the case where the instalment penalty under section 72C applies, the penalty under this section shall not apply except to the extent that any such instalment penalty has not been paid by the due date for self-assessment of tax under section 52B;</p> <p>(b) this section shall not apply in the case of penalties imposed for breach of any other provision of this Act.</p>	27	11 th June 2010
94	Interest on unpaid tax	<p>Section 94 is amended-</p> <p>(a) in subsection (1), by deleting the words "including the penalty" and inserting the words " of tax";</p> <p>(b) by deleting the proviso to subsection (1) and substituting therefor the following new proviso-</p> <p>Provided that-</p> <p>(a) the interest chargeable under this subsection shall not exceed one hundred percentum of the tax owing; and</p> <p>(b) the penalty referred to in this subsection or imposed under any other section of this Act shall not attract any interest.</p>	28	11 th June 2010
123	Commissioner's discretion to abandon or remit tax	<p>The following new section is added immediately after section 123A titled " Commissioner to refrain from assessing tax in some cases".</p> <p>123B. Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering taxes, penalties or interest in respect of any year of income ending on or before the 31st December, 2010, where-</p> <p>(a) that income has been declared for the year 2010 by a citizen of Kenya living and earning taxable income outside Kenya;</p> <p>(b) the returns and accounts for the year 2010 are submitted on or before the 30th June, 2011:</p> <p>Provided that this section shall not apply in respect of any tax where the person who should have paid the tax-</p> <p>(i) has been assessed in respect of the tax or any matter relating to the tax; or</p> <p>(ii) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.</p>	29	11 th June 2010

127A	Application of information technology	Section 127A is amended by renumbering the existing provision as subsection (1) and inserting the following new subsection- (2) For the purposes of subsection (1), the Commissioner may, by notice in the Gazette, specify- (a) the income tax formalities and procedures which may be carried out by use of information technology; and (b) the persons authorised to carry out such formalities or procedures by use of information technology.	30	11 th June 2010
127B	Users of the tax computerized system	Section 127B is amended in subsection (1) by deleting the words " in writing".	31	11 th June 2010
First Schedule	Exemptions	Paragraph 51 is deleted and substituted therefor with the following new paragraph- 51. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.	32	11 th June 2010
Second Schedule	Deductions in respect of capital expenditures on certain buildings	Part 1, is amended by deleting subparagraph(1)(ee) of paragraph 1 and substituting therefor the following new subparagraph- (ee) in a case referred to in paragraph 5 (1) (f) or 5 (1) (ff) for any year of income commencing on or after 1st January 2010, where roads, power, water, sewers and other social infrastructure have been provided by the person incurring the capital expenditure, twenty- five percent.	33	1 st January 2011
Second Schedule	Deductions in respect of capital expenditure on agricultural land	In Part IV- (i) by adding the following new subparagraph immediately after subparagraph (b) of the proviso to paragraph 22 (1)- (c) where in any year of income commencing on or after 1st January, 2011, the owner or tenant of agricultural land incurs capital expenditure on the construction of farmworks, there shall be made, in computing his gains or profits for that year of income, a deduction equal to a hundred percent of that expenditure.	33	1 st January 2011

Second Schedule	Increase of deductions	<p>(ii) By deleting paragraph 31A and substituting therefor the following new paragraph-</p> <p>31A. Where a person incurs capital expenditure on the purchase of machinery or on the construction of roads, bridges or similar infrastructure under a concessionairing arrangement, the deduction shall be spread and claimed in equal proportion over the period of the concession:</p> <p>Provided that the period of concession shall be deemed to commence- (a) in the case of machinery, in the year in which the machinery is first put into use;</p> <p>(b) in the case of a road, bridge or similar infrastructure, in the year in which it first put into use after completion.</p>	33	1 st January 2011
Third Schedule	Rates of personal reliefs and taxes	<p>The third schedule is amended -</p> <p>(a) in paragraph 5, by deleting subparagraph (i);</p> <p>(b) in paragraph 8 -</p> <p>(i) by inserting the words " prime movers, trailers" immediately after the word " trucks" appearing in subparagraph (a) ; and</p> <p>(ii) by adding the following proviso immediately after subparagraph (a)-</p> <p>Provided that advance tax shall not be imposed on tractors or trailers used for agricultural purposes.</p> <p>(iii) by deleting subparagraph (c).</p>	34	11 th June 2010
Ninth Schedule	Petroleum Operations	<p>Part III is amended by deleting the words " within thirty days to the Commissioner" appearing in paragraph 11(1) and substituting therefor the words " to the Commissioner on or before the twentieth day of the month following the month in which the deduction is made".</p>	35	11 th June 2010