

LAWS OF KENYA

THE INCOME TAX ACT

CHAPTER 470

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CHAPTER 470**THE INCOME TAX ACT****ARRANGEMENT OF SECTIONS**

Part I – PRELIMINARY	9
1. Short title and commencement	9
2. Interpretation	9
Part II – IMPOSITION OF INCOME TAX	22
3. Charge of tax	22
4. Income from businesses	23
4A. Income from businesses where foreign exchange loss or gain is realized ..	25
4B. Export processing zone enterprise	26
5. Income from employment, etc.	26
6. Income from the use of property	33
6A. Imposition of residential rental Income Tax	33
7. Income from dividends	34
7A. Dividend distributed out of untaxed gains or profits	34
7B. Repratiated income	35
8. Income from pensions, etc.	35
9. Income of certain non-resident persons deemed derived from Kenya	39
10. Income from management or professional fees, royalties, interest and rents	39
11. Trust income, etc., deemed income of trustee, beneficiary, etc.	40
12. Imposition of instalment tax	41
12A. Imposition of advance tax	42
12B. Imposition of fringe benefit Tax	42
12C. Turnover and presumptive tax	43
12D. Minimum tax	44
12E. Digital service tax	44
12F. Digital asset tax	45
Part III – EXEMPTION FROM TAX	45
13. Certain income exempt from tax, etc.	45
14. Interest on Government loans, etc., exempt from tax	46
Part IV – ASCERTAINMENT OF TOTAL INCOME	46
15. Deductions allowed	46

16. Deductions not allowed	52
17. Ascertainment of income of farmer in relation to stock	55
17A. Repealed	57
18. Ascertainment of gains or profits of business in relation to certain non-resident persons	57
18A. Ascertainment of gains and profits of business in a preferential tax regime	58
18B. Application of sections 18C, 18D, 18E and 18F	59
18C. Notification to the Commissioner	59
18D. Filing of country-by-country report, master file and local file	60
18E. Offences and penalties	62
18F. Definitions	63
19. Ascertainment of income of insurance companies	64
19A. Co-operative societies	68
20. Collective investment schemes	69
21. Members' clubs and trade associations	69
22. Purchased annuities other than retirement annuities, etc.	70
22A. Deductions in respect of contributions to registered pension or provident funds	71
22B. Deductions in respect of registered individual retirement funds	74
22C. [Repealed by Act No. 8 of 2020, s. 6.]	
23. Transactions designed to avoid liability to tax	74
24. Avoidance of tax liability by non-distribution of dividends	75
25. Income settled on children	75
26. Income from certain settlements deemed to be income of settlor	77
27. Accounting periods not coinciding with year of income, etc.	79
28. Income and expenditure after cessation of business	80
28A. Special Operating Framework Arrangement	80
Part V – PERSONAL RELIEF	80
29. General	80
30. Personal relief	81
30A. Affordable housing relief	81
31. Insurance relief	82
31A. Post-retirement medical fund relief	83

32. [Deleted by Act No. 8 of 1991, s. 62.]	
33. [Repealed by Act No. 8 of 1991, s. 62.]	
Part VI – RATES, DEDUCTIONS AND SET-OFF OF TAX AND DOUBLE TAXATION RELIEF	83
34. Rates of tax	83
34A. [Repealed by Act No. 8 of 1978, s. 9(k).]	85
35. Deduction of tax from certain income	85
36. Deduction of tax from annuities, etc., paid under a will, etc.	90
37. Deductions of tax from emoluments	90
37A. Penalty for failure to make deductions under section 35, 36 or 37	91
38. Application to Government	92
39. Set-off of tax	92
39A. [Repealed by Act No. 8 of 2009, s. 26.]	
39B. Set-off tax rebate for apprenticeships	93
40. [Repealed by Act No. 8 of 1978, s. 9(m).]	
41. Special arrangements for relief from double taxation	93
41A. Agreements for exchange of information	93
42. Computation of credits under special arrangements	94
43. Time limit	95
Part VII – PERSONS ASSESSABLE	95
44. Wife's income, etc.	95
45. [Repealed by Act No. 4 of 2023, s. 22.]	
46. Income of incapacitated person	95
47. Income of non-resident person	95
48. Income of deceased person, etc.	95
49. Liability of joint trustees	96
50. Liability of person in whose name income of another person assessed	96
51. Indemnification of representative	96
51A. [Repealed by Act No. 38 of 2016, s. 11.]	
Part VIII – RETURNS AND NOTICES	96
52. Returns of income and notice of chargeability	96
52A. [Deleted by Act No. 8 of 1996, s. 40.]	
52B. Final return with self-assessment	97
53. [Repealed by Act No. 16 of 2014, s. 13.]	

54. Documents to be included in return of income	98
54A. Keeping of records of receipts, expenses, etc.	100
54B. Supply of information upon change in particulars	100
55. Books and accounts	101
56. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
57. Return as to salaries, pensions, etc.	101
58. Return as to fees, commissions, royalties, etc.	102
59. Occupier's return of rent	102
60. Return of lodgers and inmates	103
61. Return of income received on account of other persons	103
62. Return as to income exempt from tax	103
63. Return in relation to settlements	103
64. Return in relation to registered pension fund, etc.	104
65. Return of annuity contract benefits	104
66. Return of resident company dividends	104
67. Return as to interest paid or credited by banks, etc.	104
68. Return as to dividends paid by building societies	105
69. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
70. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
71. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
72. [Repealed by Act No. 38 of 2016, s. 12.]	
72A. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
72B. Penalty for the negligence of authorized tax agent	106
72C. Penalty on underpayment of instalment tax	106
72D. [Repealed by Act No. 23 of 2019, s. 13.]	
Part IX – ASSESSMENTS	106
73. Assessments	106
74. [Repealed by Act No. 16 of 2014, s. 17.]	
74A. Instalment assessment	107
74B. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
75. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
75A. [Repealed by Act No. 38 of 2016, s. 13.]	
75B. [Deleted by Act No. 29 of 2015, 2nd Sch.]	

76. Assessment not to be made on certain employees	107
76A. Assessment not to be made on certain incomes	108
77. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
78. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
79. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
80. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
81. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
Part X – OBJECTIONS, APPEALS AND RELIEF FOR MISTAKES	108
82. [Repealed by Act No. 40 of 2013, s. 42.]	
83. [Repealed by Act No. 40 of 2013, s. 42.]	
84. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
85. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
86. Deleted by Act No. 29 of 2015, 2nd Sch.	
87. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
88. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
89. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
90. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
91. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
91A. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
Part XI – COLLECTION, RECOVERY AND REPAYMENT OF TAX	108
92. Time within which payment is to be made	108
92A. Due date for payment of tax under self-assessment	109
93. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
94. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
95. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
95A. [Repealed by Act No. 4 of 1993, s. 56.]	
96. [Deleted by Act No. 4 of 1993, s. 56.]	
96A. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
97. Deceased persons	110
98. [Repealed by Act No. 38 of 2016, s. 14.]	
99. [Repealed by Act No. 9 of 2000, s. 53.]	
100. [Deleted by Act No. 9 of 2000, s. 53.]	
101. [Deleted by Act No. 29 of 2015, 2nd Sch.]	

102. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
103. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
104. Collection of tax from ship owner, etc.	110
105. [Repealed by Act No. 38 of 2016, s. 15.]	
106. Repayment of tax in respect of income accumulated under trusts	111
Part XII – OFFENCES AND PENALTIES	111
107. General penalty	111
108. [Repealed by Act No. 15 of 2017, s. 14.]	
109. Failure to comply with notice, etc.	111
110. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
111. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
112. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
113. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
114. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
115. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
116. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
117. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
118. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
119. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
120. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
121. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
Part XIII – ADMINISTRATION	112
122. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
123. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
123A. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
123B. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
123C. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
124. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
125. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
126. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
Part XIV – MISCELLANEOUS PROVISIONS	113
127. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
127A. [Deleted by Act No. 29 of 2015, 2nd Sch.]	

127B. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
127C. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
127D. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
127E. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
128. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
129. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
130. Rules	113
131. Exemption from stamp duty	113
132. [Deleted by Act No. 29 of 2015, 2nd Sch.]	
133. Repeals and transitional	113
FIRST SCHEDULE [ss. 13 and 14]	115
SECOND SCHEDULE [ss. 4, 5 and 15]	122
THIRD SCHEDULE [ss. 29, 30, 31, 32, 33, 34 and 35]	127
FOURTH SCHEDULE [ss. 15 and 35]	135
FIFTH SCHEDULE [s. 2]	136
SIXTH SCHEDULE [s. 133]	137
SEVENTH SCHEDULE	139
EIGHTH SCHEDULE [ss. 3 and 15]	139
NINTH SCHEDULE [s. 23]	149
TENTH SCHEDULE [s. 17A]	162
ELEVENTH SCHEDULE [s. 4B]	163
TWELFTH SCHEDULE [s. 12]	164
THIRTEENTH SCHEDULE	167

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

[Act No. 16 of 1973, Act No. 13 of 1975, Act No. 2 of 1975, Act No. 7 of 1976, Act No. 11 of 1976, Act No. 12 of 1977, Act No. 16 of 1977, Act No. 8 of 1978, Act No. 13 of 1978, Act No. 13 of 1979, Act No. 6 of 1981, Act No. 18 of 1979, Act No. 12 of 1980, Act No. 1 of 1982, Act No. 10 of 1980, Act No. 8 of 1983, Act No. 14 of 1982, Act No. 10 of 1988, Act No. 18 of 1984, Act No. 13 of 1984, Act No. 8 of 1985, Act No. 8 of 1989, Act No. 10 of 1986, Act No. 10 of 1987, Act No. 9 of 1992, Act No. 10 of 1990, Act No. 3 of 1988, Act No. 9 of 1989, L.N. 342/1989, Act No. 20 of 1989, Act No. 21 of 1990, Act No. 7 of 1990, Act No. 8 of 1991, Act No. 4 of 1993, Act No. 6 of 1994, Act No. 4 of 2004, Act No. 13 of 1995, Act No. 8 of 1996, Act No. 9 of 2000, Act No. 4 of 1999, Act No. 6 of 2001, Act No. 7 of 2002, Act No. 15 of 2003, Act No. 6 of 2005, Act No. 10 of 2006, Act No. 9 of 2007, Act No. 8 of 2008, Act No. 8 of 2009, Act No. 10 of 2010, Act No. 4 of 2012, Act No. 57 of 2012, Act No. 38 of 2013, Act No. 16 of 2014, Act No. 40 of 2013, L.N. 32/2015, Act No. 14 of 2015, Act No. 29 of 2015, L.N. 12/2016, Act No. 38 of 2016, Act No. 15 of 2017, Act No. 11 of 2017, Act No. 9 of 2018, Act No. 10 of 2018, Act No. 23 of 2019, Act No. 1 of 2020, Act No. 2 of 2020, Act No. 8 of 2020, Act No. 22 of 2020, Act No. 8 of 2021, Act No. 22 of 2022, Act No. 4 of 2023, L.N. 54/2024, Act No. 2 of 2024.]

PART I – PRELIMINARY**Short title and commencement**

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

Interpretation

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

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

"actuary" means–

(a) a Fellow of the Institute of Actuaries in England; or of the Faculty of Actuaries in Scotland; or of the Society of Actuaries in the United States of America; or of the Canadian Institute of Actuaries; or

(b) such other person having actuarial knowledge as the Commissioner of Insurance may approve;

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

"annuity contract" means a contract providing for the payment to an individual of a life annuity, and

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

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

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

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

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

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

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

"child relief" *deleted by Act No. 12 of 1977, s. 5;*

"collective investment scheme" has the meaning assigned to it in section 2 of the Capital Markets Act (Cap. 485A);

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

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

"Commissioner" means—

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

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

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

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

"contract of service" means an agreement, whether oral or in writing, whether expressed or implied, to employ or to serve as an employee for any period of time,

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

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

"control", in relation to a person, means–

(a) that the person, directly or indirectly, holds at least twenty per cent of the voting rights in a company;

(b) a loan advanced by the person to another person constitutes at least seventy per cent of the book value of the total assets of the other person excluding a loan from a financial institution that is not associated with the person advancing the loan;

(c) a guarantee by the person for any form of indebtedness of another person constitutes at least seventy per cent of the total indebtedness of the other person excluding a guarantee from a financial institution that is not associated with the guarantor;

(d) the person appoints more than half of the board of directors of another person or at least one director or executive member of the governing board of that person;

(e) the person is the owner of or has the exclusive rights over the know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of a similar nature, on which another person is wholly dependent for the manufacture or processing of goods or articles or business carried on by the other person;

(f) the person or a person designated by that person–

(i) supplies at least ninety per cent of the supply of the purchases of another person; and

(ii) upon assessment, the Commissioner deems influence in the price or other conditions relating to the supply of the purchases of another person;

(g) the person purchases or designates a person–

(i) to purchase at least ninety per cent of the sales of another person; and

(ii) upon assessment, the Commissioner deems influences in the price or any other conditions of the sales of another person;

(h) the person has any other relationship, dealing or practice with another person which the Commissioner may deem to constitute control;

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

"Court" means the High Court;

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

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

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

"demurrage charges" *deleted by Act No. 23 of 2019, s. 2.;*

"digital content monetisation" means offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in any of the following forms –

(a) advertisement on websites, social media platforms or similar networks by partnering with brands including endorsements from sellers of such brands;

(b) sponsorship where a brand owner pays a content creator for content creation and promotion;

(c) affiliate marketing where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed;

(d) subscription services where the audience pays a periodic fee to access the content and support the content creator;

(e) offering for use a logo, brand or catchphrase associated with the content creator merchandise sales eBooks, course or software;

(f) membership programmes for exclusive content including early access;

(g) licensing the content including photographs, music or other businesses or individuals for use in the user's own projects; or

(h) a content creator earns a commission or fees from crowd funding;

"director" means–

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

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

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

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

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

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

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

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

"export processing zone enterprise" has the meaning assigned to it by the Export Processing Zones Act (Cap. 517);

"fair market value" means the comparable market price available in an open and unrestricted market between independent parties acting at arm's length and under no compulsion to transact, which is expressed in terms of money or money's worth;

"family relief" *deleted by Act No. 8 of 1996, s. 27;*

"financial derivative" means a financial instrument the value of which is linked to the value of another instrument underlying the transaction which is to be settled at a future date;

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

"immovable property" includes–

(a) land, whether covered by water or not, any estate, rights, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property; and

(b) a mining right, an interest in a petroleum agreement, mining information or petroleum information;

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

"individual" means a natural person;

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

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

"infrastructure bond" means a bond issued by the Government for the financing of a strategic public infrastructure facility including a road, hospital, port, sporting facility, water and sewerage system, a communication network or energy project;

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

"insurance relief" *deleted by Act No. 8 of 1996, s. 27;*

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

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

"investee company" has the meaning assigned to it under the Capital Markets Act (Cap. 485A) and the regulations made thereunder;

"Islamic finance arrangement" means all financial arrangements, including transactions, instruments, products or related activities that are structured in accordance with Islamic law;

"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 (Cap. 312);

"local committee" means a local committee established under section 82 of this Act;

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

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

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

"married relief" *deleted by Act No. 12 of 1977, s. 5;*

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

"natural resource income" means–

(i) an amount including a premium or such other like amount paid as consideration for the right to take minerals or a living or nonliving 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;

"oil company", *deleted by Act No. 16 of 2014, s. 2;*

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

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

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

"pension fund" means any fund for the payment of pensions or other similar benefits to employees on retirement, or to the dependants of employees on the

death of such employees and "registered pension fund" means one which has been registered with the Commissioner in such manner as may be prescribed;

"pensionable income" means—

(a) in relation to a member of a registered pension or provident fund or of an individual eligible to contribute to a registered individual retirement fund, the employment income specified in section 3(2)(a)(ii) subjected to deduction of tax under section 37;

(b) in the case of an individual eligible to contribute to a registered individual retirement fund, the gains or profits from business subject to tax under section 3(2)(a)(i) earned as the sole proprietor or as a partner of the business:

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

"permanent establishment" includes—

(a) a fixed place of business through which business is wholly or partly carried on and includes a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources, a warehouse in relation to a person whose business is providing storage facilities to others, a farm, plantation or other place where agricultural, forestry plantation or related activities are carried on and a sales outlet;

(b) a building site, construction, assembly or installation project or any supervisory activity connected to the site or project, but only if it continues for a period of more than one hundred and eighty-three days:

Provided that for the purpose of determining whether the period specified in this paragraph has been exceeded—

(i) where a person carries on activities at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed thirty days but do not exceed one hundred and eighty-three days; and

(ii) connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding thirty days, by one or more enterprises closely related to the first-mentioned enterprise, the different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project;

(c) the provision of services, including consultancy services, by a person through employees or other personnel engaged for that purpose, but only where the services or connected business in Kenya, continue for a period of, or periods exceeding in the aggregate, ninety-one days in any twelve-month period commencing or ending in the year of income concerned;

(d) an installation or structure used in the exploration for natural resources:

Provided that the exploration continues for a period of not less than ninety-one days;

(e) a dependent agent of a person who acts on their behalf in respect of any activities which that person undertakes in Kenya including habitually concluding contracts, or playing the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the person,

but excludes the following activities where the activities are of a preparatory or auxiliary character–

(i) the use of facilities solely for the purpose of storage, or display of goods or merchandise belonging to the enterprise;

(ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, or display;

(iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(v) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity; and

(vi) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (i) to (v).

"permanent home" means a place where an individual resides or which is available to that individual for residential purposes in Kenya, or where in the opinion of the Commissioner the individual's personal or economic interests are closest;

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

"personal relief" means–

(a) the personal relief provided for under Part V; and

(b) the relief mentioned in section 30;

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

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

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

"provisional return of income" *deleted by Act No. 16 of 2014, s. 2;*

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

"qualified institution" means a bank licensed under the Banking Act (Cap. 488), or an insurer registered under the Insurance Act (Cap. 487), or such other financial institution as may be approved under the Retirement Benefits Act, (Cap. 197);

"qualifying assets", in respect of a registered individual retirement fund, means time deposits, treasury bills, treasury bonds, securities traded on any securities exchange approved under the Capital Markets Act (Cap. 485A) and such other categories of assets as may be prescribed in the investment guidelines issued under the Retirement Benefits Act (Cap. 197);

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

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

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

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 Markets Act (Cap. 485A);

"registered annuity contract" means one which has been registered with the Commissioner in such manner as may be prescribed;

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

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

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

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

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

"related person" means, in the case of two persons where a person who participates directly or indirectly in the management, control or capital of the business of another person;

"resident", when applied in relation–

(a) to an individual, means–

(i) that he has a permanent home in Kenya and was present in Kenya for any period in any particular year of income under consideration; or

(ii) that he has no permanent home in Kenya but–

(A) was present in Kenya for a period or periods amounting in the aggregate to 183 days or more in that year of income; or

(B) was present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income;

(b) to a body of persons, means–

(i) that the body is a company incorporated under a law of Kenya; or

(ii) that the management and control of the affairs of the body was exercised in Kenya in a particular year of income under consideration; or

(iii) that the body has been declared by the Cabinet Secretary, by notice in the *Gazette*, to be resident in Kenya for any year of income;

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

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

"Retirement Benefits Authority" means the Authority by that name established under the Retirement Benefits Act (Cap. 197);

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

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

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

(b) any cinematograph film, including film or tape for radio or television broadcasting; or

(c) any patent, trade mark, design or model, plan, formula or process; or

(d) any industrial, commercial or scientific equipment,

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

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

"single relief" *deleted by Act No. 8 of 1996, s. 27;*

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

"special single relief" *deleted by Act No. 8 of 1991, s. 52;*

"specified mineral" *deleted by Act No. 16 of 2014, s. 2;*

"Sukuk" has the meaning assigned to it in the Public Finance Management Act (Cap. 412A);

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

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

"telecommunication operator" means any person licensed as such under the Kenya Information and Communications Act, (Cap. 411A);

"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 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.

"Tribunal" means the tribunal established under section 83;

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

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

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

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

"wife's employment income" means gains or profits from employment arising from a contract of service which is chargeable to tax under section 3(2)(a)(ii) and pensions, lump sums and withdrawals from a registered fund, public pension scheme or registered individual retirement fund which are chargeable to tax under section 3(2)(c), of a woman living with her husband, excepting income derived by her as a trustee or manager of a settlement created by her husband the income of which is deemed under section 25 or 26 to be the income of the settler or income derived by her as an employee of—

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

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

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

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

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

"winnings" means the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act (Cap. 131), excluding the amount staked or wagered in that transaction;

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

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

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

[Act No. 7 of 1976, s. 2, Act No. 12 of 1977, s. 5, Act No. 8 of 1978, s. 9, Act No. 12 of 1980, s. 3, Act No. 14 of 1982, s. 16, Act No. 10 of 1987, s. 31, Act No. 10 of 1988, s. 28, Act No. 9 of 1989, 2nd Sch., Act No. 10 of 1990, s. 38, Act No. 8 of 1991, s. 52, Act No. 9 of 1992, s. 35, Act No. 6 of 1994, s. 33, Act No. 13 of 1995, s. 73, Act No. 8 of 1996, s. 27, Act No. 8 of 1997, s. 27, Act No. 4 of 1999, s. 32, Act No. 9 of 2000, s. 40, Act No. 6 of 2001, s. 42, Act No. 7 of 2002, s. 37, Act No. 15 of 2003, s. 29, Act No. 4 of 2004, s. 45, Act No. 6 of 2005, s. 20, Act No. 10 of 2006, s. 16, Act No. 8 of 2008, s. 23, Act No. 8 of 2009, s. 16, Act No. 4 of 2012, s. 9, Act No. 57 of 2012, s. 13, Act No. 38 of 2013, s. 9, Act No. 16 of 2014, s. 2, Act No. 14 of 2015, s. 7, Act No. 38 of 2016, s. 2, Act No. 15 of 2017, s. 11, Act No. 9 of 2018, Sch., Act No. 10 of 2018, s. 2, Act No. 23 of 2019, s. 2, Act No. 2 of 2020, Sch, Act No. 8 of 2021, s. 2, Act No. 22 of 2022, s. 2, Act No. 4 of 2023, s. 2.]

PART II – IMPOSITION OF INCOME TAX

Charge of 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.

(2)

Subject to this Act, income upon which tax is chargeable under this Act is income in respect of–

(a) gains or profits from–

- (i) any business, for whatever period of time carried on;
- (ii) any employment or services rendered;
- (iii) any right granted to any other person for use or occupation of property;

(b) dividends or interest;

(c) (i) a pension, charge or annuity; and

- (ii) any withdrawals from, or payments out of, a registered pension fund or a registered provident fund or a registered individual retirement fund; and

(iii) any withdrawals from a registered home ownership savings plan;

(ca) income accruing from a business carried out over the internet or an electronic network including through a digital marketplace;

(d) *deleted by Act No. 14 of 1982, s. 17;*

(e) an amount deemed to be the income of any person under this Act or by rules made under this Act;

(f) gains accruing in the circumstances prescribed in, and computed in accordance with, the Eighth Schedule;

(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;

(h) a natural resource income; and

(i) gains from financial derivatives, excluding financial derivatives traded at the Nairobi Securities Exchange.

(2A) The Cabinet Secretary shall make regulations to provide for the mechanisms of implementing the provisions of subsection (2)(ca).

(3)

For the purposes of this section—

(a) "person" does not include a partnership;

(b) a bonus or interest paid by a designated cooperative society, as defined under section 19A, shall be deemed to be a dividend;

(ba) "digital marketplace" means an online or electronic platform which enables users to sell or provide services, goods or other property to other users;

(c) for the purposes of subsection (2)(g) and section 15(5A) –

(i) *deleted by Act No. 4 of 2023, s. 3.*

(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

(iii) 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.

[Act No. 13 of 1975, s. 2, Act No. 8 of 1978, s. 9, Act No. 14 of 1982, s. 17, Act No. 10 of 1990, s. 39, Act No. 8 of 1991, s. 53, Act No. 9 of 1992, s. 36, Act No. 4 of 1993, s. 35, Act No. 13 of 1995, s. 74, Act No. 57 of 2012, s. 14, Act No. 16 of 2014, s. 3, Act No. 23 of 2019, s. 3, Act No. 8 of 2021, s. 3, Act No. 22 of 2022, s. 3, Act No. 4 of 2023, s. 3.]

Income from businesses

4.

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

(a) where a business is carried on or exercised partly within and partly outside Kenya by a resident person, the whole of the gains or profits from such business shall be deemed to have accrued in or to have been derived from Kenya;

(b) the gains or profits of a partner from a partnership shall be the sum of–

(i) any remuneration payable to him by the partnership together with any interest on capital so payable, less any interest on capital payable by him to the partnership; and

(ii) his share of the total income of the partnership, calculated after deducting the total of any remuneration and interest on capital payable to any partner by the partnership and after adding any interest on capital payable by any partner to the partnership,

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

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

(c) any sum received under any insurance against loss of profits, or received by way of damages or compensation for loss of profits, shall be deemed to be gains or profits of the year of income in which it is received;

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

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

(e) where under the Second Schedule it is provided that a balancing charge shall be made, or a sum shall be treated as a trading receipt, for any year of income, the amount thereof shall be deemed to be gains or profits of that year of income;

(f) in computing the gains or profits of a "licensee" "contractor" or "subcontractor" as defined in the Ninth Schedule, the provisions of that Schedule shall apply.

[Act No. 18 of 1984, s. 2, Act No. 8 of 2009, s. 17, Act No. 4 of 2012, s. 10, Act No. 16 of 2016, s. 4.]

Income from businesses where foreign exchange loss or gain is realized

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

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) and claimed over a period of not more than five years from the date the loss was realized by a person whose gross interest paid or payable to a non- resident person exceeds thirty per cent of the person's earnings before interest, taxes, depreciation, and amortization in any year of income;

(1A) *Deleted by Act No. 4 of 2023, s. 4(b).*

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

"a" is the amount of foreign currency received, paid or otherwise computed with respect to a foreign currency asset or liability in the transaction in which the foreign exchange gain or loss is realized;

r^1 is the applicable rate of exchange for that foreign currency ("a") at the date of the transaction in which the foreign exchange gain or loss is realized;

r^2 is the applicable rate of exchange for that foreign currency ("a") at the date on which the foreign currency asset or liability was obtained or established or on the 30th December, 1988, whichever date is the later.

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

(4) For the purposes of this section—

"control" *deleted by Act No. 8 of 2021, s. 4.;*

"company" does not include a bank or a financial institution licensed under the Banking Act (Cap. 488), or non-deposit taking microfinance businesses under the Microfinance Act (Cap. 493C), entities licensed under the Hire Purchase Act (Cap. 507) and persons exempt under section 16(2)(j)(iii);

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

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

[Act No. 10 of 1988, s. 29, Act No. 4 of 1993, s. 36, Act No. 8 of 2008, s. 24, Act No. 8 of 2009, s. 18, Act No. 8 of 2021, s. 4, Act No. 22 of 2022, s. 4, Act No. 4 of 2023, s. 4]

Export processing zone enterprise

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

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

Income from employment, etc.

5. (1)

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

(a) a person who is, or was at the time of the employment or when the services were rendered, a resident person in respect of any employment or services rendered by him in Kenya or outside Kenya; or

(b) a non-resident person in respect of any employment with or services rendered to an employer who is resident in Kenya or the permanent establishment in Kenya of an employer who is not so resident,

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

(2)

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

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

Provided that—

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

(ii) where the Commissioner is satisfied that subsistence, travelling, entertainment or other allowance represents solely the reimbursement to the recipient of an amount expended by him wholly and exclusively in the production of his income from the employment or services rendered then the calculation of the gains or profits of the recipient shall exclude that allowance or expenditure;

(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; and

(iv) notwithstanding the provisions of subparagraph (ii), where such an amount is received by an employee as payment of travelling allowance to perform official duties, the standard mileage rate approved by the Automobile Association of Kenya shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of the employee's gains and profits.

(b) save as otherwise expressly provided in this section, the value of a benefit, advantage, or facility of whatsoever nature the aggregate value whereof is not less than thirty six thousand shillings granted in respect of employment or services rendered;

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

Provided that—

(i) where the contract is for a specified term, any amount received as compensation on the termination of the contract shall be deemed to have accrued evenly over the unexpired period of the contract;

(ii) where the contract is for an unspecified term and provides for compensation on the termination thereof, the compensation shall be deemed to have accrued in the period immediately following the termination at a rate equal to the rate per annum of the gains or profits from the contract received immediately prior to termination;

(iii) where the contract is for an unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination of the contract shall be deemed to have accrued evenly in the three years immediately following such termination;

(d) any balancing charge under Part II of the Second Schedule;

(e) the value of premises provided by an employer for occupation by his employee for residential purposes;

(f) an amount paid by an employer as a premium for an insurance on the life of his employee and for the benefit of that employee or any of his dependants:

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.

(fa) club entrance and subscription fees allowed against the employer's income;

(g) *deleted by Act No. 6 of 1994, s. 34.*

(2A)

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

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

(ii) zero:

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

(b) For the purposes of this subsection—

"employee" means any person who is not a beneficial owner of or able either directly or indirectly or through the medium of other companies or by any other means to control more than five per cent of the share capital or voting power of that company;

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

"prescribed rate of interest" means the following:

(i) in the year of income commencing on the 1st January, 1990, 6 per cent;

(ii) in the year of income commencing on the 1st January, 1991, 8 per cent;

(iii) in the year of income commencing on the 1st January, 1992, 10 per cent;

(iv) in the year of income commencing on the 1st January, 1993, 12 per cent;

(v) in the year of income commencing on the 1st January, 1994, 15 per cent; and

(vi) in the year of income commencing on or after the 1st January, 1995, 15% or such interest rate based on the market lending rates as the Commissioner may from time to time prescribe, to cover a period of not less than six months but not more than one year, whichever is the lower.

"relative of a director or an employee" means—

(i) his spouse;

(ii) his son, daughter, brother, sister, uncle, aunt, nephew, niece, stepfather, step-mother, step-child, or in the case of an adopted child his adopter or adopters; or

(iii) the spouse of any such relative as is mentioned in subparagraph (ii).

(2B)

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

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

Provided that–

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

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

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

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

(3)

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

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

Provided that for the purposes of this paragraph–

- (i) "plantation" shall not include a forest or timber plantation; and
 - (ii) "agricultural employee" shall not include a director other than a whole time service director;
- (d) in the case of any other employee, an amount equal to fifteen per centum of the gains or profits from his employment, excluding the value of those premises

or the rent paid by the employer if paid under an agreement made at arm's length with a third party, whichever is the higher:

Provided that—

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

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

Provided that—

(i) where a person occupies premises for part only of a year of income, the value ascertained under the foregoing provisions shall be reduced by that proportion which is just and reasonable having regard to the period of occupation and the yearly rate of gains or profits from employment;

(ii) where the employee pays rent to his employer for premises, the value ascertained under the foregoing provisions shall be reduced by the amount of rent;

(iii) where part only of any premises is so provided, the Commissioner may reduce the value ascertained under the foregoing provisions to the amount which he considers just and reasonable;

(iv) where the gains or profits from a person's employment, excluding the value of the premises provided by the employer, exceed six hundred thousand shillings in the year, the value of the premises determined under this subsection shall be subject to the limit of—

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

(b) the fair market rental value of the premises in that year where the premises are owned by the employer.

(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 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 Cabinet Secretary may, from time to time, prescribe;

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

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

- (i) to an unregistered pension scheme, unregistered provident fund or unregistered individual retirement fund; or
- (ii) to a registered pension scheme, a registered provident fund or a registered individual retirement fund in excess of the amount specified in section 22A or 22B;

(d) educational fees of employee's dependants or relatives disallowed under section 16(2)(a)(iv) which have been taxed in the hands of the employer;

(e) fringe benefits subject to tax under section 12B;

(f) the value of meals served to 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) "low income employee" *deleted by Act No. 16 of 2014, s. 5(c)*.

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

Provided that–

- (a) in the case of an employee share ownership plan, the value of the benefit shall be the difference between the offer price, per share, at the date the option is granted by the employer, and the market value, per share on the date when the employee exercises the option;
- (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 be deemed to have accrued on the date the employee exercises the option;
- (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 option was exercised by the employee; 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, when the option is exercised;
- (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.

(7)

Where an employee is offered company shares in lieu of cash emoluments by an eligible start-up, the taxation of the benefit from the shares allocated to that person by virtue of employment shall be deferred and taxed within thirty days of the earlier of–

- (a) the expiry of five years from the end of the year of the award of the shares;

- (b) the disposal of the shares by the employee; or
- (c) the date the employee ceases to be an employee of the eligible start-up:

Provided that–

- (i) this subsection shall not apply to any cash emoluments or other benefits in kind offered to an employee by virtue of the employment;
- (ii) the benefit shall be deemed to accrue at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c);
- (iii) the value of the taxable benefit shall be the fair market value of the shares at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c); or
- (iv) where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.

(8)

For the purposes of subsection (7), “eligible start-up company” means a business incorporated in Kenya that–

- (a) has an annual turnover of not more than one hundred million shillings;
- (b) does not carry on management, professional or training business;
- (c) has not been formed as a result of splitting or restructuring of an existing entity; and
- (d) has been in existence for a period of not more than five years.

[Act No. 8 of 1978, s. 9, Act No. 13 of 1979, s. 5, Act No. 10 of 1987, s. 32, Act No. 8 of 1989, s. 17, Act No. 10 of 1990, s. 41, Act No. 8 of 1991, s. 54, Act No. 9 of 1992, s. 37, Act No. 4 of 1993, s. 37, Act No. 6 of 1994, s. 34, Act No. 13 of 1995, s. 75, Act No. 8 of 1996, s. 28, Act No. 8 of 1997, s. 28, Act No. 5 of 1998, s. 30, Act No. 6 of 2001, s. 43, Act No. 7 of 2002, s. 38, Act No. 15 of 2003, s. 30, Act No. 4 of 2004, s. 46, Act No. 6 of 2005, s. 21, Act No. 10 of 2006, s. 17, Act No. 9 of 2007, s. 18, Act No. 8 of 2008, s. 25, Act No. 10 of 2010, s. 21, Act No. 4 of 2012, s. 11, Act No. 38 of 2013, s. 10, Act No. 16 of 2014, s. 5, Act No. 22 of 2022, s. 5, Act No. 4 of 2023, s. 5]

Income from the use of property

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

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

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

Imposition of residential rental Income Tax

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 two hundred and eighty-eight thousand shillings but does not exceed fifteen million shillings during any year of income.

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 Cabinet Secretary may, by notice in the *Gazette*, prescribe regulations for the better carrying out the provisions of this section.

[Act No. 14 of 2015, s. 8, Act No. 38 of 2016, s. 3, Act No. 8 of 2020, s. 2.]

Income from dividends

7. (1)

For the purposes 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 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 person related 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 per cent of the voting power of the company paying the dividend, shall be deemed not to be income chargeable to tax.

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

[Act No. 2 of 1975, s. 5, Act No. 8 of 1978, s. 9, Act No. 9 of 1992, s. 38, Act No. 4 of 1993, s. 38, Act No. 6 of 1994, s. 35, Act No. 8 of 2008, s. 26, Act No. 10 of 2018, s. 3.]

Dividend distributed out of untaxed gains or profits

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:

Provided that this section shall not apply to income which is exempt under this Act.

[Act No. 10 of 2018, s. 4, Act No. 23 of 2019, s. 4.]

Repatriated income

7B. (1) A non-resident person who carries on business in Kenya through a permanent establishment shall pay tax on repatriated income for the year of income.

(2) The repatriated income under subsection (1) shall be computed using the following formula—

$$R = A_1 + (P - T) - A_2$$

Where—

R is the repatriated profit;

A₁ is the net assets at the beginning of the year;

P is the net profit for the year of income calculated in accordance with generally accepted accounting principles;

T is the tax payable on the chargeable income; and

A₂ is the net assets at the end of the year.

(3) The tax imposed under this section shall be in addition to tax chargeable on the income of the permanent establishment under section 4.

(4) For the purposes this section, “net assets” means the total book value of assets less total liabilities for the year of income and shall not include revaluation of assets.

[Act No. 4 of 2023, s. 6]

Income from pensions, etc.

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

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

(3)

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

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

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

(5)

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

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

(b) in the case of a withdrawal from a registered pension or individual retirement fund upon termination of employment, the lesser of–

(i) the first sixty thousand shillings per full year of pensionable service with that employer starting on the later of the date the pensionable service began, or, where the employee had previously received a lump sum payment from that same employer, the date the employee's pensionable service recommenced after receipt of that lump sum; or

(ii) the first six hundred thousand shillings; or

(c) in the case of a lump sum paid out of a registered provident fund (or a defined contribution registered fund deemed by the Commissioner to be a provident fund for the purposes of assessing under this paragraph accumulations for the payment of lump sums other than out of a pension) the total of–

(i) the lesser of the first six hundred thousand shillings or the first sixty thousand shillings per full year of pensionable service with that employer starting on the later of the date the pensionable service began or, where the employee had previously received a lump sum payment from that same employer, the date the employee's pensionable service recommenced after receipt of that lump sum; and

(ii) where the registered fund receives no further contributions after 1990 year of income, or where the accumulated funds based on contributions prior to the 1st January, 1991 and contributions after the 31st December, 1990 are segregated, all lump sum payments based on the contributions made prior to 1st January, 1991, or, in any other case, all benefits based on amounts accumulated in the fund on the 31st December, 1990:

Provided that the trustees or provident fund managers shall have informed the Commissioner in writing by 31st December, 1991 of the accumulated balances

and the members of the provident funds as of 31st December, 1990, the names of the registered funds, the names and addresses of 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;

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

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

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

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

(ii) the income thereof has been taxed.

(5A)

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

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

(b) the net accumulated funds on each account earn the average rate of return on all the assets in the fund at the accounting date for a year of income; and

(c) the net accumulated funds based on contributions prior to 1st January, 1991, are made up of the accumulated balances as at 31st December, 1990, less any withdrawals from the fund plus any investment income earned on the fund up to the accounting date for a year of income.

(6)

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

(a) the widow, widower or dependants shall qualify as a group for the same tax exempt amounts out of pension income and lump sums as are available under subsections (4) and (5) respectively as if such amounts had been received by the employee; and

(b) where the registered fund provides for no payment of retirement benefits other than the payment of a lump sum to an estate, the first one million four hundred thousand shillings of such a lump sum payment shall be deemed to be income not chargeable to tax as income of the estate or its direct beneficiaries.

(7)

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

(a) where such funds have been bequeathed to the spouse, the ownership of the fund may be transferred to the spouse; or

(b) where funds are bequeathed to his children under the age of eighteen years at the time of his death, such funds shall be included in the income of such children;

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

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

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

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

(10)

For the purposes of this subsection—

(a) pension and lumpsums paid from a public pension scheme, shall be deemed to be received from a registered pension fund or a registered provident fund, as the case may be;

(b) any surplus funds in respect of a registered pension fund or a registered provident fund withdrawn by or refunded to an employer shall be deemed to be the income of that employer.

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

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

Income of certain non-resident persons deemed derived from Kenya

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

Provided that all income of a non-resident shipping line including income from delay in taking delivery of goods or returning any of the equipment used for transportation of goods shall be deemed to be income 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 or profits from the business shall be the gross amount received for the transmission of messages which are transmitted by the apparatus established in or outside Kenya, whether or not those messages originate from Kenya, and such gains and profits shall be deemed to be income derived from Kenya.

(3) Where a resident person enters into a financial derivatives contract with a non-resident person, any gain accruing to the non-resident person from that arrangement shall be subject to tax at the rate specified in the Third Schedule.

(4) The provisions of subsection (3) shall be carried out in accordance with Regulations made by the Cabinet Secretary.

[No. Act 10 of 2006, s. 18, Act No. 9 of 2007, s. 19, Act No. 23 of 2019, s. 5, Act No. 22 of 2022, s. 6.]

Income from management or professional fees, royalties, interest and rents**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—

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

- (h) *deleted by Act No. 16 of 2014, s. 6(b);*
- (i) *deleted by Act No. 23 of 2019, s. 6(a);*
- (j) an insurance or reinsurance premium.
- (k) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services;

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

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 connexion with a business carried on or to be carried on, in whole or in part, in Kenya;
- (ii) this subsection shall not apply to any such payment made, or purported to be made, by the permanent establishment in Kenya of a non-resident person to that non-resident person except for deductions provided for by agreements under section 41;
- (iii) for the avoidance of doubt, the expression "non-resident person" shall include both head office and other offices of the non-resident person.

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

(3) Where a payment has been made to a non-resident person, withholding tax paid thereon shall not be refundable or available for deduction against the income where an audit adjustment has been made in respect of such payment.

[Act No. 13 of 1975, s. 2, Act No. 8 of 2008, s. 28, Act No. 8 of 2009, s. 21, Act No. 4 of 2012, s. 12, Act No. 57 of 2012, s. 15, Act No. 38 of 2013, s. 11, Act No. 16 of 2014, s. 6, Act No. 14 of 2015, s. 9, Act No. 38 of 2016, s. 4, Act No. 9 of 2018, Sch., Act No. 10 of 2018, s. 5, Act No. 23 of 2019, s. 6, Act No. 2 of 2020, Sch, Act No. 4 of 2023, s. 7]

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

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

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

(3)

Any amount, received as income in a year of income by any person beneficially entitled thereto from any trustee in his capacity as such, or paid out of income by the trustee on behalf of such person, shall, subject to this Act, be deemed to be income

of such, and to the extent that any such amount is received or so paid out of income chargeable to tax under this Act on that trustee it shall be deemed to be income–

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

(3A) *Deleted by Act No. 4 of 2023, s. 8*

(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.

[Act No. 8 of 1991, s. 56, Act No. 8 of 2021, s. 5, Act No. 4 of 2023, s. 8]

Imposition of instalment tax

12. (1)

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

- (a) if the minimum tax payable under section 12D is higher than the instalment tax under this section; and
- (b) if he has reasonable ground to believe that the whole of the tax payable by him in respect of those emoluments will be recovered under section 37.

(2)

The amount of instalment tax payable by any person for any current year of income shall be the lesser of –

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

(3) The amount of tax determined under either subsection (2)(a) or (b) shall be reduced by the aggregate of the tax that has been or will be paid in the current year by way of deduction under section 12A, 17A, 35 or 37.

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

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

[Act No. 14 of 1982, s. 18, Act No. 10 of 1988, s. 30, Act No. 10 of 1990, s. 43, Act No. 8 of 1991, s. 57, Act No. 13 of 1995, s. 77, Act No. 8 of 1997, s. 31, Act No. 38 of 2016, s. 5, Act No. 8 of 2020, s. 3.]

Imposition of advance tax

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

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

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

Imposition of fringe benefit 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:

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

(2) For the purpose of this section, the taxable value of a fringe benefit shall be—
in the case of a loan provided after 11th June, 1998, or a loan provided on or before 11th June, 1998 the terms or conditions of which are varied after 11th June, 1998, the greater of—

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

(ii) zero:

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

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

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

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

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

(6) For the purpose of this section—

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

"loan" includes a loan from an unregistered pension or provident fund;

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

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

Turnover and presumptive tax

12C. (1) Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable by any resident person whose turnover from business is more than one million shillings but does not exceed or is not expected to exceed twenty-five million shillings during any year of income.

(2) Despite subsection (1), a person who would otherwise be liable to pay turnover tax under this section 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.

(3)

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

(a) rental income;

(b) management or professional or training fees; or

(c) *Deleted by Act No. 2 of 2020, Sch;*

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

(4) A person subject to turnover tax under this section shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(5) *Deleted by Act No. 2 of 2020, Sch.*

(6) *Deleted by Act No. 2 of 2020, Sch.*

(7) A person subject to turnover tax under this section shall be required to keep records necessary for the determination and ascertainment of the tax in accordance with the Tax Procedures Act (Cap. 469A).

(8) For purposes of this section "tax period" means a calendar month.

[Act No. 10 of 2006, s. 20, Act No. 8 of 2008, s. 29, Act No. 10 of 2018, s. 6, Act No. 23 of 2019, s. 7, Act No. 2 of 2020, Sch, Act No. 4 of 2023, s. 9]

Minimum tax

12D. (1)

Notwithstanding any other provision of this Act, a tax to be known as minimum tax shall be payable by a person if—

- (a) that person's income is not exempt under this Act;
- (b) that person's income is not chargeable to tax under sections 5, 6A, 12C, the Eighth or the Ninth Schedules; or
- (c) the instalment tax payable by that person under section 12 is lower than the minimum tax.
- (d) *Deleted by Act No. 8 of 2021, s. 6(a).*
- (e) *Deleted by Act No. 8 of 2021, s. 6(a).*

(1A)

Notwithstanding the provisions of subsection (1), a person shall not pay minimum tax if that person—

- (a) is engaged in business whose retail price is controlled by the Government;
- (b) is engaged in insurance business;
- (c) is engaged in manufacturing and that person's cumulative investment in the preceding four years from assent is at least ten billion shillings;
- (d) is licensed under the Special Economic Zones Act (Cap. 517A); and
- (e) is engaged in distribution business whose income is wholly based on a commission.

(2) The tax payable under this section shall be paid in instalments which shall be due on the twentieth day of each period ending on the fourth, sixth, ninth and twelfth month of the year of income.

[Act No. 8 of 2020, s. 4, Act No. 22 of 2020, Sch., Act No. 8 of 2021, s. 6.]

Digital service tax

12E. (1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over the internet or an electronic network including through a digital marketplace:

Provided that this section shall not apply to a non-resident person with a permanent establishment in Kenya.

(2) A person subject to digital service tax shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the month in which the digital service was offered.

(3) Despite subsection (1), digital service tax shall not apply to income chargeable under section 9(2) or section 35.

[Act No. 8 of 2020, s. 4, Act No. 8 of 2021, s. 7, Act No. 22 of 2022, s. 7.]

Digital asset tax

12F. (1) Notwithstanding any other provision of this Act, a tax to be known as digital asset tax shall be payable by a person on income derived from the transfer or exchange of digital assets.

(2) The owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall deduct the digital asset tax and remit it to the Commissioner.

(3) A non-resident person who owns a platform on which digital assets are exchanged or transferred shall register under the simplified tax regime.

(4) A person who is required to deduct the digital asset tax shall, within five working days after making the deduction, remit the amount so deducted to the Commissioner together with a return of the amount of the payment, the amount of tax deducted, and such other information as the Commissioner may require.

(5)

For the purposes of this section –

(a) “digital asset” includes –

(i) anything of value that is not tangible and cryptocurrencies, token code, number held in digital form and generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and

(ii) a non-fungible token or any other token of similar nature, by whatever name called; and

(b) “income derived from transfer or exchange of a digital asset” means the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.

[Act No. 4 of 2023, s. 10.]

PART III – EXEMPTION FROM TAX

Certain income exempt from tax, etc.

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 Cabinet Secretary may, by notice in the *Gazette*, provide–

(a) that any income or class of income which accrued in or was derived from Kenya shall be exempt from tax to the extent specified in such notice;

(b) that any exemption under subsection (1) of this section shall cease to have effect either generally or to the extent specified in the notice.

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

[Act No. 13 of 1978, Sch.]

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

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

PART IV – ASCERTAINMENT OF TOTAL INCOME

Deductions allowed

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

(2)

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

(a) bad debts incurred in the production of such gains or profits which the Commissioner considers to have become bad, and doubtful debts so incurred to the extent that they are estimated to the satisfaction of the Commissioner to have become bad, during such year of income and the Commissioner may prescribe such guidelines as may be appropriate for the purposes of determining bad debts under this subparagraph;

(b) amounts to be deducted under the Second Schedule in respect of that year of income;

(bb) amounts to be deducted under the Ninth Schedule in respect of that year of income;

(c) any expenditure of a capital nature incurred during that year of income by the owner or occupier of farm land for the prevention of soil erosion;

(d) any expenditure of a capital nature incurred in that year of income by any person on legal costs and stamp duties in connexion with the acquisition of a lease, for a period not in excess of, or expressly capable of extension beyond, ninety-nine years, of premises used or to be used by him for the purposes of his business;

(e) any expenditure, other than expenditure referred to in paragraph (f) of this section, incurred in connection with any business before the date of commencement of that business where such expenditure would have been deductible under this section if incurred after such date, so, however, that the expenditure shall be deemed to have been incurred on the date on which such business commenced;

(f) in the case of the owner of premises, any sums expended by him during such year of income for structural alterations to the premises where such expenditure is necessary to maintain the existing rent:

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

(g) the amount considered by the Commissioner to be just and reasonable as representing the diminution in value of any implement, utensil or similar article, not being machinery or plant in respect of which a deduction may be made under the Second Schedule, employed in the production of gains or profits;

(g) expenditure incurred by a person carrying on a business in payment of Affordable Housing Levy as provided under section 5(b) of the Affordable Housing Act, 2024;

(h) *Deleted by Act No. 8 of 2020, s. 5;*

(i) in the case of gains or profits of the owner of any land from the sale of, or the grant of the right to fell, standing timber which was growing on such land at the time such owner acquired such land—

(i) where such land was acquired for valuable consideration, so much of the consideration as the Commissioner may determine to be just and reasonable as representing the cost of such standing timber; or

(ii) where no valuable consideration was given for the land, so much of such amount as the Commissioner may determine to be just and reasonable as representing the value of such standing timber at the time the owner acquired such land, as is attributable to such timber sold during such year of income;

(j) in the case of gains or profits from the sale of standing timber by a person who has purchased the right to fell such timber, so much of the price paid for such right as the Commissioner may determine to be just and reasonable as attributable to the timber sold during such year of income;

(k) *Deleted by Act No. 8 of 1997, s. 32;*

(l) any expenditure of a capital nature incurred in such year of income by the owner or tenant of any agricultural land, on clearing such land, or on clearing and planting thereon permanent or semi-permanent crops;

(m) *Deleted by Act No. 16 of 2014, s. 7(a);*

(n) any expenditure incurred by any person for the purposes of a business carried on by him being—

(i) expenditure of a capital nature on scientific research; or

(ii) expenditure not of a capital nature on scientific research; or

(iii) a sum paid to a scientific research association approved for the purposes of this paragraph by the Commissioner as being an association which has as its object the undertaking of scientific research related to the class of business to which such business belongs; or

(iv) a sum paid to any university, college, research institute or other similar institution approved for the purposes of this paragraph by such Commissioner for the scientific research as is mentioned in subparagraph (iii) of this paragraph;

(o) any sum contributed in such year of income by an employer to a national provident fund or other retirement benefits scheme established for employees throughout Kenya by the provisions of any written law;

(p) any expenditure on advertising in connexion with any business to the extent that the Commissioner considers just and reasonable; and for this purpose "expenditure on advertising" includes any expenditure intended to advertise or promote, whether directly or indirectly, the sale of the goods or services provided by that business;

(q) *Deleted by Act No. 13 of 1984, s. 19;*

(r) an amount equal to one-third of the total gains and profits from employment of an individual who is not a citizen of Kenya and—

(i) whose employer is a non-resident company or partnership trading for profit;

(ii) who is in Kenya solely for the performance of his duties in relation to his employer's regional office, which office has been approved for the purposes of this paragraph by the Commissioner;

(iii) who is absent from Kenya for the performance of those duties for a period or periods amounting in the aggregate to one hundred and twenty days or more in that year of income; and

(iv) whose gains and profits from that employment are not deductible in ascertaining the total income chargeable to tax under this Act of his employer or of any company or partnership which controls, or is controlled by, that employer;

(s) *Deleted by Act No. 8 of 2020, s. 5;*

(ss) *Deleted by Act No. 8 of 2020, s. 5;*

(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) *Deleted by Act No. 8 of 2020, s. 5.*

(v) *Deleted by Act No. 8 of 2020, s. 5.*

(w) any donation in that year of income to a charitable organization whose income is exempt from tax under paragraph 10 of the First Schedule to this Act, or to any project approved by the Cabinet Secretary responsible for matters relating to finance;

(x) expenditure of a capital nature incurred in that year of income, with the prior approval of the Cabinet Secretary, by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure;

(y) *deleted by Act No. 22 of 2022, s. 8.*

(z) expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports;

(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.

(ab) *deleted by Act No. 2 of 2020, Sch.*

(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 six financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him during that year of income for residential purposes:

Provided that—

(i) if any person occupies any premises for residential purposes for part only of a year of income the deduction under this paragraph shall be reduced accordingly; and

(ii) no person may claim a deduction under this paragraph in respect of more than one residence;

(c) *deleted by Act No. 14 of 1982, s. 19;*

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

(e) *deleted by Act No. 8 of 1978, s. 9;*

(f) the amount of any loss realized in computing, in accordance with paragraph 5(2), of the Eighth Schedule, gains chargeable to tax under section 3(2)(f); but the amount of any such loss incurred in a year of income shall be deducted only from gains under section 3(2)(f) in that year of income and, in so far as it has not already been deducted, from gains in subsequent years of income;

(g) in the case of a business which is a sole proprietorship, the cost of medical expenses or medical insurance cover incurred for the benefit of the proprietor, subject to a limit of one million shillings per year.

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

(4A) *Deleted by Act No. 22 of 2022, s. 8 (b).*

(5) Notwithstanding subsection (4), the Cabinet Secretary 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.

(5)

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

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

(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) *deleted by Act No. 14 of 2015, s. 10(c)(i)*;

(b) the amount computed according to the following formula–

A x 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 any activities in the fields of natural or applied science for the extension of human knowledge, and when applied to any particular business includes–

(i) any scientific research which may lead to, or facilitate, an extension of that business or of businesses in that class;

(ii) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business, or in businesses of that class;

(b) expenditure of a capital nature on scientific research does not include any expenditure incurred in the acquisition of rights in, or arising out of scientific research but, subject thereto, does include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research.

(7)

Notwithstanding anything contained in this Act–

(a) the gains or profits of a person derived from any one of the 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) of this section shall be construed so as to be mutually exclusive;

(d) gains chargeable to tax under section 3(2)(f) of this Act and losses referred to in subsection (3)(f) of this section shall not be deemed income or losses derived or resulting from specified sources for the purposes of this subsection;

(e) the specified sources of income are–

(i) rights granted to other persons for the use or occupation of immovable property;

(ii) employment (including former employment) of personal services for wages, salary, commissions or similar rewards (not under an independent contract of service), and a self-employed professional vocation;

(iii) *deleted by Act No. 4 of 2023, s. 11;*

(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);

(ivB) income of a licensee from one licence area or a contractor from one contract area as determined in accordance with the Ninth Schedule; and

(v) other sources of income chargeable to tax under section 3(2)(a), not falling within subparagraph (i), (ii), (iii) or (iv) of this paragraph.

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

[Act No. 2 of 1975, s. 5, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, Act No. 16 of 1977, Sch., Act No. 8 of 1978, s. 9, Act No. 6 of 1981, s. 5, Act No. 1 of 1982, s. 3, Act No. 14 of 1982, s. 19, Act No. 8 of 1983, s. 14, Act No. 13 of 1984, s. 19, Act No. 18 of 1984, s. 3, Act No. 8 of 1985, s. 12, Act No. 10 of 1986, s. 29, Act No. 10 of 1988, s. 31, Act No. 8 of 1989, s. 18, Act No. 10 of 1990, s. 44, Act No. 8 of 1991, s. 58, Act No. 9 of 1992, s. 41, Act No. 4 of 1993, s. 41, Act No. 13 of 1995, s. 79, Act No. 8 of 1996, s. 31, Act No. 8 of 1997, s. 32, Act No. 9 of 2000, s. 42, Act No. 6 of 2001, s. 46, Act No. 15 of 2003, s. 32, Act No. 4 of 2004, s. 48, Act No. 6 of 2005, s. 23, Act No. 10 of 2006, s. 21, Act No. 9 of 2007, s. 20, Act No. 8 of 2008, s. 30, Act No. 8 of 2009, s. 22, Act No. 16 of 2014, s. 7, Act No. 14 of 2015, s. 10, Act No. 38 of 2016, s. 6, Act No. 15 of 2017, s. 12, Act No. 10 of 2018, s. 7, Act No. 2 of 2020, Sch, Act No. 8 of 2020, s. 5, Act No. 8 of 2021, s. 8, Act No. 22 of 2022, s. 8, Act No. 4 of 2023, s. 11, Act No. 2 of 2024, 3rd Sch.]

Deductions not allowed

16. (1)

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

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

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

(c) any expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system except where the transactions have been exempted in accordance with the Tax Procedures Act (Cap. 469B).

(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); or

(iv) educational fees of employee's dependants or relatives;

(v) *deleted by Act No. 4 of 2023, s. 12.*

(b) any expenditure or loss which is recoverable under any insurance, contract, or indemnity;

(c) any income tax or tax of a similar nature, including compensating tax paid on income:

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

(d) any sums contributed to a registered or unregistered pension, saving, or provident scheme or fund, except as provided in section 15(2)(o), or any sum paid to another person as a pension;

(e) a premium paid under an annuity contract;

(f) any expenditure incurred in the production of income deemed under section 10 of this Act to have accrued in or to have been derived from Kenya where such expenditure was incurred by a non-resident person not having a permanent establishment within Kenya;

(fa) any expenditure incurred in the production of dividend income deemed under paragraph (a) of subsection (1), of section 7 to have been derived from Kenya where such expenditure was incurred by a non-resident person not having a permanent establishment within Kenya;

(g) *deleted by Act No. 8 of 1978, s. 9;*

(h) any loss incurred in any business which, having regard to the nature of the business, to the principal occupation of the owner, partners, shareholders or other persons having a beneficial interest therein, to the relationship between any such persons or to any other relevant factor, the Commissioner considers it reasonable to regard as not being carried on mainly with a view to the

realization of profits; and, without prejudice to the generality of the foregoing, a business shall be deemed not to be carried on for any year of income with a view to the realization of profits where more than one quarter of the amount of the revenue expenditure incurred in such business in such year relates to goods, services, amenities or benefits, or to the production of goods, services, amenities or benefits, which are of a personal or domestic nature enjoyed by the owner, partners, shareholders or other persons having a beneficial interest in the business or a member of the family or the domestic establishment of any such person;

(i) *deleted by Act No. 10 of 2006, s. 22;*

(j) gross interest paid or payable to a non-resident in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization of the borrower in any financial year:

Provided that—

(i) any income which is exempt from tax shall be excluded from the calculation of earnings before interest, taxes, depreciation and amortization; and

(ii) this paragraph shall apply to—

(A) interest on all loans;

(B) payments that are economically equivalent to interest; and

(C) expenses incurred in connection with raising the finance.

(iii) this paragraph shall not apply to—

(A) banks or financial institutions licensed under the Banking Act (Cap. 488);

(B) micro and small enterprises registered under the Micro and Small Enterprises Act (Cap. 493C);

(C) microfinance institutions licensed and non-deposit taking microfinance businesses under the Microfinance Act (Cap. 493C);

(D) entities licensed under the Hire Purchase Act (Cap. 507);

(E) non-deposit taking institutions involved in lending and leasing business;

(F) companies undertaking the manufacture of human vaccines;

(G) *deleted by Act No. 4 of 2023, s. 12(b)(iii);*

(H) *deleted by Act No. 4 of 2023, s. 12(b)(iii);*

(I) holding companies that are regulated under the Capital Markets Act (Cap. 485A).

(iv) any interest in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization shall be an allowable deduction in ascertaining the total income of a person in the subsequent three years of income to the

extent that the deduction of interest on loans from non-resident persons does not exceed the thirty percent threshold provided under this section; and

(v) this provision shall not apply where the interest is exempt from tax under this Act.

(ja) an amount of deemed interest where the person is controlled by a non-resident person alone or together with not more than four other persons and where the company is not a bank or a financial institution licensed under the Banking Act (Cap. 488).

(k) *deleted by Act No. 8 of 1997, s. 33;*

(l) *deleted by Act No. 8 of 2009, s. 23.*

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

"all loans" means loans, overdrafts, ordinary trade debts, overdrawn current accounts or any other form of indebtedness for which the company is paying a financial charge, interest, discount or premium but shall not include local loans;

"deemed interest" *deleted by Act No. 38 of 2016, s. 7.*

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

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

[Act No. 7 of 1976, s. 2, Act No. 11 of 1976, s. 7, Act No. 8 of 1978, s. 9, Act No. 14 of 1982, s. 20, Act No. 10 of 1988, s. 32, Act No. 10 of 1990, s. 45, Act No. 9 of 1992, s. 42, Act No. 6 of 1994, s. 37, Act No. 8 of 1997, s. 33, Act No. 6 of 2001, s. 47, Act No. 7 of 2002, s. 40, Act No. 15 of 2003, s. 33, Act No. 6 of 2005, s. 24, Act No. 10 of 2006, s. 22, Act No. 8 of 2008, s. 31, Act No. 8 of 2009, s. 23, Act No. 10 of 2010, s. 23, Act No. 4 of 2012, s. 13, Act No. 16 of 2014, s. 8, Act No. 38 of 2016, s. 7, Act No. 23 of 2019, s. 8, Act No. 8 of 2021, s. 9, Act No. 22 of 2022, s. 9, Act No. 4 of 2023, s. 12]

Ascertainment of income of farmer in relation to stock

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

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

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

(3) Subject to subsection (4) of this section, every farmer who has elected not to take into account the value of stock shall be charged for each year of income on all amounts received for stock disposed of by him in any circumstances and whether or not the proceeds thereof would, but for this section, be regarded as a capital receipt;

and, if a part of the stock is disposed of otherwise than in the open market, he shall be charged on the cost or open market value of such stock, whichever is the lesser, so, however, that in no case shall he be charged on less than the amount received for such stock:

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

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

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

(6)

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

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

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

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

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

(ii) this section shall be applied to such beneficiary as if he had carried on the business of farming throughout the whole period from the date on which the deceased farmer commenced that business and had made the election which the deceased farmer made;

(c) in any other case, on the open market value, as if such price or value had been income of such farmer for the year of income in which he died.

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

Repealed

17A. Repealed by Act 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 any business in Kenya which consists of manufacturing, growing, mining, or producing, or harvesting, whether from the land or from the water, any product or produce, and sells outside, or for delivery outside Kenya, such product or produce, whether or not the contract of sale is made within or without Kenya, or utilizes that product or produce in any business carried on by him outside Kenya, then the gains or profit from such business carried on in Kenya shall be deemed to be income derived from Kenya and to be gains or profits such amount as would have accrued if such product or produce had been sold wholesale to the best advantage.

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

(3) Where a non-resident person carries on business with a related resident person and the course of such business is 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 such resident person or through its permanent establishment from such business shall be deemed to be of such an amount as might have been expected to accrue if the course of that business had been conducted by independent persons dealing at arm's length.

(4) *Deleted by Act No. 4 of 2023, s. 13.*

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

(7) *Deleted by Act No. 16 of 2014, s. 9(d).*

(8)

The Cabinet Secretary may, by rules published in the *Gazette*–

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

[Act No. 8 of 1978, s. 9, Act No. 18 of 1984, s. 4, Act No. 8 of 1989, s. 20, Act No. 13 of 1995, s. 81, Act No. 4 of 2004, s. 49, Act No. 10 of 2006, s. 23, Act No. 10 of 2010, s. 24, Act No. 16 of 2014, s. 9, Act No. 4 of 2023, s. 13]

Ascertainment of gains and profits of business in a preferential tax regime

18A. (1)

Where–

- (a) a resident person carries on business with a related resident person operating in a preferential tax regime; or
- (b) a resident person carries on business with–
 - (i) a non-resident person located in a preferential tax regime; or
 - (ii) an associated enterprise of a non-resident person located in a preferential tax regime; or
 - (iii) a permanent establishment of a non-resident person operating in Kenya where the non-resident person is located in a preferential tax regime, and the business produces no gains or produces less gains than those which would have been expected to accrue from that business if the business activity was not with a party in a preferential tax regime, the gains of that resident person from that business shall be deemed to be the amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm's length, or if none of the parties were located in a preferential tax regime.

(2)

For the purposes of this section, "preferential tax regime" means–

(a) any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base; or

(b) a foreign jurisdiction which–

(i) does not tax income;

(ii) taxes income at a rate that is less than twenty per cent;

(iii) does not have a framework for the exchange of information;

(iv) does not allow access to banking information; or

(v) lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure, or regulatory on supervision.

(3) For the purposes of this section, qualifying intellectual property income that subject to the preferential tax rate shall be determined using the following formula–

$$I = \left(\frac{Q}{T} \right) \times P$$

Where–

I is income receiving tax benefits;

Q is the research and development expenditures made by the taxpayer, excluding acquisition costs and related party outsourcing costs;

T is the research and development expenditures made by the taxpayer, including acquisition costs and related party outsourcing costs; and

P is intellectual property income including royalties, capital gains and any other income from the sale of an intellectual property asset including embedded intellectual property income calculated under transfer pricing principles:

Provided that for the purposes of this subsection intellectual property losses shall only be deducted against intellectual property income

[Act No. 15 of 2017, s. 13, Act No. 22 of 2022, s. 10, Act No. 4 of 2023, s. 14]

Application of sections 18C, 18D, 18E and 18F

18B. The provisions of sections, 18C, 18D, 18E, and 18F shall apply to returns for the year of income 2022 and subsequent years of income.

[Act No. 22 of 2022, s. 11.]

Notification to the Commissioner

18C. (1)

A multinational enterprise group or a constituent entity, other than an excluded multinational enterprise group, that is resident in Kenya, shall notify the

Commissioner, not later than the last day of the reporting financial year of that group–

- (a) whether or not it is the ultimate parent entity of the group;
- (b) in case it is not the ultimate parent entity of the group, whether or not it is a surrogate parent entity; or
- (c) in case paragraphs (a) and (b) do not apply, the identity of the constituent entity which is the ultimate parent entity or surrogate parent entity and the tax residence of that constituent entity.

(2) The notification referred to in subsection (1) shall be made to the Commissioner in such form as the Commissioner may specify.

[Act No. 22 of 2022, s. 12.]

Filing of country-by-country report, master file and local file

18D. (1) Each ultimate parent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with subsection (3).

(1A)

A constituent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with subsection (1B), if one of the following conditions applies–

- (a) the ultimate parent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence;
- (b) the jurisdiction in which the ultimate parent entity is resident has a current international tax agreement which Kenya is a party to but does not have a competent authority agreement with Kenya at the time of filing the country-by-country report for the reporting financial year; or
- (c) there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the Commissioner to the constituent entity resident in Kenya.

(1B) The provisions of subsections (1) and (1A) shall apply to a multinational enterprise group whose total consolidated group turnover, including extraordinary or investment income, is at least ninety-five billion shillings during the financial year immediately preceding the reporting financial year as reflected in its consolidated financial statements for such preceding financial year.

(2) An ultimate parent entity or a constituent entity shall file the country-by-country report referred to under subsection (1) not later than twelve months after the last day of the reporting financial year of the group.

(3) An ultimate parent entity or a constituent entity of a multinational enterprise group shall file a master file and a local file to the Commissioner in such manner as the Commissioner may specify.

(4) The master file and the local file shall be filed not later than six months after the last day of the reporting financial year of the multinational enterprise group.

(5)

A country-by-country report filed under subsection (1) shall consist of–

- (a) the information relating to the identity of each constituent entity, its jurisdiction of tax residence, if different, jurisdiction where such entity is organized, and the nature of the main business activity or activities of such entity;
- (b) the group's aggregate information including information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction where the group has taxable presence; and
- (c) any other information as may be required by the Commissioner.

(6)

A master file under subsection (3) shall contain–

- (a) a detailed overview of the group;
- (b) the group's growth engines;
- (c) a description of the supply chain of the key products and services;
- (d) the group's research and development policy;
- (e) a description of each constituent entity's contribution to value creation;
- (f) information about intangible assets and the group intercompany agreements associated with them;
- (g) information on any transfer of intangible assets within the group during the tax period, including the identity of the constituent entities involved, the countries in which those intangible assets are registered and the consideration paid as part of the transfer;
- (h) information about financing activities of the group;
- (i) the consolidated financial statements of the group;
- (j) tax rulings, if any, made in respect of the group; and
- (k) any other information that the Commissioner may require.

(7)

A local file under subsection (3) shall contain–

- (a) details and information on the resident constituent entity's activities within the multinational enterprise group;
- (b) management structure of the resident constituent entity;
- (c) business strategies including structuring, description of the material-controlled transactions, the resident constituent entity's business and competitive environment;
- (d) the international transactions and amounts paid to the resident constituent entity or received by the entity; and

(e) any other information that the Commissioner may require.

(8) Where there are more than one constituent entities of the same multinational enterprise group that are resident in Kenya, the multinational enterprise group may designate one of such constituent entities as a surrogate parent entity.

(9)

A resident surrogate parent entity of a multinational enterprise group shall not be required to file a country-by-country report with the Commissioner with respect to the reporting financial year of the group, if–

(a) the ultimate parent entity is obligated to file a country-by-country report in its jurisdiction of tax residence;

(b) the jurisdiction in which the ultimate parent entity is resident for tax purposes has an international agreement and a competent authority agreement in force; and

(c) the Commissioner has not notified the resident constituent entity in Kenya of a systemic failure, if any.

(10)

A resident constituent entity of a multinational enterprise group shall not be required to file a country-by-country report with the Commissioner with respect to the reporting financial year of the group, if –

(a) a non-resident surrogate parent entity files the country-by-country report on the group with the competent authority of the tax jurisdiction of the entity;

(b) the jurisdiction in which the non-resident surrogate parent entity is resident requires the filing of country-by-country reports;

(c) the competent authority of the jurisdiction in which the non-resident surrogate parent entity is resident and Kenya have a competent authority agreement for the exchange of information;

(d) the competent authority in the jurisdiction where the non-resident surrogate parent is resident has not notified Kenya of a systemic failure; or

(e) the non-resident parent entity has notified the competent authority in the jurisdiction of its tax residence that the entity is the designated surrogate parent entity of the group.

(11) The Commissioner shall maintain the confidentiality of the information contained in a return submitted in accordance with section 6(1) and section 6A(2) of the Tax Procedures Act (Cap. 469B).

[Act No. 22 of 2022, s. 12, Act No. 4 of 2023, s. 15]

Offences and penalties

18E. A person who fails to comply with the provisions of sections 18C and 18D commits an offence and shall be subject to the penalties prescribed under the Tax Procedures Act (Cap. 469B).

[Act No. 22 of 2022, s. 12.]

Definitions

18F. For the purposes of sections 18C, 18D and 18E–

"competent authority agreement" means an agreement between authorized representatives of jurisdictions which are parties to an international agreement that requires the exchange of country-by-country reports;

"consolidated financial statements" means financial statements of a multinational enterprise group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single enterprise;

"constituent entity" means–

(a) any separate business unit of a multinational enterprise group that is included in the consolidated financial statements of the multinational enterprise group for financial reporting purposes, or which would be so included if equity interests in such business unit of a multinational enterprise group were traded on a public securities exchange;

(b) any such business unit that is excluded from the multinational enterprise group's consolidated financial statements solely on size or materiality grounds;

(c) any permanent establishment of any separate business unit of the multinational enterprise group included in paragraphs (a) or (b) provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

"a country-by-country report" means a report filed under section 18D(1) describing the financial activities of each constituent entity in all the jurisdictions where the group has taxable presence;

"excluded multinational enterprise group" means, with respect to any financial year of the group, a group having total consolidated group revenue of less than the amount specified in section 18D(1);

"group" means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange and includes a single enterprise with one or more foreign permanent establishments;

"international agreement" means a bilateral or multilateral tax agreement to which Kenya is a party which provides for the exchange of tax information between Kenya and other jurisdictions;

"local file" means a file under section 18D(7) containing material transactions of the local taxpayer;

"master file" means a file under section 18D(6) containing standardized information relevant for all multinational enterprise group members;

"multinational enterprise group" means a group that includes two or more enterprises which are resident in different jurisdictions including an enterprise that carries on business through a permanent establishment or through any other entity in another jurisdiction;

"reporting financial year" means an annual accounting period with respect to which the ultimate parent entity of the multinational enterprise group prepares its financial statements;

"surrogate parent entity" means one constituent entity of the multinational enterprise group appointed by such group to file the country-by-country report in that constituent entity's jurisdiction of tax residence, on behalf of the group;

"systemic failure" means failure to comply with the competent authority agreement for reasons other than those provided in the agreement;

"ultimate parent entity" means an entity which–

(a) is not controlled by another entity; and

(b) owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group.

[Act No. 22 of 2022, s. 12, Act No. 4 of 2023, s. 16]

Ascertainment of income of insurance companies

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

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

(3)

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

(a) taking, for such year of income, the sum of–

(i) the amount of the gross premiums from such business (less such premiums returned to the insured and such premiums paid on reinsurance as relate to such business); and

(ii) the amount of other income from such business, including any commission or expense allowance received or receivable from re-insurers and any income derived from investments held in connexion with that business; and

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

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

(c) deducting from the figure arrived at under paragraphs (a) and (b) of this subsection–

(i) the amount of the claims admitted in such year of income in connexion with such business (provided that claims incurred but not paid or not reported before the end of the accounting period are estimated on the basis of actuarial principles including the discounting of ultimate costs); less any amount recovered in respect thereof under reinsurance; and

(ii) the amount of agency expenses incurred in such year of income in connection with such business; and

(iii) the amount of any other expenses allowable as a deduction (excluding costs and expenses attributable to earning exempt income) as determined by the ratio of exempt investment income to the sum of investment and exempt investment income in that year of income in computing the gains or profits of that business under this Act.

(4)

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

(a) taking, for such year of income, the sum of–

(i) the amount received or receivable in Kenya of the gross premiums from such business (less such premiums returned to the insured and such premiums paid on reinsurance, other than to the head office of such company, as relates to such business); and

(ii) the amount of other income from such business, not being income from investments, received or receivable in Kenya including any commission or expense allowance received or receivable from reinsurance, other than from the head office of such company, of risks accepted in Kenya; and

(iii) such amount of income from investments as the Commissioner may determine to be just and reasonable as representing income from investment of the reserves referable to such business done in Kenya; and

(b) deducting from the sum arrived at under paragraph (a) a reserve for unexpired risks outstanding at the end of that year of income in respect of policies for which the premiums are received or receivable in Kenya at the percentage adopted by the company in relation to its insurance business as a whole, other than life insurance, but adding to that sum the reserve deducted for similar unexpired risks at the end of the previous year of income:

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

(c) deducting from the figure arrived at under paragraphs (a) and (b)–

(i) the amount of the claims admitted in that year of income in connection with that business (Provided that claims incurred but not paid or not reported before the end of the accounting period are estimated on the basis of actuarial principles including the discounting of ultimate costs); less any amount recovered in respect thereof under reinsurance; and

(ii) the amount of agency expenses incurred in such year of income in connexion with such business; and

(iii) an amount being such proportion as the Commissioner may determine to be just and reasonable of those expenses of the head office of that company as would have been allowable as a deduction in that year of income in computing its gains or profits if the company had been a resident company in so far as those amounts relate to policies the premiums in respect of which are received or receivable in Kenya.

(5)

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

(a) the amount of actuarial surplus, as determined under the Insurance Act and recommended by the actuary to be transferred from the life fund for the benefit of shareholders;

(b) any other amounts transferred from the life fund for the benefit of shareholders; and

(c) thirty per centum of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurance Act (Cap. 487).

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

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

(6)

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

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

(b) the same proportion of any other amounts transferred from the life fund for the benefit of shareholders as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business; and

(c) the same proportion of thirty per cent of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurances Act (Cap. 487) as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business.

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

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

(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 such part of the life insurance fund as represents the liability of the company under its annuity contracts;

"company" includes a body of persons;

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

"investment income" does not include–

(a) dividends chargeable to tax under section 3(2)(a)(i); and

(b) income from the disposal of investment shares traded in any securities exchange operating in Kenya;

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

"life insurance premiums" means premiums referable to the life insurance business other than annuity business;

"life insurance expenses" means expenses referable to the life insurance business other than annuity business.

(8) The amount of the gains or profits from insurance business, both from life insurance and from other classes of insurance business, arrived at under this section

shall be taken into account together with any other income of the company charged to tax in ascertaining the total income of that company.

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

[Act No. 8 of 1991, s. 59, Act No. 9 of 1992, s. 43, Act No. 4 of 1993, s. 42,
Act No. 6 of 1994, s. 38, Act No. 8 of 1997, s. 34, Act No. 5 of 1998, s. 32,
Act No. 8 of 2008, s. 32, Act No. 8 of 2009, s. 24, Act No. 10 of 2018, s. 8.]

Co-operative societies

19A. (1)

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

(a) a society which has been exempted from all the provisions of the Co-operative Societies Act (Cap. 490) under section 92 of that Act; or

(b) a society in respect of which the Commissioner is of the opinion, having regard to the number of members composing it, the nature of its business, the manner in which its business is conducted, the extent of its transactions with non-members or any other relevant factors, is a body corporate carrying on business for its own profit.

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

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

(4)

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

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

(b) its gross income from any right granted for the use or occupation of any property, not being a royalty, ascertained in accordance with the provisions of this Act;

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

(d) any other income (excluding royalties) chargeable to tax under this Act not falling within paragraph (a), (b) or (c) ascertained in accordance with the provisions of this Act.

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

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

(7) In this section–

"bonus" and "dividend" shall, for the purposes of subsections (2) and (3), have the same meaning as in the Co-operative Societies Act (Cap. 490);

"designated co-operative society" means a co-operative society registered under the Co-operative Societies Act (Cap. 490);

"primary society" means a co-operative society registered under the Co-operative Societies Act (Cap. 490) the membership of which is restricted to individual persons.

[Act No. 13 of 1984, s. 20, Act No. 8 of 1985, s. 13, Act No. 6 of 2001, s. 48, Act No. 15 of 2003, s. 34, Act No. 38 of 2013, s. 12.]

Collective investment schemes

20. (1)

Subject to such conditions as may be specified by the Cabinet Secretary under section 130–

(a) a unit trust;

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

(c) a real estate investment trust; or

(d) an investee company of a real estate investment trust,

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

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

[Act No. 10 of 1990, s. 47, Act No. 7 of 2002, s. 41, Act No. 4 of 2012, s. 14, Act No. 23 of 2019, s. 9.]

Members' clubs and trade associations

21. (1) A body of persons which carries on the activities of a members' club or trade association shall be deemed to be carrying on a business and the gross receipts on revenue account (excluding joining fees, welfare contributions and subscriptions) shall be deemed to be income from a business.

(2) *Deleted by Act No. 4 of 2023, s. 17*

(3) In this section—

"member" means—

(a) in relation to a members' club, a person who, while he is a member, is entitled to an interest in all the assets of such club in the event of its liquidation;

(b) in relation to a trade association, a person who is entitled to vote at a general meeting of such trade association;

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

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

[Act No. 1 of 1982, s. 3, Act No. 4 of 2023, s. 17]

Purchased annuities other than retirement annuities, etc.

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

(2)

For the purpose of this section—

(a) an annuity includes any amount payable on a periodic basis, whether payable at intervals longer or shorter than a year;

(b) the portion of each payment of an annuity to which this section applies which represents the capital element thereof shall be that proportion of each such payment which the consideration or purchase price for the contract bears to the total payments—

(i) to be made under the contract, in the case of a contract for a term of years certain; or

(ii) expected at the date of the contract to be made under the contract, in the case of a contract under which the continuation of such payments depends in whole or in part upon the survival of an individual;

(c) where the continuation of such payments depends in whole or in part upon the survival of an individual—

(i) if any table of mortality has been used as the basis for determining the consideration or purchase price for the contract, that table shall be used in computing the payments expected to be made under the contract, calculations being based upon complete expectation of life;

(ii) if no table of mortality has been used as the basis for determining the consideration or purchase price for the contract, such table of mortality as the Commissioner considers appropriate to the case shall be used in computing

the payments expected to be made under the contract, calculations being based on complete expectation of life;

(iii) the age of that individual at the date of the contract shall be determined by subtracting the calendar year of his birth from the calendar year in which that date falls;

(d) where the continuation of payments depends upon the survival of an individual and where, in the event of the death of such individual before such payments aggregate a stated sum, the contract provides that the unpaid balance of the stated sum shall be paid either in a lump sum or by instalments, then the contract shall be deemed for the purpose of determining the expected term thereof to provide for the continuance of such payments thereunder for a minimum term certain equal to the nearest complete number of years required to complete the payment of the stated sum;

(e) where such payments commence on the expiry of a term of years or on the death of any individual, then the consideration or purchase price for the contract shall be taken to be—

(i) the lump sum, if any, which the individual entitled to those payments is entitled to receive in lieu thereof; or

(ii) if there is no lump sum, the sum ascertainable from the contract as the present value of the annuity at the date those payments commence; or

(iii) if there is no such sum, the present value of those payments computed as at the date the payments commence on the basis of a rate of interest of four per cent per annum and, where the payments depend upon the survival of an individual, the probabilities of survival of that individual shall be computed according to the table of mortality referred to in paragraph (c).

(3)

This section shall apply to annuities, whenever purchased or commencing, payable under a contract but shall not apply—

(a) to any annuity payable under a registered annuity contract or a registered trust scheme; or

(b) to any annuity purchased under any direction in a will, or purchased to provide for an annuity payable under a will or settlement out of income of property disposed of by such will or settlement; or

(c) to any annuity purchased under any pension scheme or pension fund; or

(d) to any annuity purchased by any person in recognition of the services or past services of another person.

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 deductible contributions of the employer in the year under defined contribution provisions of registered funds on behalf of members of the funds:

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

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

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

(3)

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

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

(ii) the amounts deducted by the employer for the year for contributions made under defined contribution provisions of registered funds under subsection (2) in respect of the members of the defined benefit registered funds.

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

(5)

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

(a) where an employee retires or terminates his employment with an employer and joins the services of another employer and requests funds to be transferred from the former employer's registered fund to the new employer's registered fund; or

(b) where an employer establishes a new registered fund and transfers the existing pension rights of an employee to that new registered fund; or

(c) where an employee terminates his employment with an employer and requests funds, which would otherwise be withdrawn or commuted as a lump sum, to be transferred to a registered individual retirement fund; or

(d) where an employee and the employer agree mutually to transfer the funds relating to the existing retirement benefit rights of the employee from one registered fund of the employer to another registered fund of that employer provided that the trust deeds of both registered funds allow such a transfer; or

(e) where an individual beneficiary directs that all funds in a registered individual retirement fund be transferred directly to another such fund:

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

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

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

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

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

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 per cent of pensionable income of the individual in that year; or

(c) two hundred and forty thousand shillings (or, where the contributions are made on behalf of the individual by his employer in respect of a part year of service of the individual, twenty thousand shillings per month of service) reduced by the amount of the contributions made by the individual or by an employer on behalf of the individual to the National Social Security Fund in that year.

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

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

22C. *Repealed by Act No. 8 of 2020, s. 6.*

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 any year of income, or that the main benefit which might have been expected to accrue from the transaction in the three years immediately following the completion thereof was the avoidance or reduction of liability to tax, he may, if he determines it to be just and reasonable, direct that such adjustments shall be made as respects liability to tax as he considers appropriate to counteract the avoidance or reduction of liability to tax which could otherwise be effected by the transaction.

(2)

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

(a) to the charging to tax of persons who, but for the adjustments, would not be charged to the same extent;

(b) to the charging of a greater amount of tax than would be charged but for the adjustments.

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

Avoidance of tax liability by non-distribution of dividends

24. (1) Where the Commissioner is of the opinion that a private company has not distributed to its shareholders as dividends within a reasonable period, not exceeding twelve months, after the end of its accounting period such part of its income for that period which could be so distributed without prejudice to the requirements of the company's business, he may direct that that part of the income of the company shall be treated for the purposes of this Act as having been distributed as a dividend to the shareholders in accordance with their respective interests and shall be deemed to have been paid on a date twelve months after the end of that accounting period.

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

Provided that—

(i) if such a charge is made, such company shall be entitled to recover from the shareholder the amount of tax attributable to the adjustment made in respect of such shareholder; and

(ii) where an adjustment is made under this section relating to the distributable profits of a company and such profits are subsequently distributed, the proportionate share therein of a shareholder shall be excluded in computing the total income of that shareholder.

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

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

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

Income settled on children

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

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

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

(2)

For the purposes of, but subject to, this section–

(a) income which is dealt with under a settlement so that it, or assets representing it, will or may become payable or applicable to or for the benefit of a child of the settlor in the future (whether on the fulfilment of a condition, or the happening of a contingency, or as the result of the exercise of a power of discretion, or otherwise) shall be deemed to be paid to or for the benefit of that child;

(b) any income so dealt with which is not required by the settlement to be allocated at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable;

(c) in relation to any settlor, only income originating from that settlor shall be taken into account as income paid under the settlement to or for the benefit of a child of the settlor.

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

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

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

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

(7)

In this section–

- (a) "child" means a child under the age of 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 any disposition, trust, covenant, agreement, arrangement, or transfer of assets through a registered family trust or resulting from an order of a court unless that order is made in contemplation of this provision;
- (c) "settlor", in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and any person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement;
- (d) reference to income originating from a settlor are references to–
 - (i) income from property originating from that settlor; and
 - (ii) income provided directly or indirectly by that settlor;
- (e) references to property originating from a settlor are references to–
 - (i) property which that settlor has provided directly or indirectly for the purposes of the settlement; and
 - (ii) property representing that property; and
 - (iii) so much of any property which represents both property so provided and other property as, on such apportionment as the Commissioner may determine to be just and reasonable, represents the property so provided;
- (f) references to–
 - (i) property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person;
 - (ii) property which represents other property include references to property which represents accumulated income from that other property.

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

[Act No. 38 of 2013, s. 13, Act No. 8 of 2021, s. 11.]

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 any person under a settlement from assets remaining the property of the settlor shall, unless such income is deemed under section 25 of this Act to be income of the settlor for an earlier year of income, be deemed to be income of the settlor for the year of

income in which it so accrued to or was received by that person and not income of any other person whether or not such settlement is revocable and whether it was made or entered into before or after the commencement of this Act.

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

(3) Where in any year of income the settlor, or a relative of the settlor, or any other person, under the direct or indirect control of the settlor or any of his relatives or the settlor and any of his relatives, by agreement with the trustees of a settlement in any way, whether by borrowing or otherwise, makes use of income arising, or of accumulated income which has arisen, under the settlement to which he is not entitled thereunder, then the amount of such income or accumulated income so made use of shall be deemed to be income of such settlor for such year of income and not income of any other person.

(4)

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

(a) has a right to reassume control, directly or indirectly, over the whole or any part of the income arising under the settlement or of the assets comprised therein; or

(b) is able to have access, by borrowing or otherwise, to the whole or any part of the income arising under the settlement or of the assets comprised therein; or

(c) has power, whether immediately or in the future and whether with or without the consent of any other person, to revoke or otherwise determine the settlement and in the event of the exercise of such power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property comprised in the settlement or to the income from the whole or any part of such property:

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

(5) In this section—

"relative" of a person means—

(a) his spouse;

(b) any ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, step-father, step-mother, step-child, adopted child, and, in the case of an adopted child, his adopter or adopters;

(c) the spouse of any such relative referred to in paragraph (b);

"settlement" includes any disposition, trust, covenant other than a registered family trust, agreement, arrangement, or transfer of assets, other than—

(a) a settlement made for valuable and sufficient consideration;

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

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

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

[Act No. 8 of 2021, s. 12.]

Accounting periods not coinciding with year of income, etc.

27. (1)

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

(a) in the case of a person other than an individual, as regards all income charged under section 3 of this Act; and

(b) in the case of an individual, as regards all income charged under that section other than gains or profits from any employment or services rendered.

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

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

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

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

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

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

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

Income and expenditure after cessation of business

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

(2) Where any sum is paid by any person after the cessation of his business which, if it had been paid prior to such cessation, would have been deductible in computing his gains or profits from such business, then, to the extent to which such sum has not already been deducted in computing such gains or profits, it shall be deducted in ascertaining his total income for the year of income in which it is paid and to the extent that such sum or remainder of such sum, as the case may be, cannot be so deducted, it shall be deducted in ascertaining his total income for the year of income in which such business ceased.

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

Special Operating Framework Arrangement

28A.

A company which—

(a) is engaged in business under a special operating framework arrangement with the Government;

(b) incorporated for purposes of undertaking the manufacture of human vaccines or other manufacturing activities including refining; and

(c) whose capital investment is at least ten billion shillings,

shall be subject to the rate of tax specified in the special operating framework arrangement with the Government.

[Act No. 22 of 2022, s. 13, Act No. 4 of 2023, s. 18]

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

(a) the number of full months in such year of income up to the end of the month in which he ceased to be resident; or

(b) the number of full months in such year of income from the commencement of the month in which he become resident,

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

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

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

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

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

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.

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

Affordable housing relief

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.

(1A) A resident individual who proves that in a year of income, the individual paid the affordable housing levy, shall for that year of income be entitled to 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.

[Act No. 9 of 2018, Sch., Act No. 2 of 2024, 3rd Sch.]

Insurance relief

31. (1)

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

(a) the individual has paid a premium for an insurance made by the individual on the individual's life or the life of the individual's spouse or 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) the individual's 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) the individual and the individual's employer, has paid a premium for the insurance referred to in paragraph (b),

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

Provided that—

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

(ii) no relief shall be granted in respect of a premium for an insurance unless the person claiming the relief furnishes evidence as to the nature and conditions of the insurance and such other particulars as may be required by the Commissioner;

(iii) an education policy with a maturity period of at least ten years shall qualify for relief; and

(iv) the provisions of this section shall apply only to life or education policies whose term commences on or after 1st January, 2003;

(v) a health policy whose term commences on or after 1st January, 2007 or a contribution made to the National Hospital Insurance Fund, shall qualify for relief;

(vi) where a policy is surrendered before its maturity, all the relief granted to the policyholder shall be recovered from the surrender value of the policy and remitted to the Commissioner by the insurer.

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

[Act No. 8 of 1991, s. 61, Act No. 13 of 1995, s. 85, Act No. 8 of 1996, s. 36, Act No. 7 of 2002, s. 42, Act No. 10 of 2006, s. 25, Act No. 8 of 2021, s. 13, Act No. 22 of 2022, s. 14, Act No. 4 of 2023, s. 19]

Post-retirement medical fund relief

31A. A resident individual who proves that in a year of income the person has contributed to a post-retirement medical fund shall for that year of income be entitled to a personal relief in this Act referred to as the post-retirement medical fund relief.

[No. 4 of 2023, s. 20]

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

33. Repealed by Act No. 8 of 1991, s. 62.

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, 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;

(i) *deleted by Act No. 14 of 2015, s. 11;*

(j) tax upon the capital gains of a person charged under section 3(2)(f) shall be charged at the rate of fifteen percent and shall not be subject to further taxation:

Provided that in the case of a firm certified by the Nairobi International Financial Centre Authority that—

(a) invests five billion shillings in Kenya; and

(b) the transfer of such investment is made after five years,

the applicable rate shall be the rate that was prevailing at the time that the investment was made.

(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) winnings;

(n) tax upon the gross turnover of a person whose income is chargeable to tax under section 12D shall be charged at the rate specified in the Third Schedule;

(o) tax upon the gross transaction value of services chargeable to tax under section 12E shall be charged at the rate specified in the Third Schedule.

(1A) *Deleted by Act No. 16 of 2014, s. 10(b).*

(1B) *Deleted by Act No. 16 of 2014, s. 10(b).*

(2)

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

(a) a management or professional fee;

(b) a royalty 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) any payment in respect of any appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
- (h) any payment in respect of an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (g) of this subsection;
- (i) winnings;
- (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 by Act No. 14 of 2015, s. 11(b)(i);*
- (n) *deleted by Act No. 23 of 2019, s. 10;*
- (o) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aviation insurance;
- (p) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services; or
- (q) gains from financial derivatives.

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

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

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

[Act No. 2 of 1975, s. 5, Act No. 13 of 1975, s. 2, Act No. 8 of 1978, s. 9, Act No. 12 of 1980, s. 3, Act No. 6 of 1981, s. 5, Act No. 10 of 1987, s. 33, Act No. 10 of 1988, s. 33, Act No. 10 of 1990, s. 49, Act No. 9 of 1992, s. 46, Act No. 6 of 1994, s. 41, Act No. 5 of 1998, s. 36, Act No. 9 of 2007, s. 22, Act No. 4 of 2012, s. 15, Act No. 57 of 2012, s. 16, Act No. 38 of 2013, s. 14, Act No. 16 of 2014, s. 10, Act No. 14 of 2015, s. 11, Act No. 38 of 2016, s. 8, Act No. 9 of 2018, Sch., Act No. 10 of 2018, s. 9, Act No. 23 of 2019, s. 11, Act No. 2 of 2020, Sch, Act No. 8 of 2020, s. 7, Act No. 22 of 2022, s. 15.]

[Repealed by Act No. 8 of 1978, s. 9(k).]

34A.

B – Deduction of Tax

Deduction of tax from certain income

35. (1)

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

(a) a management or professional fee or training fee except–

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

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

(b) a royalty or natural resource income;

(c) a rent, premium or similar consideration for the use or occupation of property, except aircraft or aircraft engines, locomotives or rolling stock:

Provided that–

(i) where the bond, loan, claim, obligation or other evidence of indebtedness is acquired by a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule from a non-resident person, such an exempt person or financial institution shall deduct tax from the difference between the acquisition price and the original issue price; and

(ii) where a non-resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner;

(d) a dividend;

(e) interest and deemed interest;

(f) a pension or retirement annuity;

(g) any appearance at, or performance in, a place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience;

(h) any activity by way of supporting, assisting or arranging any appearance or performance referred to in paragraph (g) of this subsection,

(i) winnings;

(j) *deleted by Act No. 38 of 2016, s. 9(a);*

(k) *deleted by Act No. 16 of 2014, s. 11;*

(l) gains or profits from the business of transmitting messages which is chargeable to tax under section 9 (2);

(m) *deleted by Act No. 23 of 2019, s. 12(i);*

- (n) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aircraft;
- (o) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services);
- (p) gains from financial derivatives;
- (q) digital content monetisation,

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

(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 Act No. 8 of 1978, s. 9(l)(ii).*

(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;
- (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;
 - (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);

(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 by Act No. 38 of 2016, s. 9 (b)(ii);*

(j) rent, premium or similar consideration for the use or occupation of immovable property;

(k) sales, promotion, marketing and advertising services; or

(l) digital content monetisation,

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

(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.

(3AA) A person who receives rental income on behalf of the owner of the premises shall deduct tax therefrom:

Provided that only a person appointed by the Commissioner in writing for that purpose may deduct tax under this section.

(3AB) A person who deducts rental income tax under this section shall, within five working days after the deduction was made, remit the amount so deducted to the Commissioner together with a return in writing of the tax deducted and such other information as the Commissioner may require.

(3AC) The Commissioner shall, upon receipt of the amount remitted under subsection (3AB), furnish the person from whom the rental income tax was withheld with a certificate stating the amount of the rent and tax deducted therefrom.

(3B) *Deleted by Act No. 16 of 2014, s. 11(c).*

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

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

(5)

Where a person deducts tax under this section he shall, within five working days after 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.

(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, (Cap 412A).

(6) *Deleted by Act No. 38 of 2016, s. 9(d).*

(6A)

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

(a) fails to make the deduction or fails to deduct the whole amount of the tax which he should have deducted; or

(b) fails to remit the amount of any deduction to the Commissioner on or before the twentieth day of the month following the month in which such deduction was made or ought to have been made,

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

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

(6B) *Deleted by Act No. 29 of 2015, 2nd Sch.*

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

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

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

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

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

[Act No. 2 of 1975, s. 5, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, Act No. 8 of 1978, s. 9, Act No. 13 of 1979, s. 5, Act No. 18 of 1979, Sch., Act No. 10 of 1987, s. 34, Act No. 10 of 1990, s. 50, Act No. 9 of 1992, s. 47, Act No. 4 of 1993, s. 44, Act No. 6 of 1994, s. 42, Act No. 8 of 1996, s. 38, Act No. 4 of 1999, s. 36, Act No. 9 of 2000, s. 46, Act No. 6 of 2001, s. 49, Act No. 7 of 2002, s. 43, Act No. 15 of 2003, s. 35, s. 36, Act No. 4 of 2004, s. 51, Act No. 6 of 2005, s. 27, Act No. 10 of 2006, s. 26, Act No. 9 of 2007, s. 23, Act No. 8 of 2008, s. 33, Act No. 8 of 2009, s. 25, Act No. 10 of 2010, s. 25, Act No. 4 of 2012, s. 16, Act No. 57 of 2012, s. 17, Act No. 38 of 2013, s. 15, Act No. 16 of 2014, s. 11, Act No. 14 of 2015, s. 21, Act No. 29 of 2015, 2nd Sch., Act No. 38 of 2016, s. 9, Act No. 9 of 2018, Sch, Act No. 10 of 2018, s. 10, Act No. 23 of 2019, s. 12, Act No. 2 of 2020, Sch., Act No. 22 of 2022, s. 16, Act No. 4 of 2023, s. 21.]

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

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

Provided that—

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

(ii) any annuity directed to be paid free of tax shall be paid without deduction of tax, and any sums paid by the trustees to the annuitant to meet his liability to tax on the annuity shall also be paid without deduction of tax and the trustees shall be entitled to repayment of the tax paid by deduction or otherwise on such an amount of the income of the trust as is equal to the total of the annuity and the sums so paid;

(iii) the Commissioner may authorize the trustees on payment of any annuity other than an annuity directed to be paid free of tax to deduct,

from the amount of such annuity, tax at a rate lower than the rate paid or payable on the income, or no tax, and thereupon the trustees shall deduct from the amount of any such annuity so paid tax at the lower rate, or no tax, as the case may be.

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

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

Deductions 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 per cent of the amount of tax involved or ten thousand shillings whichever is greater, and the provisions of this Act relating to the collection and recovery of such tax shall also apply to the collection and recovery of such 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) *Deleted by Act No. 22 of 2022, s. 17.*

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

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

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

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

(6) *Deleted by Act No. 38 of 2016, s. 10(a).*

(7) *Deleted by Act No. 38 of 2016, s. 10(b).*

[Act No. 7 of 1976, s. 2, Act No. 1 of 1982, s. 3, Act No. 8 of 1983, s. 15, Act No. 8 of 1997, s. 39, Act No. 5 of 1998, s. 37, Act No. 9 of 2000, s. 47, Act No. 8 of 2008, s. 34, Act No. 10 of 2010, s. 26, Act No. 29 of 2015, Sch., Act No. 38 of 2016, s. 10, Act No. 22 of 2022, s. 17.]

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 sections 35, 36 or 37, fails to remit the deducted amount as required or directed by the Commissioner, every director and every officer of the corporate body concerned with the management thereof, shall be guilty of an offence, unless he proves to the satisfaction of the Court that he did not know, and could not reasonably be expected to know that the deducted amount had not been remitted and that he took all reasonable steps to ensure that the offence was not committed, and shall be liable

to a fine of not less than ten thousand shillings but not more than two hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

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

Application to Government

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

C-Set-off of Tax

Set-off of tax

39. (1)

An amount of tax which—

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

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

(3) The tax chargeable on the income of any person in respect of which set-off is to be allowed under this section shall be taken to be the amount by which the tax chargeable (before set-off under this section) in respect of his employment income or income specified under section 10 (1)(e) is increased by the inclusion of such income in his employment income or income specified under section 10(1)(e).

(4) Credit under this section shall not exceed the amount of tax payable in Kenya on such employment income or income in respect of any activity under section 10(1)(e).

[Act No. 20 of 1989, Sch., Act No. 7 of 1990, Sch., Act No. 6 of 2001, s. 50,
Act No. 9 of 2007, s. 24, Act No. 8 of 2008, s. 35, Act No. 22 of 2022, s. 18.]

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

Set-off tax rebate for apprenticeships

39B. (1) Any employer who engages at least ten university or technical and vocational education and training 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.

[Act No. 14 of 2015, s. 13, Act No. 8 of 2021, s. 14.]

D-Double Taxation Relief

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

Special arrangements for relief from double taxation

41. (1) Every special arrangement for relief from double taxation made with the Government of any country outside of the Republic of Kenya with a view of affording relief from double taxation in relation to income tax and any taxes of similar character imposed by the laws of that country shall, subject to subsection (2) 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 every such agreement shall be subject to the provisions of the Treaty Making and Ratification Act (Cap. 4D).

(2) Subject to subsection (3), 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 a person or persons who are not residents of that other contracting state for the purposes of the agreement.

(3) Subsection (2) shall not apply if the resident of the other contracting state is a company listed in a stock exchange in that other contracting state.

(4) In this section, the terms "person" and "underlying ownership" have the respective meanings assigned to them in the Ninth Schedule.

[Act No. 7 of 1976, s. 2, Act No. 16 of 2014, s. 12, Act No. 8 of 2021, s. 15.]

Agreements for exchange of information

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

[Act No. 4 of 2012, s. 17, Act No. 8 of 2021, s. 16.]

Computation of credits under special arrangements

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

(2) *Deleted by Act No. 7 of 1976, s. 2.*

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

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

(5)

Where—

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

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

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

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

(8) In this section, "credit" means a credit mentioned in subsection (1).

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

Time limit

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

PART VII – PERSONS ASSESSABLE**Wife's income, etc.**

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

45. *Repealed by Act No. 4 of 2023, s. 22.*

Income of incapacitated person

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

Income of non-resident person

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

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

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

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) of this Act, be assessed on, and the tax charged on, his executors or administrators for such year of income.

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

(3) Where any executors or administrators distribute the estate of a deceased person before any change in the rate of tax at which they are liable in respect of a

year of income, they shall not be liable in respect of any increased tax resultant from that change.

Liability of joint trustees

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

Liability of person in whose name income of another person assessed

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

Indemnification of representative

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

51A. *Repealed by Act No. 38 of 2016, s. 11.*

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 such person, including income deemed to be his under this Act, liable to tax and of those particulars that may be required for the purposes of this Act; and such return shall include a declaration signed by such person, or by the person in whose name he is assessable, that such return is a full and true statement:

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

(2) In the case of the executors or administrators of a deceased person, or of the liquidator of a resident company, or of a bankrupt, or of a person whom the Commissioner has reason to believe is about to leave Kenya, the Commissioner may, by notice in writing, require him to furnish a return of income at any time whether before or after the end of the year of income to which such return relates.

(3)

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

(a) within four months after the end of such year of income; or

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

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

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

(i) if he had no income chargeable to tax for such year of income other than from emoluments; and

(ii) if the tax payable in respect of those emoluments has been recovered by deduction under section 37 of this Act.

(4)

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

(a) is first named in the agreement of partnership; or

(b) if there be no agreement, is specified by name or initials singly, or with precedence to the other partners, in the usual name of the partnership; or

(c) is first named in any statement required for the purposes of registration of the business under any law of Kenya; or

(d) is the precedent resident active partner if the partner named with precedence is not an active partner,

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

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

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 the Act, shall for any accounting period commencing on or after 1st January, 1992, furnish to

the Commissioner a return of income, including a self-assessment of his tax on such income, not later than the last day of the sixth month following the end of the year of income.

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

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

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

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

[Act No. 8 of 1991, s. 64, Act No. 9 of 1992, s. 48, Act No. 4 of 1993, s. 46, Act No. 8 of 1997, s. 41, Act No. 7 of 2002, s. 44, Act No. 4 of 2012, s. 19, Act No. 57 of 2012, s. 18.]

53. *Repealed by Act No. 16 of 2014, s. 13.*

Documents to be included in return of income

54. (1)

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

(a) a copy of such accounts signed by himself and by such other person together with a certificate signed by such other person—

(i) where such accounts were prepared by such other person, specifying the nature of the books of accounts and documents from which the accounts were so prepared; and

(ii) stating whether and subject to what reservations, if any, he considers that such accounts present a true and fair view of the gains or profits from such business for that accounting period;

(b) in the case of a company or partnership, a certificate specifying the nature and amounts of all payments of whatever kind made, and the nature of any benefit, advantage, or facility of whatever kind granted, in the case of a company to the directors thereof and to employees whose emoluments are at the rate of eighty thousand shillings a year or more, or, in the case of a partnership, to the partners; and the certificate shall be signed by a majority of the directors or partners (of whom one shall be the partner who signed the return of income of the partnership), as the case may be, or, if there are less than three such directors or partners, by all such directors or partners:

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

(2)

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

(a) stating whether to the best of his knowledge and belief the certificate referred to in subsection (1)(b) is true and correct;

(b) where such accounts were prepared by such professional person, recording the extent of his verification of the books of account and documents produced to him;

(c) where such accounts were examined by such professional person, specifying the nature of the books of account and documents produced to him and the extent of his examination thereof.

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

(4)

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

(a) a certificate signed by himself—

(i) specifying the nature of the books of account and documents from which the accounts were prepared;

(ii) stating whether the accounts reflect all the transactions of his business and present a true and fair view of the gains or profits from such business for such period;

(b) in the case of a company or partnership, a certificate specifying the nature and amounts of all payments of whatever kind made to, and the nature of any benefit, advantage, or facility, of whatever kind, granted, in the case of a company, to the directors thereof and to employees whose emoluments are at the rate of forty thousand shillings a year or more, or, in the case of a partnership, to the partners; and the certificate shall be signed by a majority of the directors or partners (of whom one shall be the partner who signed the return of income of the partnership), as the case may be, or, if there are less than three directors or partners, by all the directors or partners.

(4A) Deleted by Act No. 57 of 2012, s. 19.

(4B) Deleted by Act No. 57 of 2012, s. 19.

(5) For the purposes of this section–

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

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

[Act No. 13 of 1979, s. 5, Act No. 18 of 1979, Sch., Act No. 4 of 1993, s. 47, Act No. 6 of 2001, s. 51, Act No. 4 of 2004, s. 52, Act No. 8 of 2008, s. 36, Act No. 57 of 2012, s. 19.]

Keeping of records of receipts, expenses, etc.

54A. (1) A person carrying on a business shall keep records of all receipts and expenses, goods purchased and sold and accounts, books, deeds, contracts and vouchers which in the opinion of the Commissioner, are adequate for the purpose of computing tax.

(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.

[Act No. 8 of 1996, s. 41, Act No. 16 of 2014, s. 14.]

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.

[Act No. 16 of 2014, s. 15.]

Books and accounts

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

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

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

(i) in respect of which the Commissioner has notified that person in writing that its preservation is not required; or

(ii) in the case of a company which has gone into liquidation and has been finally dissolved or in the case of the cessation of a business other than one carried on by a company, for more than three months after the date on which the person having custody of the documents or books of account relating to the company or business as the case may be, informs the Commissioner that he proposes to destroy them.

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

56. Deleted by Act No. 29 of 2015, 2nd Sch.

Return as to salaries, pensions, etc.

57. (1)

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

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

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

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

(2)

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

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

(b) to persons employed include, in relation to a company, a director of that company.

(3) By notice published in two successive issues of the *Gazette*, the Commissioner may require all employers, or any employer or class of employer, to furnish him within a reasonable time, not being less than thirty days from the date of publication of the second notice, with a written return containing the name and address of the employer and the number of this 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 any business to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of all payments made by such person of any kind specified in the notice, being–

(a) payments made in the course of the business for services rendered, or in anticipation of services to be rendered, by persons not employed in such business; or

(b) payments for services rendered, or in anticipation of services to be rendered, in connexion with the formation, acquisition, development, or disposal of the business or a part of it, by persons not employed in such business; or

(c) periodical or lump sum payments in respect of any royalty.

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

(3)

For the purposes of this section–

(a) references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connexion with the rendering of services; and

(b) references to the making of payments include references to the giving of any form of valuable consideration,

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

Occupier's return of rent

59.

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

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

Return of lodgers and inmates

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

Return of income received on account of other persons

61.

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

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

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 such notice, with a return containing a full and true statement–

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

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 of this Act to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing such particulars as he may consider necessary for the purposes of those sections.

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

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

Return of annuity contract benefits

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

Return of resident company dividends

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

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

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

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

(2) Without prejudice to the powers conferred by subsection (1) of this section, a separate notice may be served under that subsection as respects the transactions carried on at any branch of a business that may be specified in such notice, and any such separate notice shall, if served on the manager or other person in charge of such branch, be deemed to have been duly served on the person carrying on the business, and where a separate notice is so served as respects the transactions carried on at any branch, any notice subsequently served under subsection (1) on the person carrying on the business shall not be deemed to extend to a transaction to which such separate notice extends.

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

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

Return as to dividends paid by building societies

68. (1)

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

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

(b) in the case of a resident building society, by any person,

Provided that and any such return shall give the names and addresses of the persons to whom the dividends were paid or credited and shall state, in each case, the amount of the dividends: the year specified in any such notice shall not be a year ending more than three years before the date of the service of the notice.

(2) For the purposes of this section—

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

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

69. Deleted by Act No. 29 of 2015, 2nd Sch.

70. Deleted by Act No. 29 of 2015, 2nd Sch.

71. Deleted by Act No. 29 of 2015, 2nd Sch.

72. Repealed by Act No. 38 of 2016, s. 12.

72A. Deleted by Act No. 29 of 2015, 2nd Sch.

Penalty for the negligence of authorized tax agent

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

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

Penalty on underpayment of instalment tax

72C. (1) Subject to the Twelfth Schedule, a penalty of twenty per cent of the difference between the amount of instalment tax payable in respect of a year of income as specified in section 12, and the instalment tax actually paid multiplied by one hundred and ten per cent shall be payable.

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

Provided that—

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

[Act No. 4 of 1993, s. 51, Act No. 8 of 1997, s. 44, Act No. 9 of 2000, s. 50, Act No. 4 of 2012, s. 20.]

72D. *Repealed by Act No. 23 of 2019, s. 13.*

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 such person under this Act for the delivery of a return of income.

(2)

Where a person has delivered a return of income, the Commissioner may—

- (a) (i) accept the return and deem the amount that person has declared as his self assessment in which case no further notification need be given; or
- (ii) where the return is in respect of a year of income prior to 1992, accept that return and assess him on the basis thereof;

(b) if he has reasonable cause to believe that such return is not true and correct, determine, according to the best of his judgment, the amount of the income of that person and assess him accordingly.

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

[Act No. 8 of 1991, s. 66, Act No. 6 of 1994, s. 43.]

74. *Repealed by Act No. 16 of 2014, s. 17.*

Instalment assessment

74A. (1) Without prejudice to his powers under section 73, Commissioner may proceed to make an instalment assessment for tax under section 12 in respect of any person after the expiry of the time allowed to that person under this Act for the payment of instalment tax; and

(2) When a person has paid instalment tax under section 12 he shall thereupon be deemed to have been assessed for the purpose of instalment tax under this section on the basis of the amount of instalment tax paid; and

(3) Where a person has not paid instalment tax for a year of income and the Commissioner considers that the person has or will have income chargeable to tax for that year, he may, according to the best of his judgment, estimate the income of that person and make an instalment assessment upon him accordingly.

[Act No. 10 of 1990, s. 54, Act No. 8 of 1996, s. 42, Act No. 16 of 2014, s. 18.]

74B. *Deleted by Act No. 29 of 2015, 2nd Sch.*

75. *Deleted by Act No. 29 of 2015, 2nd Sch.*

75A. *Repealed by Act No. 38 of 2016, s. 13.*

75B. *Deleted by Act No. 29 of 2015, 2nd Sch.*

Assessment not to be made on certain employees

76.

The Commissioner shall not assess an employee for any year of income—

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

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

unless, prior to the expiry of seven years after that year of income, such employee applies to the Commissioner to be assessed, whether in connexion with a claim for repayment of tax or otherwise, or the Commissioner considers an assessment to be

necessary or expedient so as to arrive at the correct amount of the tax to be charged upon or to be payable by such employee for such year of income.

Assessment not to be made on certain incomes

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.

[Act No. 8 of 1991, s. 67.]

77. Deleted by Act No. 29 of 2015, 2nd Sch.

78. Deleted by Act No. 29 of 2015, 2nd Sch.

79. Deleted by Act No. 29 of 2015, 2nd Sch.

80. Deleted by Act No. 29 of 2015, 2nd Sch.

81. Deleted by Act No. 29 of 2015, 2nd Sch.

PART X – OBJECTIONS, APPEALS AND RELIEF FOR MISTAKES

82. Repealed by Act No. 40 of 2013, s. 42.

83. Repealed by Act No. 40 of 2013, s. 42.

84. Deleted by Act No. 29 of 2015, 2nd Sch.

85. Deleted by Act No. 29 of 2015, 2nd Sch.

86. Deleted by Act No. 29 of 2015, 2nd Sch..

87. Deleted by Act No. 29 of 2015, 2nd Sch.

88. Deleted by Act No. 29 of 2015, 2nd Sch.

89. Deleted by Act No. 29 of 2015, 2nd Sch.

90. Deleted by Act No. 29 of 2015, 2nd Sch.

91. Deleted by Act No. 29 of 2015, 2nd Sch.

91A. Deleted by Act No. 29 of 2015, 2nd Sch.

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 by Act No. 16 of 2014, s. 19.*

(4) *Deleted by Act No. 8 of 1989, s. 21.*

(4A) Where a person has notified the Commissioner in writing as required by section 53(3), the provisional tax shall be due and payable within thirty days after the date of service by the Commissioner of the provisional assessment.

(5) In the case of a company which is being wound up, the due dates for payment of tax on any income charged for the year of income in which the winding-up commences and for the preceding year of income shall be deemed for the purpose of priority of debts but for that purpose only, to be the date next before the date of the winding-up order or the resolution, special resolution or extraordinary resolution, as the case may be, passed for the winding-up of the company, and whether or not assessments have been made before that date.

(6) *Deleted by Act No. 29 of 2015, 2nd Sch.*

(7) *Deleted by Act No. 29 of 2015, 2nd Sch.*

(8) *Deleted by Act No. 29 of 2015, 2nd Sch.*

[Act No. 2 of 1975, s. 5, Act No. 7 of 1976, s. 2, Act No. 13 of 1979, s. 5, Act No. 8 of 1989, s. 21, Act No. 10 of 1990, s. 55, Act No. 4 of 1993, s. 54, Act No. 7 of 2002, s. 47, Act No. 16 of 2014, s. 19, Act No. 29 of 2015, 2nd Sch.]

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 the year of income or accounting period.

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

[Act No. 8 of 1991, s. 69, Act No. 4 of 1993, s. 54, Act No. 8 of 1997, s. 46, Act No. 5 of 1998, s. 38, Act No. 4 of 2004, s. 56.]

93. Deleted by Act No. 29 of 2015, 2nd Sch.

94. Deleted by Act No. 29 of 2015, 2nd Sch.

95. Deleted by Act No. 29 of 2015, 2nd Sch.

95A. Repealed by Act No. 4 of 1993, s. 56.

96. Deleted by Act No. 4 of 1993, s. 56.

96A. Deleted by Act No. 29 of 2015, 2nd Sch.

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 of this Act,

the amount of tax unpaid or charged, as the case may be, in the assessment as finally determined shall be a debt due and payable out of his estate.

98. Repealed by Act No. 38 of 2016, s. 14.

99. Repealed by Act No. 9 of 2000, s. 53.

100. Deleted by Act No. 9 of 2000, s. 53.

101. Deleted by Act No. 29 of 2015, 2nd Sch.

102. Deleted by Act No. 29 of 2015, 2nd Sch.

103. Deleted by Act No. 29 of 2015, 2nd Sch.

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

(2) No civil or criminal proceedings shall be instituted or maintained against the proper officer of Customs or any other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship or aircraft is detained under this

section affect the liability of the owner, charterer or agent to pay harbour or airport dues and charges for the period of detention.

105. *Repealed by Act No. 38 of 2016, s. 15.*

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 of this Act applies, income (in this section referred to as the trust income) arising from a fund is accumulated for the benefit of a person contingently on his attaining some specified age or marrying then, if that person proves to the satisfaction of the Commissioner that the contingency has happened, he shall, on making to him a claim for that purpose, be entitled to have repaid to him a sum equal to the amount by which the total amount of tax borne by the trust income during the period of accumulation exceeds the total amount of additional tax which would have been borne by him during that period if the trust income and the income from any other fund subject to the same trust for accumulation had been included in his total income; but in calculating that sum a deduction shall be made in respect of tax borne by the trust fund and already repaid to him.

(2) A claim for repayment under this section shall be made in writing to the Commissioner within six years after the expiry of the year of income in which the contingency happened.

PART XII – OFFENCES AND PENALTIES

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.

[Act No. 8 of 1996, s. 43.]

108. *Repealed by Act No. 15 of 2017, s. 14.*

Failure to comply with notice, etc.

109. (1)

Any person shall be guilty of an offence if he, without reasonable excuse—

- (a) fails to furnish a return or give a certificate as required by section 35 (5) of this Act; or
- (b) fails to furnish a full and true return in accordance with the requirements of any notice served on him under this Act or fails to give notice to the Commissioner as required by section 52 (3) of this Act; or
- (c) fails to furnish within the required time to the Commissioner or to any other person any document which under this Act, or under a notice served on him under this Act, he is required so to furnish; or
- (d) fails to keep records, books or accounts in accordance with the requirements of a notice served on him under section 55(1) of this Act, or fails to keep those records, books or accounts in the language specified in the notice; or

(e) fails to preserve a record, document or book of account in contravention of section 55 (2) of this Act; or

(f) fails to produce a document for the examination of the Commissioner in accordance with the requirements of a notice served on him under this Act; or

(g) destroys, damages or defaces any accounts or other documents in contravention of a notice served on him under section 56 (1) of this Act; or

(h) fails to attend at a time and place in accordance with the requirements of a notice served on him under this Act; or

(i) fails to answer any question lawfully put to him, or to supply any information lawfully required from him, under this Act; or

(j) fails to deduct and account, or fails to account for tax, as provided by section 37 of this Act, or fails to supply prescribed certificates as is required by that section; or

(k) when requested by the Commissioner, fails to furnish the identifying number required under section 132, or fails to include in any return, in a statement or in other documents the identifying number when required to do so.

(2) No prosecution for an offence under this section shall be instituted at any time subsequent to two years after the date of the commission of the offence or, in the case of the contravention of paragraph (d), (e) or (g) of subsection (1) after the date on which the fact of the commission of that offence came to the knowledge of the Commissioner.

[Act No. 7 of 1976, s. 2, Act No. 8 of 1991, s. 72.]

110. Deleted by Act No. 29 of 2015, 2nd Sch.

111. Deleted by Act No. 29 of 2015, 2nd Sch.

112. Deleted by Act No. 29 of 2015, 2nd Sch.

113. Deleted by Act No. 29 of 2015, 2nd Sch.

114. Deleted by Act No. 29 of 2015, 2nd Sch.

115. Deleted by Act No. 29 of 2015, 2nd Sch.

116. Deleted by Act No. 29 of 2015, 2nd Sch.

117. Deleted by Act No. 29 of 2015, 2nd Sch.

118. Deleted by Act No. 29 of 2015, 2nd Sch.

119. Deleted by Act No. 29 of 2015, 2nd Sch.

120. Deleted by Act No. 29 of 2015, 2nd Sch.

121. Deleted by Act No. 29 of 2015, 2nd Sch.

PART XIII – ADMINISTRATION

122. Deleted by Act No. 29 of 2015, 2nd Sch.

123. Deleted by Act No. 29 of 2015, 2nd Sch.

123A. Deleted by Act No. 29 of 2015, 2nd Sch.

123B. Deleted by Act No. 29 of 2015, 2nd Sch.

123C. Deleted by Act No. 29 of 2015, 2nd Sch.

124. Deleted by Act No. 29 of 2015, 2nd Sch.

125. Deleted by Act No. 29 of 2015, 2nd Sch.

126. Deleted by Act No. 29 of 2015, 2nd Sch.

PART XIV – MISCELLANEOUS PROVISIONS

127. Deleted by Act No. 29 of 2015, 2nd Sch.

127A. Deleted by Act No. 29 of 2015, 2nd Sch.

127B. Deleted by Act No. 29 of 2015, 2nd Sch.

127C. Deleted by Act No. 29 of 2015, 2nd Sch.

127D. Deleted by Act No. 29 of 2015, 2nd Sch.

127E. Deleted by Act No. 29 of 2015, 2nd Sch.

128. Deleted by Act No. 29 of 2015, 2nd Sch.

129. Deleted by Act No. 29 of 2015, 2nd Sch.

Rules

130. The Cabinet Secretary 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 whatsoever nature over property, movable or immovable, and all transfers of such property in favour of or by the Commissioner shall be exempt from stamp duty.

132. Deleted by Act No. 29 of 2015, 2nd Sch.

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) of this section, the East African Income Tax Management Act (E.A. Cap. 24) shall, notwithstanding anything contained in the Treaty for East African Co-operation Act (Cap. 4), cease to have the force of law in Kenya with effect from 1st January, 1974.

(3) Subject to subsection (4) of this section, the Income Tax (Allowances and Rates) (No. 2) Act, 1971 (Act No. 29 of 1971), is repealed.

(4) Notwithstanding subsections (2) and (3) of this section, the East African Income Tax Management Act and the Income Tax (Allowances and Rates) (No. 2) Act, 1971, shall remain in force for all purposes in relation to the year of income 1973 and previous years of income and the Income Tax (Allowances and Rates)(No. 2) Act,

1971, shall be read and construed as if, when enacted, the Second Schedule thereto contained the following additional paragraph—

"3. The non-resident tax rates shall be the rates set out in paragraph 1 of the Third Schedule to this Act and for the purposes of this paragraph such rates shall be charged from 18th June, 1971."

(5) The transitional provisions contained in the Sixth Schedule shall have effect notwithstanding anything contained in this Act.

(6) Notwithstanding the repeal of the Second Schedule, the provisions of paragraph 24 E of the repealed Schedule shall continue to be in force until 31st December, 2024.

(7) Subject to the provisions of section 12 of this Act, any investment allowance on any written down values as at the date of commencement of this Act, shall be claimed on a straight-line basis.

[Act No. 2 of 1975, s. 5, Act No. 2 of 2020, Sch, Act No. 8 of 2021, s. 17, Act No. 22 of 2022, s. 19, Act No. 4 of 2023, s. 23]

FIRST SCHEDULE
EXEMPTIONS

(ss. 13 and 14)

[Sections 13 and 14, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, Act No. 12 of 1977, s. 5, Act No. 8 of 1978, s. 9, Act No. 6 of 1981, s. 5, Act No. 8 of 1983, s. 17, Act No. 13 of 1984, s. 21, Act No. 18 of 1984, s. 5, Act No. 8 of 1985, s. 14, Act No. 10 of 1986, s. 33, Act No. 10 of 1987, s. 36, Act No. 3 of 1988, s. 43, Act No. 10 of 1988, s. 34, Act No. 10 of 1990, s. 59, Act No. 8 of 1991, s. 74, Act No. 13 of 1995, s. 87, Act No. 8 of 1996, s. 44, Act No. 8 of 1997, s. 49, Act No. 5 of 1998, s. 39, Act No. 6 of 2001, s. 53, Act No. 10 of 2006, s. 29, Act No. 9 of 2007, s. 27, Act No. 8 of 2008, s. 38, Act No. 10 of 2010, s. 32, Act No. 57 of 2012, s. 23, Act No. 38 of 2013, s. 22, Act No. 16 of 2014, Act No. 14 of 2015, Act No. 38 of 2016, Act No. 11 of 2017, Act No. 15 of 2017, Act No. 9 of 2018, Sch., Act No. 23 of 2019, s. 14, Act No. 2 of 2020, Sch. Act No. 8 of 2020, s. 8, Act No. 8 of 2021, s. 18. Act No. 22 of 2022, s. 20, Act No. 4 of 2023, s. 24.]

***Part I - INCOME ACCRUED IN, DERIVED FROM OR
RECEIVED IN KENYA WHICH IS EXEMPT FROM TAX***

1. So much of the income of a person as is expressly exempted from income tax by or under the provisions of any Act of Parliament for the time being in force, to the extent provided by such Act.
2. The income of any person who, or organization which, is exempt from income tax by or under any Act of Parliament for the time being in force, to the extent provided by such Act.
3. *Deleted by Act No. 57 of 2012, s. 23(a).*
4. *Deleted by Act No. 2 of 2020, Sch.*
5. *Deleted by Act No. 13 of 1984, s. 21.*

6.

The income, other than income from investments, of an amateur sporting association, that is to say, an association—

- (a) whose sole or main object is to foster and control any outdoor sport; and
- (b) whose members consist only of amateurs or affiliated associations the members of which consist only of amateurs; and
- (c) whose memorandum of association or by-laws have provisions defining an amateur or a professional and providing that no person may be or continue to be a member of such association if such person is not an amateur.

7. *Deleted by Act No. 2 of 2020, Sch.*

8. The income of any county government.

[Act No. 16 of 2014, s. 20.]

9. *Deleted by Act No. 2 of 2020, Sch.*

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 such gains or profits are applied solely to such purposes and either—

- (i) such business is carried on in the course of the actual execution of such purposes;
- (ii) the work in connexion with such business is mainly carried on by beneficiaries under such purposes; or
- (iii) such gains or profits consist of rents (including premiums or any similar consideration in the nature of rent) received from the leasing or letting of land and any chattels leased or let therewith; 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.

Provided further that in this paragraph, “institution, body of persons or irrevocable trust, of a public character” means an entity established to benefit the public in a transparent and accountable manner without restriction or discrimination regardless of the level of charges or fees levied for services rendered, and which utilises its assets or income exclusively to carry out the purpose for which the entity was established without conferring a private benefit to an individual.

[Act No. 13 of 1975, Act No. 6 of 2001, s. 53, Act No. 57 of 2012, s. 23(b), Act No. 4 of 2023, s. 24]

11. The income of any person from any management or professional fee, royalty or interest when the Cabinet Secretary certifies that it is required to be paid free of tax by the terms of an agreement to which the Government is a party either as principal or guarantor and that it is in the public interest that such income shall be exempt from tax.

12. The income of any registered pension scheme.

13. The income of any registered trust scheme.

14. The income of any registered pension fund.

15. The income of a registered provident fund.

16. The income from the investment of an annuity fund, as defined in section 19 of this Act, of an insurance company.

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

18. *Deleted by Act No. 2 of 2020, Sch.*

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

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

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

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

Provided that, where any person to whom such an allowance is paid is granted a deduction under section 15 of this Act in respect of any expenditure incurred in relation to an activity for which the allowance is paid, then the exemption conferred by this paragraph shall not apply to so much of such allowance as is equal to the amount of such deduction.

23. The income of the East African Development Bank and of Corporations established under Article 71 of the Treaty for East African Co-operation together with the income of subsidiary companies wholly owned by that Bank or by any of the said Corporations.

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

25. *Deleted by Act No. 2 of 2020, Sch.*

26.

The emoluments—

(a) *deleted by Act No. 38 of 2013, s. 22;*

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

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

27. The emoluments payable out of foreign sources in respect of duties performed in Kenya in connexion with a technical assistance or other agreement for developmental services or purpose to which the Government or the Community is a party to any non-resident person or to a person who is resident solely for the purposes of performing those duties, in any case where the agreement provides for the exemption of such emoluments.

28. *Deleted by Act No. 2 of 2020, Sch.*

29. *Deleted by Act No. 2 of 2020, Sch.*

30. *Deleted by Act No. 2 of 2020, Sch.*

31. *Deleted by Act No. 2 of 2020, Sch.*

32. *Deleted by Act No. 2 of 2020, Sch.*

33. Deleted by Act No. 2 of 2020, Sch.

34. Deleted by Act No. 2 of 2020, Sch.

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) *deleted by Act No. 2 of 2020, Sch.;*
- (b) *deleted by Act No. 2 of 2020, Sch.;*
- (c) a private residence if the individual owner has occupied the residence continuously for the three-year period immediately prior to the transfer concerned:

Provided that—

- (i) in determining whether or not a person has occupied a residence continuously for three years, any period during which he was temporarily absent from the residence shall be ignored;
 - (ii) references to a private residence include the immediately surrounding land utilized exclusively for personal purposes as an adjunct to the residence and not for the production of income, but does not include any part of the residence and land utilized for business purposes;
 - (iii) no individual may claim or be taken to have used more than one residence as his residence at the same time for the purposes of this Act;
 - (iv) no individuals may claim or be taken to have used more than one residence as their residence for the purposes of this Act at any time when they were husband and wife living together;
 - (v) no individual shall claim or be taken to have used a residence as a residence at any time when he was a dependant of either or both of his parents;
 - (vi) where a residence is used in part for business purposes, or is transferred in a single transaction together with land and other property used for the production of income, the taxable value of such property used for residential purposes shall be separately determined from that used for business purposes or for the production of income;
- (d) property (being land) transferred by an individual where—
- (i) the transfer value is not more than three million shillings; or
 - (ii) agricultural property having an area of less than fifty acres where such property is situated outside a municipality, gazetted township or an area that is declared by the Cabinet Secretary, by notice in the *Gazette*, to be an urban area for the purposes of this Act;
- (e) *deleted by Act No. 2 of 2020, Sch.;*
 - (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:

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.

- (g) property, including investment shares, which is transferred or sold for the purpose of transferring the title or the proceeds into a registered family trust.

[Act No. 14 of 2015, s. 16(a), Act No. 2 of 2020, Sch, Act No. 8 of 2021, s. 18.]

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

38. Deleted by Act No. 10 of 1987, s. 36.

39. Deleted by Act No. 10 of 1987, s. 36.

40. Deleted by Act No. 2 of 2020, Sch.

41. Deleted by Act No. 2 of 2020, Sch.

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. Deleted by Act No. 8 of 2020, s. 8.

[Act No. 8 of 2020, s. 8]

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

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.

[Act No. 11 of 2017, Sch.]

46. Deleted by Act No. 2 of 2020, Sch.

47. Deleted by Act No. 2 of 2020, Sch.

48. Gains arising from trade in securities listed on any securities exchange operating in Kenya by any dealer licensed under the Capital Markets Authority Act (Cap. 485A):

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

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

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

(2) For the purposes of this paragraph, "pooled fund" has the meaning assigned to it under the Retirement Benefit Act, 1997 (No. 3 of 1997).

[Act No. 10 of 2006, s. 29.]

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.

[Act No. 10 of 2006, s. 29, Act No. 10 of 2010, s. 32.]

52. *Deleted by Act No. 2 of 2020, Sch.*

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

[Act No. 38 of 2016, s. 16, Act No. 8 of 2020, s. 8.]

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

[Act No. 38 of 2016, s. 16.]

55. *Deleted by Act No. 2 of 2020, Sch.*

56. *Deleted by Act No. 2 of 2020, Sch.*

57. The income of the National Housing Development Fund.

[Act No. 23 of 2019, s. 14.]

57. The income or principal sum of a registered family trust.

[Act No. 8 of 2021, s. 18.]

58. Income earned by an individual who is registered under the Ajira Digital Program for three years beginning 1st January, 2020;

Provided that—

- (a) the individual shall qualify for the exemption upon payment of registration fee of ten thousand shillings per annum; and
- (b) the Cabinet Secretary shall, in consultation with the Cabinet Secretary for the ministry responsible for information communication technology, issue regulations for the better carrying out of this provision.

[Act No. 23 of 2019, s. 14.]

58. Any capital gains relating to the transfer of title of immovable property to a family trust.

[Act No. 8 of 2021, s. 18.]

59. The amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time home-owner.

60. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services:

Provided that such bonds, notes or securities shall have a maturity of at least three years.

61. Deemed interest in respect of an interest free loan advanced to a company undertaking the manufacture of human vaccines.

62. Payments made to non-resident service providers not having a permanent establishment in Kenya in respect of services provided to a company undertaking the manufacture of human vaccines.

63. Compensating tax accruing to a company undertaking the manufacture of human vaccines.

64. Dividends paid by a company undertaking the manufacture of human vaccines to any non-resident person.

65. Deleted by Act No. 4 of 2023, s. 24(b)

66. Dividends paid by Special Economic Zone enterprises, developers and operators licensed under the Special Economic Zones Act (Cap. 517A).

67. Dividends paid by Special Economic Zone enterprises, developers and operators to any non-resident person.

68. Royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines.

[Act No. 4 of 2023, s. 24.]

69. Interest paid to a resident person or non-resident person by a company undertaking the manufacture of human vaccines.

[Act No. 4 of 2023, s. 24.]

70. Investment income from a post-retirement medical fund, whether or not the fund is part of a retirement benefits scheme.

[Act No. 4 of 2023, s. 24.]

71. Income earned by a non-resident contractor, sub-contractor, consultant or employee involved in the implementation of a project financed through a one hundred percent grant under an agreement between the Government and the development partner, to the extent provided for in the Agreement:

Provided that the non-resident is in Kenya solely for the implementation of the project financed by the one hundred percent grant.

[Act No. 4 of 2023, s. 24.]

72. Gains on transfer of property within a special economic zone enterprise, developer and operator.

[Act No. 4 of 2023, s. 24.]

73. Royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by a special economic zone

developer, operator or enterprise, in the first ten years of its establishment, to a non-resident person.

[Act No. 4 of 2023, s. 24.]

[Act No. 2 of 2020, s. 20, Act No. 22 of 2022, s. 20, Act No. 4 of 2023, s. 24(c), Act No. 4 of 2023, s. 24.]

Part II - SECURITIES, THE INTEREST ON WHICH IS EXEMPT FROM TAX
Repealed by Act No. 2 of 2020, Sch.

SECOND SCHEDULE

INVESTMENT ALLOWANCE

(ss. 4, 5 and 15)

[Act No. 2 of 1975, s. 5, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, L.N. 123/1976, Sch., L.N. 189/1977, Sch., Act No. 8 of 1978, s. 9, Act No. 13 of 1979, s. 5, Act No. 6 of 1981, s. 5, Act No. 14 of 1982, s. 21, Act No. 18 of 1984, s. 6, Act No. 8 of 1985, s. 15, Act No. 10 of 1986, s. 34, Act No. 10 of 1987, s. 37, Act No. 10 of 1988, s. 35, Act No. 8 of 1989, s. 22, Act No. 8 of 1991, s. 75, Act No. 4 of 1993, s. 58, Act No. 6 of 1994, s. 46, Act No. 13 of 1995, s. 88, Act No. 8 of 1996, s. 45, Act No. 4 of 1999, s. 40, Act No. 9 of 2000, s. 54, Act No. 6 of 2001, s. 54, Act No. 15 of 2003, s. 40, Act No. 4 of 2004, s. 60, Act No. 6 of 2005, s. 35, Act No. 10 of 2006, s. 30, Act No. 9 of 2007, s. 28, Act No. 8 of 2008, s. 39, Act No. 8 of 2009, s. 29, Act No. 10 of 2010, s. 33, Act No. 57 of 2012, s. 24, Act No. 16 of 2014, s. 21, Act No. 14 of 2015, s. 17, Act No. 11 of 2017, Act No. 15 of 2017, ss. 16 & 17, Act No. 1 of 2020, s. 11, Act No. 2 of 2020, Sch, Act No. 8 of 2021, s. 19, Act No. 22 of 2022, s. 21, Act No. 4 of 2023, s. 25]

1. Deduction of investment allowance

(1) Where a person incurs capital expenditure in respect of an item listed in the first column of the table, an investment allowance may be deducted in computing the gains or profits of that person at the corresponding rate specified in the second column, for each year of income—

Capital expenditure incurred	Rate of Investment Allowance
(a) Buildings	
(i) Hotel building	50% in the first year of use
(ii) Building used for manufacture	50% in the first year of use
(iii) Hospital buildings	50% in the first year of use
(iv) Petroleum or gas storage facilities	50% in the first year of use
(v) Residual value to item (a)(i) to (a)(iv)	25% per year, in equal instalments
(vi) Educational buildings including student hostels	10% per year, in equal instalments
(vii) Commercial building	10% per year, in equal instalments
(viii) Industrial Building	10%
(ix) Dock	10% in equal instalments
(b) Machinery	
(i) Machinery used for manufacture	50% in the first year of use
(ii) Hospital equipment	50% in the first year of use
(iii) Ships or aircrafts	50% in the first year of use
(iv) Residual value items (b)(i) to (b)(iii)	25% per year, in equal instalments
(v) Motor vehicles and heavy earth moving equipment	25% per year, in equal instalments

Capital expenditure incurred	Rate of Investment Allowance
(vi) Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines	25% per year, in equal instalments
(vii) Furniture and fittings	10% per year, in equal instalments
(viii) Telecommunications equipment	10% per year, in equal instalments
(ix) Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming	25% per year, in equal instalments
(x) Machinery used to undertake operations under a prospecting right	50% in the first year of use and 25% per year, in equal instalments
(xi) Machinery used to undertake exploration operations	50% in the first year of use and 25% per year, in equal instalments
(xii) Other machinery	10% per year, in equal instalments
(c) Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator	10% per year, in equal instalments
(d) Farmworks	50% in the first year of use and 25% per year, in equal instalments

Provided that–

- (a) in the case of change of user of a building, the deduction shall be restricted to the residual value or unclaimed amount at the applicable rate;
- (b) in respect of a hotel, educational or hospital building, the building shall be licensed by the competent authority; and
- (c) "building used for manufacture" includes any structure or civil works deemed to be part of a building where the structure or civil works relates or contributes to the use of the building;
- (d) "commercial building" includes–
 - (i) a building used as an office, shop, showroom, godown, storehouse, or warehouse used for storage of raw materials for manufacture of finished or semi-finished goods; or
 - (ii) civil works relating to water or electric power undertaking, but does not include an undertaking not carried on by way of trade;

(e) "machinery used for manufacture" means machinery used directly in the process of manufacture, and includes machinery used for the following ancillary purposes–

- (i) generation, transformation and distribution of electricity;
- (ii) clean-up and disposal of effluents and other waste products;
- (iii) reduction of environmental damage;
- (iv) water supply or disposal;
- (v) maintenance of the machinery; or
- (vi) scientific research and development;

(f) "manufacture" means the refining or making, including packaging, of goods from raw or semi-finished goods, or the generation of electrical energy, or the transformation and distribution of electricity, but does not include design, storage, transport, administration or any other ancillary activity;

(g) civil works include–

- (i) roads and parking areas;
- (ii) railway lines and related structures;
- (iii) water, industrial effluent and sewerage works;
- (iv) communications and electrical posts and pylons and other electrical supply works;
- (v) security walls and fencing; and
- (vi) earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures

(h) "Farm works" means farmhouses, labour quarter, any other immovable building necessary for the proper operation of the farm, fences, ditches, drains, water and electricity supply works and other works necessary for the proper operation of the farm.

(i) "dock" includes a container terminal berth, harbour, wharf, pier, jetty, storage yard, or other works in or at which vessels load or unload merchandise but does not include a pier or jetty used for recreation;

(j) "industrial building" includes a building in use for the purpose of transport, bridge, tunnel, inland navigation water and electricity or hydraulic power undertaking;

(k) "machinery used for agriculture" means machinery used directly in agricultural activities including tilling, planting, irrigation, weeding and harvesting;

(l) "telecommunications equipment" includes civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment.

(1A)

Notwithstanding paragraph 1, the investment deduction shall be one hundred per cent where-

(a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least two billion shillings:

Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty per cent, that rate shall continue to apply for the investment made on or before the 25th April, 2020 or the investment deduction shall be one hundred and fifty per cent where the cumulative investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least two billion shillings;

(b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or

(c) the person has incurred investment in a special economic zone.

(1B) Paragraph (1A) shall apply to items listed under paragraphs 1(1)(a)(i) and (ii), and (1)(b)(i).

[No. 4 of 2023, s. 25]

2. Calculation of written down or residual value

The written down or residual value of each item referred to in paragraph 1 shall be calculated separately, and shall be the balance of capital expenditure taking into account the sale of the item after deducting investment allowance.

3. Treatment of excess or deficit of realised amounts

Where the amount realised from the sale of an item referred to in paragraph 1 exceeds the written down or residual value, the excess shall be treated as a trading receipt or, conversely, a trading loss for the year of income.

4. Balancing charge or deduction on cessation of business

(1) Where an investment allowance has been deducted under paragraph 1 in computing the gains or profits of a person and that person ceases to carry on business for the purposes of which the item was used and the item ceases to be owned by him, a balancing charge or balancing deduction shall be made or allowed for the year of income in which he ceased to carry on business.

(2) Where the person referred to in subparagraph (1) is a partnership, the person shall be deemed to have ceased to carry on business only when all the partners cease to carry on that business.

(3) Where the items are sold by a liquidator of a company, the balancing charge or balancing deduction shall be made or allowed in the year of income in which the winding up commenced.

(4)

Where on cessation of a business, a balancing charge or balancing deduction is to be made or allowed under this paragraph and –

(a) the consideration received exceeds the residual value at the time of cessation, the balancing charge shall be the excess amount or, where the residual value is nil, the consideration received; or

(b) a consideration is not received by the person who owns the items, or the residual value at the time of the cessation exceeds the consideration received, the balancing deduction shall be the residual value at the time of cessation, or the excess thereof over the consideration received.

5. Determination of market value of items used in a business

Where an item is brought into use for a business without being purchased or ceases permanently to be used without being sold, it shall be deemed to have been purchased or sold, and the cost or amount realized shall be deemed to be the market value.

6. Restriction on capital expenditure on motor vehicles

(1) Where capital expenditure exceeding three million shillings is incurred on a motor vehicle, other than a commercial vehicle, that capital expenditure shall be restricted to three million shillings.

(2) Where the motor vehicle referred to in subparagraph (1) is sold, the sale price shall be deemed to be the proportion of the proceeds of sale, having regard to the original purchase price and three million shillings.

7. Limitation on capital expenditure on buildings

Capital expenditure incurred on the construction of a building does not include capital expenditure on the acquisition of, or of rights in or over, land.

8. Ascertainment of capital expenditure on buildings

(1) Where a building is used partly for purposes other than the purposes specified in paragraph 1, the capital expenditure on which the deduction in respect of the building is calculated shall be the expenditure attributable to that portion of the building which is used for those purposes, but where the expenditure attributable exceeds ninety per cent of the total expenditure incurred on the construction of the building the whole building shall be treated as used for the specified purposes.

(2) Where an existing building is extended by further construction, the extension shall be treated as a separate building.

(3) Where capital expenditure is incurred on the construction of a building and before that building is used it is sold, the seller shall not be allowed a deduction.

(4) Where a person purchases the building referred to in subparagraph (3), that person shall be deemed to have incurred capital expenditure on its construction equal to the capital expenditure actually incurred on its construction or to the amount paid by him, whichever is lesser.

(5) Where the building referred to in subparagraph (3) is sold more than once before it is used, subparagraph (4) shall apply but only in relation to the last sale.

(6) Where a building referred to in subparagraph (3) is sold by a person carrying on a business of construction for sale, the qualifying capital expenditure shall be the price paid on the sale.

9. Expenditure incurred for a person

Any expenditure incurred on behalf of a person by another person, shall not qualify for deduction under this Schedule.

THIRD SCHEDULE

RATES OF PERSONAL RELIEFS AND TAX

(ss. 29, 30, 31, 32, 33, 34 and 35)

[Act No. 2 of 1975, s. 5, Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, Act No. 12 of 1977, s. 5, Act No. 8 of 1978, s. 9, Act No. 10 of 1980, s. 5, Act No. 12 of 1980, s. 3, Act No. 6 of 1981, s. 5, Act No. 14 of 1982, s. 22, Act No. 13 of 1984, s. 22, Act No. 18 of 1984, s. 7, Act No. 8 of 1985, s. 16, Act No. 10 of 1987, s. 38, Act No. 10 of 1988, s. 36, Act No. 8 of 1989, s. 23, Act No. 10 of 1990, s. 60, Act No. 21 of 1990, Sch., Act No. 8 of 1991, s. 76, Act 9 of 1992, s. 57, Act 4 of 1993, s. 59, Act 6 of 1994, s. 47, Act No. 13 of 1995, s. 89, Act No. 8 of 1996, s. 46, Act No. 8 of 1997, s. 50, Act No. 5 of 1998, s. 40, Act No. 4 of 1999, s. 41, Act No. 9 of 2000, s. 55, Act No. 6 of 2001, s. 55, Act No. 7 of 2002, s. 48, Act No. 15 of 2003, s. 41, Act No. 4 of 2004, s. 61, Act No. 6 of 2005, s. 36, Act No. 10 of 2006, s. 31, Act No. 9 of 2007, s. 29, Act No. 8 of 2008, s. 40, Act No. 8 of 2009, s. 30, Act No. 10 of 2010, s. 34, Act No. 4 of 2012, s. 22, Act No. 57 of 2012, s. 25, Act No. 38 of 2013, s. 23, Act No. 16 of 2014, s. 22, Act No. 14 of 2015, s. 18, Act No. 38 of 2016, s. 17, Act No. 11 of 2017, Sch, Act No. 15 of 2017, s. 18, Act No. 9 of 2018, Sch., Act No. 10 of 2018, s. 11, Act No. 23 of 2019, s. 15, Act No. 2 of 2020, Sch, Act No. 8 of 2020, s. 9, Act No. 22 of 2020, Sch., Act No. 8 of 2021, Sch, Act No. 22 of 2022, s. 22, Act No. 4 of 2023, s. 26(b)(i), Act No. 4 of 2023, s. 26, Act No. 2 of 2024, 3rd Sch.]

RATES OF PERSONAL RELIEF AND TAX

HEAD A – RESIDENT PERSONAL RELIEF

1. Personal Relief

The amount of the personal relief shall be twenty-eight thousand eight hundred shillings:

Provided that for the year of income 1995, all the income over £19,500 shall be charged additional tax at the rate of one-half shilling in each twenty shillings.

[Act No. 38 of 2016, s. 17(a), Act No. 15 of 2017, s. 18(a), Act No. 2 of 2020, Sch.]

2. Insurance Relief

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

3. Affordable housing relief

The amount of affordable housing relief shall be 15% of the employee's contribution but shall not exceed Ksh. 108,000 per annum.

[Act No. 9 of 2018, Sch., Act No. 23 of 2019, s. 15.]

4. Post-retirement medical fund relief

The amount of post-retirement medical fund relief shall be fifteen per cent of the amount of contribution paid or sixty thousand shillings per annum, whichever is lower.

[Act No. 4 of 2023, s. 26(a)]

HEAD B – RATES OF TAX

[Act No. 11 of 2017, Sch., Act No. 15 of 2017, s. 18(b)(i), Act No. 2 of 2020, Sch., Act No. 22 of 2020, Sch, Act No. 4 of 2023, s. 26(b)(i).]

1. The individual rates of tax shall be -

	<i>Rate in each shilling</i>
On the first Ksh. 288,000	10%
On the next Ksh. 100,000	25%
On the next Ksh. 5,612,000	30%
On the next Ksh. 3,600,000	32.5%
On all income over 9,600,000	35%

[Deleted by Act No. 4 of 2023, s. 26(b)(ii).]

1A.

[Act No. 11 of 2017, Sch., Act No. 15 of 2017, s. 18(b)(i), Act No. 2 of 2020, Sch., Act No. 22 of 2020, Sch, Act No. 4 of 2023, s. 26(b)(ii).]

2. The corporate rate of tax shall be–

(a) in the case of a resident company–

	<i>Rate in each twenty shillings</i>
(i) for the year of income 1974 and each subsequent year of income up to and including the year of income 1990	9.00
(ii) for the year of income 1990	8.50
(iii) for the year of income 1991	8.00
(iv) for the year of income 1992	7.50
(v) for the year of income 1993 upto and including the year of income 1997	7.00
(vi) for the year of income 1998 up to and including the year of income 1999	6.50
(vii) for the year of income 2000 and each subsequent year of income	6.00
(viii) for the year of income 2020 and each subsequent year of income	5.00
(ix) for the year of income 2021 and each subsequent year of income.	6.00

Provided that this provision shall apply to the income earned from the 1st January, 2021.

Provided that for a resident company with an accounting period ending between the 1st July, 1994 and the 30th June, 1995 the corporation rate of tax shall be increased by one-half shilling in each twenty shillings

(b) In the case of a non-resident company having a permanent establishment in Kenya–

Rate in each twenty shillings

(i) for the year of income 1974 and each subsequent year of income up to and including the year of income 1989	10.50
(ii) for the year of income 1990	10.00
(iii) for the year of income 1991	9.50
(iv) for the year of income 1992 and each subsequent year of income	9.00
(v) for the year of income 1993 up to and including the year of income 1997	8.50
(vi) for the year of income 1998 up to and including 1999	8.00
(vii) for the year of income 2000 and each subsequent year of income	7.50
(viii) for the year of income 2024 and each subsequent year of income	6.00

Provided that for a non-resident company having a permanent establishment in Kenya with an accounting period ending between the 1st July, 1994 and the 30th June, 1995, the corporation rate of tax shall be increased by one-half shilling in each twenty shillings—

(c) *deleted by Act No. 2 of 2020, Sch.;*

(d) *deleted by Act No. 2 of 2020, Sch.;*

(e) *deleted by Act No. 2 of 2020, Sch.;*

(f) an export processing zone enterprise which does not engage in any commercial activities shall be exempted from paying any corporation tax for a period of ten years commencing with the year in which production, sales or receipts relating to the activities for which that enterprise has been licensed as an export processing zone enterprise commence; but the corporation rate of tax will be twenty-five per cent for the period of ten years commencing immediately thereafter:

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

(g) (i) *deleted by Act No. 2 of 2020, Sch.;*

(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);

(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 per cent for another ten years;

(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

(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–

(i) 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 ex-factory value of the motor vehicles; and

(ii) in this paragraph, “local content” means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

(k) *deleted by Act No. 2 of 2020, Sch.;*

(l) *deleted by Act No. 2 of 2020, Sch.;*

(m) in respect of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax specified in the Agreement shall continue to apply for the unexpired period as provided under the Agreement;

(n) in respect of a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first ten years from the year of commencement of its operations;

(o) in respect of a company operating a shipping business in Kenya, fifteen per cent for the first ten years from the year of commencement of its operations;

(p) in respect of a company undertaking the manufacture of human vaccines, ten per cent.

[Act No. 14 of 2015, 18(a), Act No. 11 of 2017, Sch., Act No. 38 of 2016, s. 17, Act No. 15 of 2017, s. 18(ii)(a)(b), Act No. 10 of 2018, s. 11(a), Act No. 23 of 2019, s. 15, Act No. 2 of 2020, Sch, Act No. 22 of 2020, Sch, Act No. 22 of 2022, s. 22(a), Act No. 4 of 2023, s. 26(b)(iii),(iv)&(v)]

3. The non-resident tax rates shall be–

(a) in respect of management or professional fees or training fees, consultancy, agency or contractual fee, twenty per cent of the gross sum payable:

Provided that–

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

Provided that the rate applicable to any royalty paid by any Special Economic Zone Enterprise, Developer or Operator to a non-resident 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;
- (d) in respect of a dividend, fifteen per cent of the amount payable:

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

- (e) (i) in respect of interest arising from a Government bearer bond of at least two years duration and interest and deemed interest, discount or original issue discount, fifteen per cent of the gross sum payable;
- (ia) in respect of interest and deemed interest arising from a bearer bond issued outside Kenya of at least two years duration and interest, discount or original issue discount, seven and a half per cent of the gross sum payable;
- (ii) in respect of interest, arising from bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent of the gross amount payable;
- (iii) in respect of interest paid by any Special Economic Zone Enterprise, Developer or Operator to a non-resident persons, 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, any place (whether public or private) for the purpose of entertaining, instructing,

taking part in any sporting event or otherwise diverting an audience, twenty per cent of the gross amount payable;

- (h) in respect of an activity by way of supporting, assisting or arranging any appearance or performance mentioned in subparagraph (g) of this paragraph, twenty per cent of the gross amount payable;
- (i) in respect of winnings, twenty percent;
- (ia) in respect of interest and deemed interest arising from a bearer bond issued outside Kenya of at least two years duration and interest, discount or original issue discount, seven and a half per cent of the gross sum payable;
- (j) [deleted by Act No. 16 of 2014, s. 22(a)(v);]
- (k) in respect of gains or profits from the business of a ship-owner which is chargeable to tax under section 9(1) of the Act, two and a half per cent of the gross amount received;
- (l) in respect of gains and profits from the business of transmitting messages by cable or radio communication, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet and satellite or any other similar method of communication which is chargeable to tax under section 9(2), five per cent of the gross amount received;
- (m) [deleted by Act No. 38 of 2016, s. 17 (e)(i);]
- (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;
- (o) [deleted by Act No. 23 of 2019, s. 15(ii);]
- (p) an insurance or reinsurance premium, five per cent of the gross amount payable;
- (q) in the case of sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services twenty percent of the gross amount;

Provided that with regard to transportation of goods, the rate shall not be applicable to East African Community citizens;
- (r) in the case of gains from financial derivatives, fifteen per cent of such gains;
- (s) in the case of repatriated income under section 7B, fifteen per cent;
- (t) in the case of digital content monetisation, twenty percent of the gross amount.

[Act No. 16 of 2014, s. 22(a), Act No. 14 of 2015, s. 18(b), Act No. 38 of 2016, s. 17(e)(i), Act No. 15 of 2017, s. 18(c)(i)(ii)(iii), Act No. 9 of 2018, Sch, Act No. 10 of 2018, s. 11(b), Act No. 123 of 2019, s. 15, Act No. 2 of 2020, Sch., Act No. 22 of 2022, s. 22, Act No. 4 of 2023, s. 26(b)(vi)]

4. Deleted by Act No. 6 of 1994, s. 47.

5. The resident withholding tax rates shall be–
- (a) in respect of a dividend, fifteen per cent of the amount payable;
 - (b) in respect of interest, discount or original issue discount arising from–
 - (i) bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent;
 - (ii) Government Bearer Bond of at least two years duration and other sources, fifteen per cent;
 - (iii) bearer bonds with a maturity of ten years and above, ten per cent of the gross amount payable, of the gross amount payable;
 - (c) in respect of a commission or fee, paid or credited by an insurance company to any person for the provision, whether directly or indirectly, of an insurance cover to any person or group of persons, five per cent of the gross amount payable to brokers, and ten percent of the gross amount payable to brokers, and ten percent of the gross amount payable to all others;
 - (d) (i) in respect of a payment of a pension or any withdrawal made after the expiry of fifteen years from the date of joining the fund, or on the attainment of the age of fifty years, or upon earlier retirement on the grounds of ill-health or infirmity of body and mind, from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund, in excess of the tax free amounts specified under section 8(4) and 8(5) in any one year and, provided that tax has not been deducted under section 37–

	Rate in each shilling
On the first Shs. 400,000	10%
On the next Shs. 400,000	15%
On the next Shs. 400,000	20%
On the next Shs. 400,000	25%
On all income above KSh. 1,600,000 of the amounts in excess of the tax-free amount.	30%

Provided that the tax so deducted shall be final;

- (ii) in respect of a 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)]section 8(4) and 8(5) in any one year–

	Rate in each shilling
On the first KShs. 288,000	10%
On the next KShs. 100,000	25%

On all income over KShs. 388,000

30%

- (iii) in respect of surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds, thirty per cent of the gross sum payable;
 - (e) in respect of a qualifying dividend, five per cent of the amount payable;
 - (f) (i) in respect of management or professional fee or training fee, other than contractual fee, the aggregate value of which is twenty-four thousand shillings in a month or more, five per cent of the gross amount payable;
 - (ii) in respect of contractual fee the aggregate value of which is twenty-four thousand shillings in a month or more, three per cent of the gross amount payable;
 - (g) in respect of a royalty or natural resource income, five per cent of the gross amount payable;
 - (h) in respect of qualifying interest–
 - (i) ten per cent of the gross amount payable in the case of housing bonds; and
 - (ii) twenty per cent of the gross amount payable in the case of bearer instrument; and
 - (iii) fifteen per cent of the gross amount payable in any other case;
 - (i) in respect of winnings, twenty percent;
- Provided that the tax paid under this subparagraph is final.
- (j) *deleted by Act No. 38 of 2016, s. 17 (e)(ii);*
 - (ja) in respect of a rent, premium or similar consideration for the use or occupation of immovable property, seven point five percent of the gross amount payable;
 - (jb) in respect to the disbursement of deemed income to beneficiaries under section 11(3)(c) the rate of twenty five percent;
 - (k) *deleted by Act No. 14 of 2015, s. 18(c)(iii);*
 - (l) in respect of payments for sales promotion, marketing, advertising services, five per cent of the gross amount;
 - (m) in respect of payments relating to digital content monetisation, five per cent

[Act No. 6 of 1994, Act No. 14 of 2015, s. 18(c), Act No. 38 of 2016, s. 17 (d) & (e) (ii), Act No. 15 of 2017, s. 18 (c)(iv), Act No. 9 of 2018, Sch, Act No. 2 of 2020, Sch, Act No. 22 of 2020, Sch., Act No. 8 of 2021, s. 20, Act No. 4 of 2023, s. 26(b)(vii) &(viii)]

6. *Deleted by No. 16 of 2014, s. 22(c).*

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, two thousand five hundred shillings per tonne of load capacity per year or five thousand shillings per year, whichever is higher;
 Provided that advance tax shall not be imposed on the tractors or trailers used for agricultural purposes;
 - (b) for saloons, station-wagons, mini-buses, buses and coaches, one hundred shillings per passenger capacity per month or five thousand shillings per year, whichever is higher;
 - (c) [deleted by Act No. 10 of 2010, s. 34.]
 [Act No. 4 of 2023, s. 26(b)(ix)&(x)]
9. The rate of turnover tax shall be one point five percent of the gross receipts of the business of a taxable person under section 12C.
 [Act No. 10 of 2018, s. 11(c), Act No. 23 of 2019, s. 15, Act No. 2 of 2020, Sch, Act No. 4 of 2023, s. 26(b)(xi), Act No. 2 of 2024, 3rd Sch.]
10. The rate of tax in respect of residential rental income shall be seven point five percent of the gross rental receipts of a taxable resident person under section 6A
 [Act No. 14 of 2015, s. 18(d), Act No. 4 of 2023, s. 26(b)(xii)]
11. The rate of tax in respect of minimum tax under section 12D shall be one per cent of the gross turnover.
 [Act No. 8 of 2020, s. 9.]
12. The rate of tax in respect of digital service tax under section 12E shall be one point five per cent of the gross transaction value.
 [Act No. 8 of 2020, s. 9]
13. The rate of tax in respect of digital asset tax shall be three per cent of the transfer or exchange value of the digital asset.
 [Act No. 4 of 2023, s. 26(b)(xiii)]

FOURTH SCHEDULE

FINANCIAL INSTITUTIONS

(ss. 15 and 35)

[Act No. 6 of 1981, s. 5, Act No. 8 of 1983, s. 18, Act No. 8 of 1985, s. 17, Act No. 9 of 1989, Second Sch., Act No. 8 of 2008, s. 41, Act No. 4 of 2023, s. 27]

A bank or financial institution or mortgage finance company licensed and the Banking Act (Cap. 488).

An insurance company licensed under the Insurance Act (Cap. 487)

The Kenya Reinsurance Corporation established by the Reinsurance Corporation Act.

A building society registered under the Building Societies Act (Cap. 489).

The National Housing Corporation established under the Housing Act (Cap. 117).

A co-operative society registered under the Co-operative Societies Act (Cap. 490).

The Kenya Post Office Savings Bank established by the Kenya Post Office Savings Bank Act (Cap. 493B).

The Agricultural Finance Corporation established by the Agricultural Finance Corporation Act (Cap. 323).

A person licensed under Part VII of the Hire-purchase Act (Cap. 507).

Mortgage refinance companies licensed under the Central Bank of Kenya Act (Cap. 491).

FIFTH SCHEDULE

SCHEDULED PROFESSIONS AND SCHEDULED QUALIFICATIONS

(s. 2)

[Act No. 7 of 1976, s. 2, Act No. 13 of 1984, s. 23, Act No. 10 of 1988, s. 37, Act No. 4 of 1993, s. 60.]

Profession	Qualifications
1. Medical	Any person who is registered as a medical practitioner under the Medical Practitioners and Dentists Act (Cap. 253).
2. Dental	Any person who is registered as a dentist under the Medical Practitioners and Dentists Act (Cap. 253).
Surveyors-	
(a) Land surveyor	Any person licensed as a surveyor under the Survey Act. (Cap. 299)
(b) Surveyor	Any person who is a fellow or professional associate of the Royal Institution of Chartered Surveyors
5. Architects or Quantity Surveyors	Any person who is registered as an architect or a quantity surveyor under the Architects and Quantity Surveyors Act (Cap. 525)
6. Veterinary Surgeons	Any person who is registered or licensed as a veterinary surgeon under the Veterinary Surgeons Act (Cap. 366).
7. Engineers	Any person who is registered under the Engineers Registration Act (Cap. 530).
8. Accountants	Any person who is registered as an accountant under the Accountants Act (Cap. 531).
9 Certified Public Secretaries	A person who is registered under the Certified Public Secretaries of Kenya Act (Cap. 534).

SIXTH SCHEDULE
TRANSITIONAL PROVISIONS

(s. 133)

[Act No. 2 of 1975, s. 5.]

1.

In and for the purposes of the application of the Management Act under subsection (4) of section 133 of this Act—

- (a) references in the Management Act to the Authority shall be read as references to the Cabinet Secretary;
- (b) references in the Management Act to the Commissioner-General and to other officers shall be read as references to the Commissioner and equivalent officers appointed under this Act;
- (c) the local committees and the tribunal appointed for Kenya under the Management Act shall continue in being for the purpose of such application;
- (d) any rules made under the Management Act shall, to the extent that they refer to Kenya, continue to have full force and effect.

2. Legal proceedings commenced prior to 1st January, 1974, under the Management Act shall not be abated by reason only of the operation of subsection (2) of section 133 of this Act, and where the Commissioner-General was a party to any such proceedings the Commissioner shall be substituted as a party in place of the Commissioner-General.

3.

(1) Subject to this Schedule, the continuity of the operation of the Law relating to income tax shall not be affected by the substitution of this Act for the Management Act and accordingly—

- (a) so much of any enactment or document as refers, whether expressly or by implication, to or to things done or to be done under or for the purposes of any provision of this Act shall, if and so far as the nature of the subject matter of the enactment or document permits, be construed as including in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the Management Act has or had effect, reference to, or, as the case may be, to things done or to be done under or for the purposes of, that corresponding provision;
- (b) so much of an enactment or document as refers, whether expressly or by implication, to or to things done or to be done under or for the purposes of, any provision of the Management Act shall, if and so far as the nature of the subject matter of the enactment or document permits, be construed as including in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Act has effect, a reference to, or, as the case may be, to things done or deemed to be done or to be done under or for the purposes of, that corresponding provision.

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

4. Where the ascertainment of the total income of any person for the year of income 1973 results in a deficit, the total income of such person for the year of income 1974 shall be computed as if section 13(4) of the Management Act continued to apply to that year of income.

5. Where any farmer has elected under section 16 of the Management Act not to take into account the values of livestock and produce at the beginning and end of each such year of income for the purposes of ascertaining his income therefrom for each such year of income, then such election shall be deemed to be an election made in accordance with section 17 of this Act.

6. Where, immediately prior to the commencement of this Act, there is for the purpose of the Second Schedule to the Management Act in relation to a person a residue of expenditure or expenditure still unallowed, then such residue of expenditure or expenditure still unallowed, as the case may be, shall, in relation to such person, be the residue of expenditure or expenditure still unallowed, as the case may be, on the commencement of this Act for the purposes of the Second Schedule to this Act.

7.

Where under this Act—

(a) a sum is deemed to be income of, or in respect of, a year of income prior to the commencement of this Act; or

(b) *deleted by Act No. 2 of 1975, s. 5.*

(c) the Commissioner may divide any amount into portions and any portion is taken into account in computing the gains or profits or in ascertaining total income for any year of income prior to the commencement of this Act, then an assessment in relation thereto for such year of income may be made as if such sum or portion, as the case may be, had been income charged to tax under the Management Act.

8. Where under the Management Act the income of a beneficiary under any trust or settlement has been charged to tax for a year of income on the basis of the amount receivable under that trust or settlement in such year of income, nothing in this Act shall operate to charge such beneficiary on income received after the commencement of this Act which has been charged on him under the Management Act.

9. Any arrangements specified in notices issued under section 55 of the Management Act shall continue to have effect as if they had been made under section 41 of this Act.

10. Local committees and the members thereof appointed for areas under section 97 of the Management Act shall continue to act according to the terms of the notices

making such appointments as if such local committees and the members thereof had been established and appointed by notices under section 82 of this Act.

11. Where, after the commencement of this Act, a payment is made in respect of the refund or return of contributions made or premiums paid, prior to the commencement of this Act, under an approved pension scheme, approved pension fund, approved annuity contract, approved trust scheme or approved provident fund mentioned in subsections (1), (2), (3) and (4) of section 8 of the Management Act, such payment shall in the manner and to the extent provided in those subsections, and in section 3(c), of the Management Act, be deemed to be income charged to tax under section 3(2)(e) of this Act:

Provided that—

- (i) references in section 8(2) to "any year of income" shall be construed as meaning any year of income prior to the commencement of this Act; and
- (ii) references in section 8(2) to "the year of income" and "the relevant year of income" shall be construed as references to the year ending 31st December, 1974; and
- (iii) in section 8(2) the proviso thereto shall be read and construed as if the following words were deleted, namely—
 - (a) which expired earlier than the year of income (hereinafter referred to as the relevant year of income) prior to the year of income—
 - (i) in which it was received; or
 - (ii) in the case of a policy, in which the policy was assigned or transferred; or
 - (iii) in which the employee left the service of the employer; or
 - (iv) in which the person died, whichever is the earlier; and
 - (b) in excess of one year of the period—
 - (iv) section 8(3) and (4) shall apply only in respect of contributions made, or in case of paragraph (a) of subsection (4) thereof in respect of a pension right accrued, prior to the commencement of this Act.

SEVENTH SCHEDULE

SPECIAL PROVISIONS ON COMMUNITY EMPLOYEES (*Deleted*)

Deleted by Act No. 8 of 1978, s. 9.

EIGHTH SCHEDULE

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

(ss. 3 and 15)

[Act No. 13 of 1975, s. 2, Act No. 7 of 1976, s. 2, Act No. 8 of 1978, s. 9, Act No. 6 of 1981, s. 5, Act No. 14 of 1982, s. 23, Act No. 8 of 1985, s. 18, Act No. 16 of 2014, Act No. 14 of 2015, Act No. 38 of 2016, Act No. 23 of 2019, s. 16, Act No. 8 of 2020, s. 10, Act No. 4 of 2023, s. 28]

Part I**1. Interpretation**

(1) In this Part of the Schedule, except where the context otherwise requires–

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

"company" includes–

(a) a members' club deemed under section 21(1) to be carrying on a business;

(b) a trade association that elects under section 21(2) to be deemed to carry on a business;

"consideration" means consideration in money or money's worth;

"individual" includes more than one individual or an unincorporated association or body of individuals including trustees and partners;

"land" includes–

(a) buildings on land and anything attached to land or permanently fastened to anything attached to land (whether on or below the surface);

(b) standing timber, trees, crops and other vegetation growing on land; and

(c) land covered by water;

"marketable security" includes a security of such a description as to be capable of being sold and stock as defined in section 2 of the Stamp Duty Act (Cap. 480);

"property"–

(a) in the case of a company has the meaning assigned thereto in the Interpretation and General Provisions Act (Cap. 2), and includes property acquired or held for investment purposes but does not include a road vehicle;

(b) in the case of an individual means–

(i) land situated in Kenya and any right or interest in or over that land; and

(ii) a marketable security situated in Kenya, other than an investment share as defined in Part II of this Schedule;

"transfer" has the meaning assigned thereto in paragraph 6 of this Schedule;

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

(2) For the purposes of this schedule–

(a) a reference to a transfer of property includes a reference to a part transfer of property; and

(b) there is a part transfer of property where, on a person making a transfer, any description of property derived from the transferred property remains undisposed of.

(3)

For the purposes of this Schedule two persons are "related persons" if–

- (a) either person participates directly or indirectly in the management, control or capital of the business of the other; or
- (b) any third person participates directly or indirectly in the management, control or capital of the business of both.

(4)

For the purposes of subparagraph (3) of this paragraph a reference to "person" includes–

- (a) in the case of an individual, a reference to a relative (as defined in section 26(5) of that person; and
- (b) a reference to a company.

(5)

For the purposes of this Schedule–

- (a) shares or securities being marketable securities issued by a municipal or a Government authority, or by a body created by such an authority, are situated in the country of that authority; and
- (b) subject to paragraph (a) of this paragraph, shares or securities (being marketable securities) are situated where they are registered and, if registered in more than one register, where the principal register is situated.

2. Taxation of gains

Subject to this Schedule, income in respect of which tax is chargeable under section 3(2)(f) is–

- (a) the whole of the gains which accrued to a company, an individual or partnership on or after the 1st January, 2015, on the transfer of property situated in Kenya, whether or not the property was acquired before 1st January, 2015, or
- (b) gains derived from the alienation of shares or comparable interests, including interests in a partnership or trust, if, at any time during the three hundred and sixty-five days preceding the alienation, the shares or comparable interests derived more than twenty per cent of their value directly or indirectly from immovable property situated in Kenya, or
- (c) gains, other than those to which subparagraph (a) applies, derived from the alienation of shares of a company resident in Kenya if the alienator, at any time during the three hundred and sixty-five days preceding such alienation, held directly or indirectly at least twenty per cent of the capital of that company:

Provided that for the purposes of this paragraph, the person alienating the shares shall notify the Commissioner in writing where there is a change of at least twenty per cent in the underlying ownership of the property

[Act No. 16 of 2014, s. 23(a), Act No. 4 of 2023, s. 28(a)]

3. Income not chargeable

(1) Income is not chargeable to tax under section 3(2)(f) of this Act where, and to the extent that, it is chargeable to tax under any other provision of this Act.

(2) The gain accruing to a company on any transfer of machinery classified in paragraph 1(b) of the Second Schedule is not chargeable to tax under section 3(2)(f).

(3) The gain which is exempted from tax under paragraph 36 of the First Schedule is not chargeable to tax under section 3(2)(f).

[Act No. 16 of 2014 s. 23(b), Act No. 8 of 2014, s. 10, Act No. 8 of 2020, s. 10.]

4. Computation of gains

(1) The gain which accrues to a person on the transfer of any property is the amount by which the transfer value of the property exceeds the adjusted cost of the property.

(2) Where, in computing the gain accruing to a person on the transfer of any property, it is found that the adjusted cost of the property exceeds the transfer value of the property, the amount of the excess is the loss realized by the person on the transfer of the property.

(3) Any gain or loss realized by a person on the transfer of property shall be deemed to be realized by the person at the time of the transfer, whether or not the consideration is payable by instalments but a payment by way of interest on any part of the consideration not immediately payable shall not be treated as part of the transfer value of the property.

(4) Debts incurred on the transfer of property which the Commissioner considers to have become bad shall be deemed to be a loss for the purposes of section 15(3)(f) and those provisions shall apply accordingly.

(5) Section 15(2)(e) does not apply in relation to a loss realized by a person on the transfer of property.

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

(1) In relation to any property held by a person as nominee for another person or as trustee for a person absolutely entitled as against the trustee (or for two or more persons who are so entitled in possession, whether as joint tenants or tenants in common), or as liquidator for any company, this Schedule shall apply as if the property were vested in, and the acts of the nominee, trustee or liquidator in relation to the property were the acts of the person or persons for whom the person is nominee, trustee or liquidator (transfers between the person or persons and the nominee, trustee or liquidator being disregarded accordingly).

(2) Where a person entitled to property by way of security or to the benefit of a charge or encumbrance on property, deals with the property for the purpose of enforcing or giving effect to the security, charge or encumbrance, his dealings with it shall be treated as if they were done through him as nominee by the person entitled to the property subject to the security, charge or encumbrance, and this subparagraph shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or encumbrance as receiver and manager as it applies to the dealings of the person so entitled.

6. Meaning of transfer

(1)

Subject to this Schedule there is a transfer of property for the purposes of this Schedule–

(a) where property is sold, exchanged, conveyed or otherwise disposed of in any manner whatever (including by way of gift), whether or not for consideration; or

(b) on the occasion of the loss, destruction or extinction of property whether or not a sum by way of compensation or otherwise, or under a policy of insurance, is received in respect of the loss, destruction or extinction of the property unless such sum is utilized to reinstate the property in essentially the same form and in the same place within one year of the loss, destruction or extinction of the property or within a longer period of time approved by the Commissioner; or

(c) on the abandonment, surrender, cancellation or forfeiture of, or the expiration of substantially all rights to, property, including the surrender of shares or debentures on the dissolution of a company.

(2)

There is no transfer of property for the purposes of this Schedule–

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

(b) in the case of the issuance by a company of its own shares or debentures;

(c) by the vesting in the personal representative of a deceased person by operation of law of the property of that deceased person;

(d) by the transfer by a personal representative of any property to a person as legatee in the course of the administration of the estate of a deceased person. For this purpose "legatee" includes a person taking under a devise or other testamentary disposition or on an intestacy or partial intestacy whether he takes beneficially or as a trustee;

(e) by the vesting in the liquidator by an order of a court of the property of a company under section 240 of the Companies Act (Cap. 486);

(f) by the vesting in the official receiver or other trustee in bankruptcy of the property of a bankrupt under section 57 of the Bankruptcy Act (Cap. 53);

(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 by Act No. 14 of 2015, s. 19(a)(ii).*

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

[Act No. 16 of 2014, s. 23(c), Act No. 14 of 2015, s. 19, Act No. 38 of 2016, s. 18.]

7. Transfer value

(1)

Subject to this Schedule, the transfer value of property shall be computed by reference to such of the following amounts (if any) as are appropriate having regard to the manner of the transfer, namely–

(a) the amount of or the value of the consideration for the transfer of the property;

(b) sums received in return for the abandonment, forfeiture or surrender of the property;

(c) sums received as consideration for the use or exploitation of the property;

(d) sums received by way of compensation for damage or injury to the property or for the loss of the property;

(e) sums received under a policy of insurance in respect of damage or injury to, or the loss or destruction of, the property;

(f) any amount by which the liability of a person to another person entitled to property by way of security or to the benefit of a charge or encumbrance is reduced as a result of dealings with the property for the purposes of enforcing or giving effect to the security, charge or encumbrance, together with any amount received by the person out of the proceeds of such dealings.

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

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

[Act No. 16 of 2014, s. 23(d).]

8. Adjusted cost

(1)

Subject to this Schedule, the adjusted cost of any property is–

(a) the amount of or value of the consideration for the acquisition or construction of the property;

(b) the amount of expenditure wholly and exclusively incurred on the property at any time after its acquisition by or on behalf of the transferor for the purpose of enhancing or preserving the value of the property at the time of the transfer;

(c) the amount of expenditure wholly and exclusively incurred at any time after the acquisition of the property by the transferor establishing, preserving or defending the title to, or a right over, the property; and

(d) the incidental costs to the transferor of acquiring the property.

(2) For the purpose of computing the adjusted cost of any property, an amount computed shall be reduced by such amounts as have been allowed as deductions under section 15(2).

(3)

Where a company issues to any of its shareholders shares–

(a) that do not constitute a dividend under section 7 (1)(d) or (e), the cost of the shares–

(i) shall be the sum paid for the shares; or

(ii) if no sum is paid for the shares, shall be deemed to be nil,

and the shareholder shall allocate, in the manner prescribed, the cost of his existing shares between such old shares and such new shares; or

(b) that constitute, wholly or partly, a dividend under either of those paragraphs, the amount which constitutes a dividend shall be treated as part of the cost of the shares, and the shareholder shall allocate, in the manner prescribed, the cost of the existing shares between such old shares and such new shares.

(4) Where there is a part transfer of property the adjusted cost of the property shall be allocated to the part transferred in accordance with a method approved by the Commissioner.

(4A) Where property is transferred in a transaction that is not subject to capital gains tax, and the property is subsequently transferred in a taxable transaction within a period of less than five years, then the adjusted cost in the subsequent transfer shall be based on the original adjusted cost as determined in the first transfer.

(5) The Commissioner may make rules for the purposes of subparagraph (3) prescribing the manner of allocation to be prescribed under that subparagraph.

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 (Cap. 485A).

[Act No. 14 of 2015, s. 19(b).]

9. Market value

(1)

Where property is acquired or transferred–

- (a) otherwise than by way of a bargain made at arms length;
- (b) by way of a gift in whole or in part;
- (c) for a consideration that cannot be valued; or
- (d) as the result of a transaction between persons who are related then, for the purposes of–
 - (i) paragraph 7 of this Schedule, the amount of the consideration for the transfer of the property shall be deemed to be equal to the market value of the property at the time of the transfer; and
 - (ii) paragraph 8 of this Schedule, the amount of the consideration for the acquisition of the property shall be deemed to be equal to the market value of the property at the time of the acquisition or to the amount of the consideration used in computing stamp duty payable on the transfer by which the property was acquired, whichever is the lesser.

(2) Property is acquired or transferred by way of a bargain at arms length only if the consideration is determined as between an independent willing buyer and an independent willing seller.

(3) The Commissioner may determine the market value of any property, and a reference in this paragraph to the market value of property is a reference to the price which the property would fetch if sold in the open market as so determined.

10. Incidental costs

For the purposes of paragraphs 7(2) and 8(1)(d) of this Schedule, the incidental costs of the acquisition or transfer of property shall consist of expenditure wholly and exclusively incurred by the person acquiring the property or the transferor for the purposes of the acquisition or transfer, as the case may be, of the property being–

- (a) fees, commission or remuneration paid for the professional services of any surveyor, valuer, accountant, agent or legal adviser;
- (b) costs of transfer (including stamp duty);
- (c) in the case of an acquisition, the cost of acquisition (including mortgage costs) and the cost of advertising to find a seller, and costs reasonably incurred for

the purposes of this Schedule in making any valuation or in ascertaining market value;

- (d) in the case of a transfer, the cost of advertising to find a buyer and costs reasonably incurred for the purposes of this Schedule in making any valuation or in ascertaining market value; and
- (e) any other costs which the Commissioner may allow as being just and reasonable.

11. Amounts not allowable in computing transfer value or adjusted cost

No amount shall be allowed–

- (a) under paragraph 7(2) of this Schedule as part of the incidental costs of making a transfer; or
- (b) under paragraph 8 of this Schedule as part of the adjusted cost of any property, if that amount has been or is otherwise allowed as a deduction in computing gains or profits chargeable to tax under section 3(2)(a) of this Act.

11A.

The due date for tax payable in respect of property transferred under this Part shall be the earlier of–

- (a) receipt of the full purchase price by the vendor; or
- (b) registration of the transfer.

[[Act No. 14 of 2015, s. 19(g), [Act No. 4 of 2023, s. 28(c)]]

12. Transfer or acquisition of property with other property

Where property is transferred or acquired together with other property in pursuance of one bargain, then, notwithstanding that separate prices are, or purport to be, agreed for separate items of that property, the Commissioner may determine what part of the adjusted cost or the transfer value is reasonably attributable to each of the properties involved, which determination shall be binding on both the transferor and the transferee of the property.

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

13. Exemption

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 that is necessitated by a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity, where such transfer is–

- (a) a legal or regulatory requirement;
- (b) as a result of a directive or compulsory acquisition by the government;
- (c) an internal restructuring which does not involve a transfer of property to a third party within a group which has existed for at least twenty-four months; or
- (d) in the public interest and approved by the Cabinet Secretary.

[Act No. 23 of 2019, s. 16, Act No. 4 of 2023, s. 28(d)]

**Part II - ACCRUAL AND COMPUTATION
OF GAINS FROM INVESTMENT SHARES**

14. Interpretation

In this Part of this Schedule—

"consideration" means consideration in money or money's worth;

"investment shares" means shares of companies, municipal or Government authorities or a body created by such authorities, as are listed and traded on the Nairobi Stock Exchange;

[Act No. 14 of 2015, s. 19(c).]

15. Computation of gains

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.

[Act No. 14 of 2015, s. 19(d).]

16. Deleted by Act No. 14 of 2015, s. 19(e).

16A. Deleted by Act No. 14 of 2015, s. 19(e).

17. Deleted by Act No. 14 of 2015, s. 19(e).

18. Collecting of tax

A stockbroker who conducts the transfer of investment shares on behalf of a transferor shall collect and remit tax to the Commissioner in accordance with section 35(5).

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

[Act No. 14 of 2015, s. 19(f).]

19. Remittance of tax

The remittance of money by a stockbroker under paragraph 18 of this Schedule shall be a full and final discharge to the stockbroker as against all persons from liability in respect of such money.

20. Failure to collect and remit

A stockbroker who fails to collect and remit as required under paragraph 18 of this Schedule, the amount of income tax out of the proceeds (over which he has control) accruing as a result of the transfer of investment shares is jointly and severally liable with the transferor of the shares for payment of the tax.

21. Exemption

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

(2) Gains from a transfer of investment shares for or in connexion with a pension fund, trust scheme, or provident fund registered with the Commissioner shall not be subject to deduction of income tax under this Part of this Schedule.

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

Deleted by Act No. 16 of 2014, s. 23(e).

NINTH SCHEDULE

TAXATION OF EXTRACTIVE INDUSTRIES

(s. 23)

[Act No. 18 of 1984, s. 8, Act No. 10 of 2010, s. 35, Act No. 16 of
2014, Act No. 14 of 2015, Act No. 8 of 2021, Act No. 4 of 2023]

Part I - INTERPRETATION

1. Interpretation

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

"consideration", in relation to the disposal of an interest in a person, a mining or petroleum right, or 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 the 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 a person with whom the Government has concluded 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 mining or petroleum information, means the total 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 decommissioning, 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 (Cap. 306); or

(d) a right to extract geothermal resources issued or granted under the Geothermal Resources Act (Cap. 314A);

"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;

"licence area" means the area that is the subject of 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 (Cap. 306);

"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 (Cap. 308);

"Petroleum (Exploration and Production) Act" means the Petroleum (Exploration and Production) Act (Cap. 308), or any successor legislation dealing with the exploration, development, production, and transportation of petroleum;

"petroleum information" means information relating to petroleum operations;

"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 (Cap. 306);

(b) an authority or right to search for geothermal resources issued or granted under the Geothermal Resources Act (Cap. 314A);

"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 Resources Act or Petroleum (Exploration and Production) Act, has the meaning assigned in the Mining Act, Geothermal Resources 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.

[Act No. 14 of 2015, s. 20(a).]

Part II - MINING OPERATIONS

2. Taxation of licenses

(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 of this Act regarding the taxation of a licensee, this Schedule shall prevail.

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

3. Limitation of deductions relating to mining operations

(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 the 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 a 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 licence area.

(6)

If–

(a) a licensee has ceased mining operations under a mining right in a licence 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, to treat the loss as a loss in 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) may be 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.

4. Prospecting expenditure

(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 a 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) The rate of depreciation for machinery first used to undertake operations under a prospecting right shall be the rate specified in paragraph 1(b)(x) of the Second Schedule.

[Act No. 8 of 2021, s. 21(a).]

5. Extraction expenditure

(1) Subject to subparagraphs (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 the 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.

6. Rehabilitation expenditure

(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.

(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 in a 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 the licence area covered by the mining right and is managed jointly by the Cabinet Secretary responsible for mining and the licensee.

[Act No. 14 of 2015, s. 20(b).]

Part III - PETROLEUM OPERATIONS

7. Taxation of contractors

(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 the 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.

8. Limitation of deductions relating to petroleum operations

(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 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 a 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 not 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.

9. Exploration expenditure

(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) The rate of depreciation for machinery first used to undertake exploration operations shall be the rate specified in paragraph 1 (b)(xi) of the Second Schedule.

[Act No. 8 of 2021, s. 21(b).]

10. Development expenditure

(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 the 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 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 in 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.

11. Decommissioning expenditure

(1) A contractor shall be allowed a deduction for the amount that the contractor transfers to an escrow account during a year of income as 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 a 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 (Cap. 308).

12. Paid-on-behalf

(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 the 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

13. Farm-outs

(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 the work commitments of the licensee or contractor under the right or agreement.

(2) If this paragraph applies, and the transfer 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 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).

14. Indirect transfers of interest

(1) A licensee or a contractor shall immediately notify the Commissioner, in writing, if there is a twenty 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.

[Act No. 4 of 2023, s. 29]

15. Taxation of subcontractors

(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, ten per cent; or

(b) for a service fee paid by a licensee, ten per cent.

(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 the 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 a 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" means a subcontractor that is not a resident and includes a subcontractor that is a foreign government or foreign government body.

[Act No. 14 of 2015, s. 20(c), Act No. 8 of 2021, s. 21 (c).]

16. Deduction of withholding tax by contractor

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;
- (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, ten per cent of the gross amount of the management, training or professional fees payable.

[Act No. 14 of 2015, s. 20(d), Act No. 8 of 2021, s. 21(d).]

17. Source of income

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.

18. Deductibility of interest

The provisions of Section 16(2)(j) shall apply to a contractor or a licensee.

[Act No. 8 of 2021, s. 21(e).]

19. Hedging transactions

(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 AUTHORISED AGENTS

(s. 17A)

[Act No. 8 of 1989, s. 24, Act No. 6 of 1994, s. 48, Act No. 13 of 1995, s. 90, Act No. 5 of 1998, s. 41, Act No. 4 of 1999, s. 42.]

Produce	Authorized Agents
Maize (grain)	Kenya Seed Company Limited. National Cereals and Produce Board. Millers.
Wheat (grain)	Kenya Seed Company Limited Kenya Grain Growers Co-operative Union. National Cereals and Produce Board. Millers.
Barley (grain)	Kenya Breweries Limited.
Rice (Paddy)	National Irrigation Board.
Cut Sugar-cane	Miwani Sugar Mills Limited. Chemelil Sugar Co. Limited. Mumias Sugar Co. Limited. Associated Sugar Co. Limited. South Nyanza Sugar Co. Limited. Muhoroni Sugar-cane Farmers Co-operative Union Limited.
Pyrethrum Flower (Wet and dry)	Pyrethrum Board of Kenya
Tobacco Leaf	B.A.T. (Kenya) Limited. Mastermind Tobacco (K) Limited.
Tea Leaf	Kenya Tea Development Authority. James Finlays P.L.C. Brooke Bond Kenya Limited. Eastern Produce Africa Limited. George Williamson Kenya Limited. Sasini Tea and Coffee Limited. Pannel Bellhouse Mwangi & Co. (Kaisugu Ltd). Kosagat Tea Estate. Theta Group Limited. (Kibwari Tea Estate Limited) Mitchell Cons & Co. (E.A.) Limited. (Nandi Tea Estates Limited). Estates Services Limited. (Siret Tea Co. Limited). Kariarana Estates Limited. Livingstone Registrars Limited. (Ngorongo Tea Factory Limited). African Highlands Produce Company
Coffee	Coffee Board of Kenya

Produce	Authorized Agents
Raw Cashewnuts	Kenya Cashewnuts Limited National Cereals & Produce Board
Pigs	Farmers Choice Limited. Uplands Bacon Factory Limited
Raw Cotton	Mwea Ginnery. Kibos Ginnery. Hola Ginnery. Makueni Ginnery. Meru Ginnery. 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 Tanners Limited. Nakuru Chrome Tanning Co. Limited. Bata Shoe Co. Limited. Sagana Tanneries Limited. Alpharama Limited. Barbar Tannery Limited. Othor Tanneries. Furs and Wool Limited. Kitale Tanneries Limited. Garissa Tanners Limited. Leather Industries of Kenya Limited. East African Leather Factory Limited. Lake Tanners Limited. Deras Limited.

ELEVENTH SCHEDULE

TAXATION OF EXPORT PROCESSING ZONE ENTERPRISES

(s. 4B)

[Act No. 10 of 1990, s. 61, Act No. 8 of 1991, s. 77, Act No. 6 of 1994, s. 49,
Act No. 7 of 2002, s. 48A, Act No. 15 of 2003, s. 42, Act No. 9 of 2007, s. 30.]

1. In this Schedule, unless the context otherwise requires, "export processing zone enterprise" has the same meaning as that ascribed to it in the Export Processing Zones Act, 1990.
2. An export processing zone enterprise shall maintain its business accounts in a convertible foreign currency of its choice provided that the Commissioner's consent of that choice has been requested and obtained.
- 3.

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

- (a) the enterprise shall be deemed to be a non-resident subject to a non-resident rate of withholding tax on payments made to such an enterprise and, where such payments are made by a person who is not an export processing zone enterprise, the tax shall be a final tax; and
- (b) payments by an export processing zone enterprise to any person other than a resident person shall be deemed to be exempted from tax.

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

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

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

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

8. Where the related resident company that is not an export processing zone enterprise provides services other than manufacturing services to an export processing zone enterprise, the related resident company shall not deduct the cost of providing such services unless the Commissioner is satisfied that the services were provided at a fair market price.

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

TWELFTH SCHEDULE

PROVISIONS RELATING TO INSTALMENT TAX

[Section 12, Act No. 10 of 1990, s. 62, Act No. 8 of 1991, s. 78, Act No. 4 of 1993, s. 61, Act No. 13 of 1995, s. 91, Act No. 8 of 1996, s. 47, Act No. 7 of 2002, s. 49.] ^(s. 12)

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–

<i>For persons with accounting periods commencing on or after</i>	<i>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</i>			
	Fourth Month	Sixth Month	Ninth Month	Twelfth Month
1st January 1990			15%	
1st January 1991			30%	
1st January 1992			45%	
1st January 1993			60%	20%
1st January 1994		15%	60%	25%
1st January 1995		30%	45%	25%
1st January 1996	25%	25%	25%	25%

(b) Where a person can satisfy the Commissioner that more than two thirds of his income is derived from agricultural, pastoral, horticultural or similar activities, the instalment tax payable by such persons under section 12 will be reduced under the provisions of section 12(4) and be payable on the due dates as required under section 92 in the proportions specified as follows–

<i>For persons with accounting periods commencing on or after</i>	<i>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>		
	Sixth Month	Ninth Month	Twelfth Month
1st January 1990		15%	
1st January 1991		30%	
1st January 1992		45%	
1st January 1993		60%	20%
1st January 1994		75%	25%
1st January 1995		75%	25%

2.

Where the instalment tax payable is calculated by reference to subsection 2(b) of section 12 and–

- (a) the company's immediate preceding year consists of less than three hundred and sixty five days, the tax payable for the preceding year will be deemed to be an amount that would have been assessed had the company's immediate preceding year been made up of three hundred and sixty five days by multiply in the ratio that three hundred and sixty five days is of the number of days in that year of income;
- (b) the company that is making payment was formed as a result of amalgamation of two or more companies, the tax assessed and payable for the immediately

preceding year will be deemed to be the aggregate of the tax that would have been payable by all the predecessor companies;

- (c) the company that is making payment has had transferred to it during winding up in the year preceding the year of income all or substantially all the property from any of the companies which it controls by means of the holding of shares or possession of voting power, the company's tax payable in the preceding year will be deemed to be the aggregate of its own tax payable together with that of the company that it controls;
- (d) the company making payment has had transferred to it by a related company in the preceding year of income all or substantially all of its property the company's tax payable in the preceding year of income will be deemed to be the sum total of the tax payable by both the transferor and the transferee companies;
- (e) the company making payment has commenced its business in that year of income, the company's preceding year of income will be deemed to be NIL;
- (f) "tax assessed and payable for the preceding year" shall be taken to mean the amount payable immediately before the due date for the instalment tax and shall disregard any subsequent amendments and adjustments;
- (g) where under this Act, a person has been permitted to make up the accounts of his business for a period greater than twelve months, the person shall calculate the instalment tax payable for such period in accordance with section 12 of this Act, and then multiply the result by the ratio of the number of days in the current year of income to 365 days.

3.

The payment of instalment tax payable under section 12 shall be accompanied by the following information—

- (a) a declaration of the choice of method adopted by the person in computing the instalment tax payable;
 - (b) where the tax is computed on the basis of an estimate of the current year of income, the total income of the person making the payment for that year of income including income deemed to be his under this Act which is chargeable to tax based on all information available to him at the date upon which the 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 return;
 - (c) where the tax is computed on the basis of the preceding year assessment, the amount of tax assessed for the preceding year;
 - (d) a declaration by the person making the return or by the person in whose name he is assessable that the instalment payment of a full and true estimate to the best his knowledge and belief.
-

THIRTEENTH SCHEDULE

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

Repealed by Act No. 38 of 2016, s. 19.

CHAPTER 470
THE INCOME TAX ACT
INDEX TO SUBSIDIARY LEGISLATION

	Page
Under section 2(1)	
Declarations of Crops	172
Under section 2(1)	
The Income Tax Act - Declaration	173
Under section 3(2A)	
The Income Tax (Digital Service Tax) Regulations	174
Under section 5(4)(b)	
The Income Tax Act- Prescribed Limit of Medical Benefit	179
Under section 6A	
The Income Tax (Residential Rental Income Tax) Regulations	180
Under section 9(4)	
The Income Tax (Financial Derivatives) Regulations	183
Under section 12A(2)	
The Income Tax (Advance Tax) (Conditions and Procedures) Rules	186
Under section 12C	
The Income Tax (Turnover Tax) Rules (<i>Revoked</i>)	189
Under section 13	
The Income Tax Act — Exemption	190
The Income Tax Act- Revocation	191
Under section 13(1)	
The Income Tax Act - Exemption	192
Under section 13(2)	
The Exemption Notices Under Section 13(2)	193
Under section 13(2)(a)	
The Income Tax Act -Exemption	238
Under section 14(2)	
Exemptions under Section 14(2)	239
Under section 15(2)(a)	
Income Tax Act - Guidelines on Allowability of Bad Debts	248
Under section 15(2)(ab)	

The Income Tax Act- Criteria for the Determination of Rebate	249
Under section 18(8)	
The Income Tax (Transfer Pricing) Rules	251
Under section 35(7)	
The Exemption Notices Under Section 35(7)	255
Under section 39B(2)	
The Income Tax (Set-Off Tax Rebate for Graduate Apprenticeships) Regulations	256
Under section 41	
The Income Tax Act-Agreement Between the Government of the Republic of Kenya and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes of Income	259
Under section 41	
Avoidance of Double Taxation with Respect to Taxes on Income	277
Under section 41	
The Income Tax Act-The Double Taxation Relief (Federal Republic of Germany) Notice ...	296
The Income Tax Act- The Double Taxation Relief (Korea) Notice	311
Under section 41	
The Income Tax Act-Declaration of Special Arrangements for Relief from Double Taxation	326
The Income Tax Act-Declaration of Special Arrangements for Relief from Double Taxation	329
Under section 41	
The Income Tax Act-Double Taxation Relief (Rwanda, Uganda and the United Republic of Tanzania) Notice	340
Under section 41	
The Double Taxation Relief (Canada) Notice	356
Under section 41	
The Income Tax Act-The Double Taxation Relief (India) Notice	373
Under section 41	
The Income Tax Act-Double Taxation Relief (Iran) Notice	388
Under section 41	
The Income Tax Act-The Double Taxation Relief (Italy) Notice	402
Under section 41	
The Income Tax Act-The Double Taxation Relief (Kuwait) Notice	419
Under section 41	
The Income Tax Act-Double Taxation Relief (Mauritius) Notice	434
Under section 41	

The Income Tax Act-The Double Taxation Relief (Netherlands) Notice	451
Under section 41	
The Income Tax Act-The Double Taxation Relief (Qatar) Notice	473
Under section 41	
The Income Tax Act-The Double Taxation Relief (Seychelles) Notice	488
Under section 41	
The Income Tax Act-Double Taxation Relief (South Africa) Notice	506
Under section 41	
The Income Tax Act-The Double Taxation Relief (The United Republic of Tanzania and the Republic of Uganda) Notice	523
Under section 41	
The Income Tax Act- The Double Taxation Relief (United Arab Emirates) Notice	538
Under section 41	
Double Taxation United Kingdom of Great Britain and Northern Ireland	554
Under section 82	
The Income Tax (Local Committees) Rules	571
Under section 83	
The Income Tax (Tribunal) Rules	576
Under section 91	
The Income Tax (Appeals to the High Court) Rules	580
Under section 106(1)	
The Income Tax Act - Exemption	585
Under section 123	
The Income Tax Act - Direction	586
Under section 130	
The Income Tax (National Social Security Fund) (Exemption) Rules	587
The Income Tax (Charitable Donations) Regulations	589
Under section 130	
The Income Tax (P.A.Y.E) Rules	592
The Income Tax (Distraint) Rules	599
The Income Tax (Prescribed Dwelling house) Rules	603
The Income Tax (Retirement Benefit) Rules	604
The Income Tax (Home Ownership Savings Plan) Rules	610
The Income Tax (Venture Capital Enterprise) Rules	614
The Income Tax (Withholding Tax) Rules	617
The Income Tax (Leasing) Rules	623

The Income Tax (Registered Unit Trust/ Collective Investment Schemes) Rules	627
Income Tax (Investment Duty Set Off) (Revocation) Rules	628
The Income Tax (Turnover Tax) Rules	629

Declaration under section 2(1)**DECLARATIONS OF CROPS**

[L.N. 17/1975, L.N. 19/1985, L.N. 269/1986, L.N. 158/1989, L.N. 54/2005, L.N. 66/2006]

The Cabinet Secretary responsible for Finance and Economic Planning hereby declares the following to be permanent or semi-permanent crops for the purposes of the Act.

Cashew nuts

Citrus

Cloves

Coconuts

Coffee

Pyrethrum

Sisal

Wattle

Sugar-cane

Tea

Rubber

Vanilla

Apples

Pears

Peaches

Plums

Apricots

Cocoa

Macadamia

Cinchona

Tara

Jojoba plant

Bananas

Roses

Grape Vines

Eucalyptus

Pine

Cypress

Avocadoes and

Mangoes

Declaration of Specified Mineral under section 2(1)

THE INCOME TAX ACT - DECLARATION

[L.N. 157/1989]

The Cabinet Secretary responsible for Finance declares flouspar to be a specified mineral for the purposes of the Act with effect from the 1st January, 1989.

Regulations under section 3(2A)

THE INCOME TAX (DIGITAL SERVICE TAX) REGULATIONS

ARRANGEMENT OF REGULATIONS

1. Citation and commencement
 2. Interpretation
 3. Digital services
 4. Application of digital service tax
 5. User location
 6. Gross transaction value
 7. Registration
 8. Appointment of a tax representative.
 9. Simplified tax registration
 10. Accounting and payment
 11. Amendment of returns.
 12. Records.
 13. Penalties.
-

THE INCOME TAX (DIGITAL SERVICE TAX) REGULATIONS

[L.N. 207/2020]

Citation and commencement.

1. These Regulations may be cited as the Income Tax (Digital Service Tax) Regulations and shall come into force on the 2nd January, 2021.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"digital marketplace" has the meaning assigned to it in section 3(3)(ba);

"digital marketplace provider" means a person who provides a digital marketplace platform;

"digital service" means any service that is delivered or provided over a digital marketplace;

"digital service provider" means a person who provides digital services through a digital marketplace; and

"platform" means any electronic application that allows digital service providers to be connected to users of the services, directly or indirectly, and includes a website and mobile application.

Digital services.

3. (1) Digital services for which digital service tax shall apply include—

- (a) downloadable digital content including downloadable mobile applications, e-books and films;
- (b) over-the-top services including streaming television shows, films, music, podcasts and any form of digital content;
- (c) sale of, licensing of, or any other form of monetising data collected about Kenyan users which has been generated from the users' activities on a digital marketplace;
- (d) provision of a digital marketplace;
- (e) subscription-based media including news, magazines and journals;
- (f) electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;
- (g) electronic booking or electronic ticketing services including the online sale of tickets;
- (h) provision of search engine and automated held desk services including supply of customised search engine services;
- (i) online distance training through pre-recorded media or e- learning including online courses and training; and
- (j) any other service provided through a digital marketplace.

(2) Digital service tax shall not apply to income taxed under section 9 (2) or section 35 of the Act.

[Subsidiary]

(3) The following services shall not be digital services for the purposes of these Regulations—

- (a) online services which facilitate payments, lending or trading of financial instruments, commodities or foreign exchange carried out by—
 - (i) a financial institution specified under the Fourth Schedule to the Act; or
 - (ii) a financial service provider authorised or approved by the Central Bank of Kenya; and
- (b) online services provided by Government institutions.

Application of digital service tax.

4. (1) Digital service tax shall apply to the income of a resident or non-resident person derived from or accrued in Kenya from the provision of services through a digital marketplace.

(2) Digital service tax paid by a resident or non-resident person with a permanent establishment in Kenya shall be offset against the tax payable by that person for that year of income.

(3) Digital service tax paid by a non-resident person without a permanent establishment in Kenya shall be a final tax.

User location.

5. (1) A person shall be subject to digital service tax if that person provides or facilitates the provision of a digital service to a user who is located in Kenya.

(2) A user of a digital service shall be deemed to be located in Kenya if—

- (a) the user receives the digital service from a terminal located in Kenya, where terminal includes a computer, tablet and mobile phone;
- (b) the payment for the digital service is made using a debit or credit facility provided by a financial institution or company located in Kenya;
- (c) the digital service is acquired through an internet protocol address registered in Kenya or an international mobile phone country code assigned to Kenya; or
- (d) the user has a business, residential or billing address in Kenya.

Gross transaction value.

6. (1) Digital service tax shall be imposed on the gross transaction value of the digital service which shall be—

- (a) in the case of the provision of digital services, the payment received as consideration for the services; and
- (b) in the case of a digital marketplace, the commission or fee paid to the digital marketplace provider for the use of the platform.

(2) The gross transaction value of a digital service shall not include the value added tax charged for the service.

Registration.

7. (1) A non-resident person without a permanent establishment in Kenya who provides a digital service to a user in Kenya may register under the simplified tax registration framework specified in regulation 9.

(2) A resident person, or a non-resident person with a permanent establishment in Kenya, who provides a digital service in Kenya shall be required to apply to the Commissioner for digital service tax registration in the prescribed form.

Appointment of a tax representative.

8. A non-resident person without a permanent establishment in Kenya who elects not to register in accordance with regulation 9 shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act (Cap. 469B).

Simplified tax registration.

9. (1) A person who applies for registration under the simplified tax registration framework shall do so through an online registration form prescribed by the Commissioner.

(2) The application under paragraph (1) shall include the following information—

- (a) the name of the applicant's business including its trading name;
- (b) the name of the contact person responsible for tax matters;
- (c) the postal and registered address of the business and its contact person;
- (d) the telephone number of the contact person;
- (e) the electronic address of the contact person;
- (f) the websites or uniform resource locator of the applicant through which business is conducted;
- (g) the national tax identification number issued to the applicant in the country of residence;
- (h) the certificate of incorporation issued to the applicant's business; and
- (i) any other information that the Commissioner may require.

(3) The applicant may be required to submit to the Commissioner any documents necessary to substantiate the information provided in the application under paragraph (2).

(4) Upon registration, the Commissioner shall issue the applicant with a Personal Identification Number for the purpose of filing returns and payment of the digital service tax.

(5) A person registered under these Regulations who ceases to provide digital services in Kenya shall apply to the Commissioner for deregistration in the prescribed form.

Accounting and payment.

10. (1) Digital service tax shall be paid by—

- (a) the digital service provider or digital marketplace provider; or
- (b) the tax representative appointed under regulation 8.

(2) A person liable to pay digital service tax under paragraph (1) shall submit a return in the prescribed form and remit the tax due by the twentieth day of the month following the end of the month that the digital service was offered.

Amendment of returns.

11. (1) Any amendment to a return submitted under these Regulations shall be in accordance with section 31 of the Tax Procedures Act (Cap. 469B)

(2) Where an amendment under paragraph (1) results in the overpayment of tax—

- (a) in the case of a non-resident person without a permanent establishment in Kenya, the amount overpaid shall be retained as a credit and offset against the digital service tax payable in the subsequent tax period; and

[Subsidiary]

- (b) in the case of a resident person, or a non-resident person with a permanent establishment in Kenya, the amount overpaid shall be refunded in accordance with section 47 of the Tax Procedures Act (Cap. 469B).

Records.

12. A person liable to digital service tax shall keep records in accordance with section 23 of the Tax Procedures Act (Cap. 469B).

Penalties.

13. A person who fails to comply with the provisions of these Regulations shall be liable to the relevant penalties prescribed under the Tax Procedures Act (Cap. 469B).

Prescribed Limit of Medical Benefit under section 5(4)(b)

THE INCOME TAX ACT- PRESCRIBED LIMIT OF MEDICAL BENEFIT

[L.N. 53/2005]

The Cabinet Secretary responsible for Finance prescribes the sum of one million shillings to be the maximum limit for the purposes of that paragraph.

Rules under section 6A

THE INCOME TAX (RESIDENTIAL RENTAL INCOME TAX) REGULATIONS

ARRANGEMENT OF REGULATIONS

1. Citation
 2. Interpretation
 3. Application
 4. Election to be excluded from residential rental income tax
 5. Residential rental income Tax as a final tax
 6. Records
 7. Submission of returns and payment of tax
 8. Penalties
 9. Inspection of records
 10. Deductions
 11. Disputes
 12. Transitional provisions
-

THE INCOME TAX (RESIDENTIAL RENTAL INCOME TAX) REGULATIONS

[L.N. 106/2016]

Citation.

1. These Regulations may be cited as the Income Tax (Residential Rental Income Tax Regulations).

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"gross rent" means payments received from a right granted to another person for use or occupation of immovable property which includes rent, premium or similar consideration received for the use or occupation of property;

"return of income" means a return of income furnished by a person chargeable to tax under these Rules;

"tax period" means a calendar month;

"property" means building occupied as a residential house;

"residential rental income tax" means tax payable under section 6A of the Act.

"year of income" has the meaning assigned to it under the Act.

Application.

3. (1) These Regulations shall also apply where the rental property is owned by a partnership.

(2) These Rules shall not apply to a person whose income is exempt from tax under the First Schedule to the Act.

Election to be excluded from residential rental income tax.

4. (1) A person who opts not to be subject to the residential rental income tax under section 6A of the Act shall notify the Commissioner, at least three months before the end of the year of income.

(2) The Commissioner shall within sixty days from the date of receipt of such notice acknowledge receipt of the notice, in writing.

(3) Where the Commissioner fails to acknowledge receipt of the notice within the time specified in regulation 4(2), the Commissioner shall be deemed to have received the notice.

(4) The option not to be subject to residential rental income shall take effect in the subsequent year of income.

(5) Where a person is subject to residential rental income tax and during a year of income the rental income exceeds ten million shillings or that person has reason to believe that the rental income is likely to exceed ten million shillings, the person shall inform the Commissioner of that fact before the end of that year of income.

(6) Any person who fails to notify the Commissioner of the as required under paragraph (5) shall be guilty of an offence under the Act.

Residential rental income Tax as a final tax.

5. Any income from rent that is subject to residential rental income tax shall not be liable to any other tax under the Act.

[Subsidiary]

Records.

6. A person subject to residential rental income tax shall be required to keep records necessary for the determination and ascertainment of the tax in accordance with the Tax Procedure Act (Cap. 469B).

Submission of returns and payment of tax.

7. A person subject to residential rental income tax shall submit a return and pay the tax due to the Commissioner, on or before the 20th day of the month immediately following the month which the rent was received.

Penalties.

8. A person who fails to comply with regulation 7 shall be liable to the penalty prescribed in section 83 of the Tax Procedure Act (Cap. 469B).

Inspection of records.

9. For purposes of obtaining full information in respect of accounting for residential rental income tax under these Regulations, the Commissioner may by notice require any person to—

- (a) produce books and records relating to the computation the tax; or
- (b) appear at such time and place as may be specified in the notice.

Deductions.

10. No expenses or capital deductions allowances shall be deducted while computing the tax.

Disputes.

11. Any dispute arising from the administration of these Regulations relating to the assessment of tax shall be dealt with in accordance with the provisions of the Tax Procedure Act (Cap. 469B).

Transitional provisions.

12. (1) These Regulations shall not affect-

- (a) the assessment and collection of rent income tax under section 15(7)(b) of the Act that was due before the 31st December, 2015;
- (b) penalty, audit or investigation that commenced before coming into force of these Regulations;

(2) Any losses brought forward under section 15(7)(b) of the Act shall be deemed to have been extinguished as at 31st December, 2015.

Regulations under section 9(4)

THE INCOME TAX (FINANCIAL DERIVATIVES) REGULATIONS

ARRANGEMENT OF REGULATIONS

Part I – PRELIMINARY

1. Citation
 2. Interpretation
 3. Scope of gains from financial derivatives
 4. Realisation of gains or loss
 5. Record and characterisation of income from financial derivatives
 6. Payment of taxes
-

THE INCOME TAX (FINANCIAL DERIVATIVES) REGULATIONS

[L.N. 4/2023]

PART I – PRELIMINARY

Citation.

1. These Regulations may be cited as the Income Tax (Financial Derivatives) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"call option" means an option that gives the holder of a financial derivative the right to buy the underlying assets at a stipulated price on or before a specified future date;

"currency swap" means a contract between two parties to exchange two currencies at a future date at a predetermined exchange rate;

"forward contract" means a customised over-the-counter traded financial derivative contract that provides for the purchase or sale of an underlying asset whose delivery or settlement is to be made at a future date at a price agreed upon on the date when the contract is entered into;

"futures contract" means a standardised agreement traded in a recognised exchange market for the acquisition or disposal of an underlying asset whose delivery is to be made at a future date at a price agreed upon on the date when the contract is entered into including a reference to a date and price determined in accordance with the terms of the contract;

"gain" means any profit earned by a person from a financial derivative contract including any premium or fee paid in respect of an option contract;

"interest rate swap" is an agreement between two parties to exchange one stream of interest payments for another over a specified period;

"option contract" means a financial derivative which offers the holder the right, but not the obligation, to buy or sell the underlying assets or security at a specified price on or before the expiry date of the option contract;

"option premium" is the price the holder of an option contract pays to buy or sell the option contract;

"put option" means an option contract that gives the holder the right to sell the underlying asset within a specified period at a specified price;

"swap" means an option contract to purchase or sell the underlying asset at a specified price at a specified time and may involve several settlements before maturity; and

"underlying assets" include bonds, commodities, currencies, interest rates, securities, stock indices, price indices, credit ratings or similar assets.

Scope of gains from financial derivatives.

3. (1) Any realized gain to a non-resident person, being a realized loss to the resident person who is a party to the financial derivative contract, shall be chargeable to tax in accordance with the Act.

(2) For the purposes of subregulation (1), a financial derivatives contract, unless exempted under the Act, includes—

- (a) a futures contract including interest rate futures, stock index futures, volatility futures, weather futures or a similar futures contract whether cash settled or not;
- (b) a forward contract, whether cash settled or not;

- (c) a swap contract including a contract for interest rate swap, currency swap, credit default swap and hybrid swap;
- (d) an options contract including put options, call options and option spreads; or
- (e) any other financial derivative instrument.

Realisation of gains or loss.

4. (1) Subject to these Regulations, a gain or loss from a financial derivative shall be deemed to have been realized at the earlier of—

- (a) the underlying asset changing hands;
- (b) the settlement of the contract; or
- (c) the expiry of the contract:

Provided that in the case of an options contract, the gain or loss shall be deemed to have been realised at the time of payment of the option premium and at the time the option is exercised.

(2) A realised loss by a resident person from a financial derivative shall be allowed as a deduction against any gain accruing from similar activities to the extent that it has not been claimed.

Record and characterisation of income from financial derivatives.

5. (1) A person involved in a financial derivatives transaction shall keep a record of all contracts and financial activities resulting from such a contract.

(2) Any income from a financial derivative transaction shall —

- (a) clearly be characterised as other income (financial derivative gains/losses) in the tax returns for the period; and
- (b) be treated as a separate source in accordance with section 15(7) of the Act for a resident person or a permanent establishment in Kenya.

Payment of taxes.

6. The tax payable under these Regulations shall be due and payable by the 20th day of the month after which the loss from the transaction with the non-resident person is realised.

Regulations under section 12A(2)

THE INCOME TAX (ADVANCE TAX) (CONDITIONS AND PROCEDURES) RULES

ARRANGEMENT OF RULES

1. Citation
 2. Interpretation
 3. Payment of advance tax
 4. Maintenance of records
 5. Filing of returns
 6. Licensing and inspection
 7. Dispute in calculation of advance
 8. Inspection of records
 9. Penalties and interest
-

THE INCOME TAX (ADVANCE TAX) (CONDITIONS AND PROCEDURES) RULES

[L.N. 52/2012]

Citation.

1. The Rules may be cited as Income Tax (Advance Tax)(Conditions and Procedures) Rules.

Interpretation.

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

"advance tax" means tax payable under section 12A of this Act;

"owner of a commercial vehicle" means the registered owner as indicated in the registration certificate issued by the Registrar of motor vehicles.

Payment of advance tax.

3. (1) Any person who owns a commercial vehicle shall be liable to pay advance tax.

(2) Advance tax shall be payable for each year of income at the rates specified under paragraph 8 of the Third Schedule to the Act.

(3) Advance tax shall be due and payable to the Commissioner on or before the twentieth day of the first month of the year of income, or in cases of transfer of ownership of the commercial vehicle, before the new owner is registered as such.

(4) The Commissioner shall assess the amount of advance tax payable under these Rules in accordance with paragraph 8 of the Third Schedule to the Act.

(5) A person liable to pay advance tax shall submit to the Commissioner the payment accompanied by the prescribed form.

(6) The Commissioner shall issue, to every person who pays advance tax under these Rules, a receipt which shall be the proof of payment of advance tax.

Maintenance of records.

4. Any person who is liable to pay advance tax shall keep records necessary for the determining and ascertaining advance tax, including registration certificates, vehicle inspection reports, previous advance tax receipts and such other document or record as the Commissioner may from time to time direct.

Filing of returns.

5. (1) A person who pays advance tax shall submit to the Commissioner a return of income in accordance with section 52B of the Act.

(2) A person who fails to file a return of income in accordance with paragraph (1) shall be liable to pay additional tax as provided under section 72 of the Act.

Licensing and inspection.

6. A Government agency shall for the purposes of the registration or transfer of ownership, licensing or inspection of a commercial vehicle, require the owner of the commercial vehicle to furnish such agency with evidence of payment of advance tax or income tax exemption certificate, where applicable.

Dispute in calculation of advance.

7. Any dispute arising from the administration of these Rules relating to the assessment to tax shall be dealt with in accordance with section 84 of the Act.

[Subsidiary]

Inspection of records.

8. (1) For purposes of obtaining information necessary for the verification of advance tax paid, the Commissioner may by notice require a person liable to pay advance tax to—

- (a) produce all accounts, books of accounts, documents and other records relating to the payment of advance tax in respect of such period as may be specified by the Commissioner;
- (b) produce the commercial vehicle or a Vehicle Inspection Report prepared by a recognized Government agency or agent; or
- (c) avail themselves for interview at such time and place as may be specified in the notice.

(2) The Commissioner may, upon undertaking an inspection under this rule, demand from the person, based on the information obtained from the inspection—

- (a) the tax which appears from the documents and records produced by that person, would have been payable under rule 3 for the period covered by the inspection had that person complied with these Rules; or
- (b) the outstanding tax and penalties.

Penalties and interest.

9. (1) Any person who fails to pay the advance tax due shall, in addition to the payment of the unpaid tax, be liable to pay a penalty and interest on the unpaid tax in accordance with section 72D and section 94 of this Act respectively.

(2) The provisions of the Act that relate to collection and recovery of tax shall apply for the purposes of collection and recovery of unpaid advance tax.

Rules under section 12C

THE INCOME TAX (TURNOVER TAX) RULES

[L.N. 5/2008]

Revoked by Legal Notice 224 of 2023 on 29th December, 2023

Exemption under section 13**THE INCOME TAX ACT — EXEMPTION**

[L.N. 76/1997]

The Cabinet Secretary responsible for Finance provides that the 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, shall be exempt from tax.

THE INCOME TAX ACT- REVOCATION

[L.N. 73/1998]

The Cabinet Secretary responsible for Finance provides that the income of the Kenya Power Company Limited shall cease to be exempt from tax with effect from 1st January, 1999.

Legal Notice No. 167 of 31st October, 1980 is revoked.

Exemption under section 13(1)**THE INCOME TAX ACT - EXEMPTION**

[L.N. 121/1987]

The Cabinet Secretary responsible for Finance directs that the investment income of the Kenya Society for Protection and Care of Animals shall be exempt from tax.

Exemptions under section 13(2)**THE EXEMPTION NOTICES UNDER SECTION 13(2)**

[L.N. 93/1974, L.N. 44/1975, L.N. 43/1975, L.N. 118/1975, L.N. 147/1975, L.N. 148/1975, L.N. 149/1975, L.N. 186/1976, L.N. 97/1977, L.N. 123/1977, L.N. 124/1977, L.N. 125/1977, L.N. 122/1977, L.N. 126/1977, L.N. 147/1977, L.N. 163/1977, L.N. 272/1977, L.N. 15/1978, L.N. 13/1978, L.N. 14/1978, L.N. 35/1978, L.N. 129/1978, L.N. 258/1978, L.N. 259/1978, L.N. 45/1979, L.N. 83/1979, L.N. 79/1979, L.N. 127/1979, L.N. 179/1979, L.N. 285/1979, L.N. 168/1980, L.N. 169/1980, L.N. 169/1982, L.N. 10/1981, L.N. 52/1981, L.N. 155/1981, L.N. 240/1983, L.N. 72/1984, L.N. 240/1985, L.N. 3/1986, L.N. 59/1986, L.N. 144/1986, L.N. 205/1986, L.N. 270/1986, L.N. 61/1987, L.N. 72/1987, L.N. 121/1987, L.N. 193/1987, L.N. 5/1988, L.N. 6/1988, L.N. 114/1988, L.N. 167/1988, L.N. 273/1988, L.N. 302/1988, L.N. 327/1988, L.N. 434/1988, L.N. 4/1989, L.N. 51/1989, L.N. 52/1989, L.N. 161/1989, L.N. 167/1989, L.N. 248/1989, Act No. 5 of 1989, L.N. 394/1989, L.N. 7/1990, L.N. 48/1990, L.N. 49/1990, L.N. 58/1990, L.N. 226/1990, L.N. 225/1990, L.N. 356/1990, L.N. 478/1990, L.N. 446/1990, L.N. 515/1990, L.N. 54/1991, L.N. 99/1991, L.N. 267/1991, L.N. 514/1991, L.N. 531/1991, L.N. 30/1992, L.N. 31/1992, L.N. 72/1992, L.N. 82/1992, L.N. 83/1992, L.N. 27/1993, L.N. 73/1993, L.N. 164/1993, L.N. 277/1993, L.N. 322/1993, L.N. 350/1993, L.N. 352/1993, L.N. 365/1993, L.N. 408/1993, L.N. 32/1994, L.N. 43/1994, L.N. 143/1994, L.N. 153/1994, L.N. 219/1994, L.N. 330/1994, L.N. 379/1994, L.N. 484/1994, L.N. 4/1995, L.N. 136/1995, L.N. 137/1995, L.N. 152/1995, L.N. 205/1995, L.N. 218/1995, L.N. 262/1995, L.N. 330/1995, L.N. 262/1996, L.N. 289/1996, L.N. 288/1996, L.N. 302/1996, L.N. 39/1997, L.N. 45/1997, L.N. 82/1997, L.N. 156/1997, L.N. 155/1997, L.N. 548/1997, L.N. 19/1998, L.N. 20/1998, L.N. 61/1998, L.N. 62/1998, L.N. 93/1998, L.N. 3/1999, L.N. 2/1999, L.N. 97/1999, L.N. 178/1999, L.N. 28/2000, L.N. 135/2000, L.N. 44/2001, L.N. 45/2001, L.N. 117/2001, L.N. 167/2001, L.N. 182/2001, L.N. 34/2002, L.N. 131/2002, L.N. 153/2002, L.N. 155/2002, L.N. 154/2002, L.N. 177/2002, L.N. 45/2003, L.N. 24/2003, L.N. 25/2003, L.N. 44/2003, L.N. 70/2003, L.N. 155/2003, L.N. 164/2003, L.N. 207/2003, L.N. 208/2003, L.N. 51/2005, L.N. 104/2005, L.N. 138/2005, L.N. 137/2005, L.N. 139/2005, L.N. 5/2006, L.N. 68/2006, L.N. 94/2006, L.N. 95/2006, L.N. 110/2006, L.N. 116/2006, L.N. 163/2006, L.N. 164/2006, L.N. 21/2007, L.N. 61/2007, L.N. 2/2008, L.N. 13/2008, L.N. 63/2008, L.N. 158/2009, L.N. 16/2011, L.N. 46/2010, L.N. 47/2010, L.N. 73/2010, L.N. 72/2010, L.N. 82/2010, L.N. 83/2010, L.N. 147/2010, L.N. 164/2010, L.N. 178/2010, L.N. 32/2011, L.N. 85/2011, L.N. 86/2011, L.N. 131/2011, L.N. 65/2012, L.N. 62/2013, L.N. 62/2014, L.N. 56/2014, L.N. 55/2014, L.N. 86/2014, L.N. 87/2014, L.N. 121/2014, L.N. 91/2015, L.N. 146/2015, L.N. 165/2015, L.N. 200/2016, L.N. 115/2017, L.N. 156/2017, L.N. 221/2017, L.N. 45/2018, L.N. 44/2018, L.N. 234/2018, L.N. 22/2019, L.N. 181/2019, L.N. 158/2020, L.N. 15/2021, L.N. 24/2021, L.N. 193/2022]

[L.N. 93/1974]

The Cabinet Secretary responsible for Finance and Economic Planning hereby provides that income in respect of dividends received by the Industrial and Commercial Development Corporation Investment Company Limited, where the company controls, directly or indirectly, less than twenty-five per cent of the voting power of the company paying the dividends shall, with effect from 1st January, 1974, be exempt from tax.

[L.N. 43/1975]

The Cabinet Secretary responsible for Finance and Planning hereby provides that such part of the income of the Executive Secretary of the African Social Studies Programme as is paid to him in respect of his employment as such and received by him from outside Kenya shall, where such Executive Secretary is not ordinarily resident in Kenya or is ordinarily resident in Kenya solely for the purpose of his employment as such, be exempt from tax.

[L.N. 44/1975]

The Cabinet Secretary responsible for Finance and Planning hereby provides that such part of the income of the Regional Director and the Deputy Regional Director of the Christian Children's Fund, Incorporated as is paid to them in respect of their employment as such and received by them from outside Kenya shall, where such Regional Director and Deputy Regional Director are not ordinarily resident in Kenya or are ordinarily resident in Kenya solely for the purposes of their employment as such, be exempt from tax.

[Subsidiary]

[L.N. 147/1975]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Morgan Grenfell & Co. Ltd. (a company incorporated in the United Kingdom) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one million pounds sterling made by Morgan Grenfell & Co. Ltd., to the Industrial Development Bank Limited (a company incorporated in Kenya) under the provisions of a document described as a Loan Agreement dated 23rd January, 1975, made between the Industrial Development Bank and Morgan Grenfell & Co. Ltd., shall be exempt from tax.

[L.N. 148/1975]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, (a company incorporated in the Federal Republic of Germany), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of four million deutsch mark made by Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh to the Industrial Development Bank Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 13th December, 1974, made between the Industrial Development Bank, Limited and the Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, shall be exempt from tax.

[L.N. 149/1975]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, (a company incorporated in the Federal Republic of Germany), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of four million deutsch mark made by Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 13th December, 1974, made between the Development Finance Company of Kenya Limited and Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, shall be exempt from tax.

[L.N. 97/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the European Investment Bank (a company incorporated in the Grand Duchy of Luxemburg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of two million European Units of Account (equivalent to approximately twenty million Kenya shillings) made by the European Investment Bank to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 27th October, 1976, made between the Development Finance Company of Kenya Limited and the European Investment Bank, shall exempt from tax.

[L.N. 122/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Nederlandse Financierings—Maatschappij Voor Ontwikkelingslanden N.V., (a company incorporated in the Kingdom of the Netherlands), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of twelve and a half million shillings made by Nederlandse Financierings—Maatschappij Voor Ontwikkelingslanden N.V. to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 6th May, 1976, made

between the Development Finance Company of Kenya Limited and Nederlandse Financierings—Maatschappij Voor Ontwikkelingslanden N.V., shall be exempt from tax.

[L.N. 123/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH, (a company incorporated in the Federal Republic of Germany), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of six million deutsche mark made by Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH to the Industrial Development Bank Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated the 2nd day of December, 1976, made between the Industrial Development Bank Limited and the Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH, shall be exempt from tax.

[L.N. 124/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the Commonwealth Development Corporation (a company incorporated in England), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one hundred and fifty thousand pounds sterling made by the Commonwealth Development Corporation to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 17th December, 1976, made between the Development Finance Company of Kenya Limited and the Commonwealth Development Corporation, shall be exempt from tax.

[L.N. 125/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Manufacturers Hanover Export Finance Limited (a company incorporated in the United Kingdom) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one million pounds sterling made by Manufacturers Hanover Export Finance Limited to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Financial Agreement dated 3rd November, 1976, made between the Development Finance Company of Kenya Limited and Manufacturers Hanover Export Finance Limited, shall be exempt from tax.

[L.N. 126/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Morgan Grenfell & Company Limited (a company incorporated in the United Kingdom) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of two million pounds sterling made by Morgan Grenfell & Company Limited to the Industrial Development Bank Limited (a company incorporated in Kenya) under the provisions of a document described as a Financial Agreement dated the 14th day of January, 1977, made between the Industrial Development Bank Limited and Morgan Grenfell & Company Limited, shall be exempt from tax.

[L.N. 147/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the United States Agency for International Development, in so far as such income represents a Guaranty Fee accrued in or derived from Kenya under the provisions contained in a document described as an Implementation Agreement dated 3rd June, 1975, made between the City Council of Nairobi and the United States Agency for International Development, shall be exempt from tax.

[L.N. 163/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of three million European Units of Account (equivalent to approximately thirty million shillings) made by the European Investment Bank to the East African Portland Cement Company Limited (a company incorporated in Kenya), under the provisions of a document described as a Finance Contract dated 11th May, 1977, made between the East African Portland Cement Company Limited and the European Investment Bank, shall be exempt from tax.

[L.N. 272/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the Danish Turnkey Dairies Limited (a company incorporated in Denmark) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of eight million, seven hundred twenty-four thousand and nine hundred and sixty-one danish kroner made by the Danish Turnkey Dairies Limited to the Kenya Co-operative Creameries Limited (a Company incorporated in Kenya) under the provisions of a document described as a Form of Agreement dated 16th September, 1972, made between the Kenya Co-operative Creameries Limited and the Danish Turnkey Dairies Limited, shall be exempt from tax.

[L.N. 13/1978]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the Danish Turnkey Dairies Limited (a company incorporated in Denmark) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of eight million, seven hundred twenty-four thousand and nine hundred and sixty-one danish kroner made by the Danish Turnkey Dairies Limited to the Kenya Co-operative Creameries Limited (a Company incorporated in Kenya) under the provisions of a document described as a Form of Agreement dated 16th September, 1972, made between the Kenya Co-operative Creameries Limited and the Danish Turnkey Dairies Limited, shall be exempt from tax.

[L.N. 14/1978]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxemburg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of five million European Units of Account (equivalent to approximately fifty million Kenya shillings) made by the European Investment Bank to the Industrial Development Bank of Kenya (a company incorporated in Kenya) under the provisions of a document described as a Finance Contract dated 8th November, 1977, made between the Industrial Development Bank of Kenya and the European Investment Bank, shall be exempt from tax.

[L.N. 15/1978]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxemburg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of twelve million European Units of Account (equivalent to approximately one hundred and twenty million Kenya shillings) made by the European Investment Bank to the South Nyanza Sugar Company Limited (a company incorporated in Kenya) under the provisions of a document described as a Finance

Contract dated 8th September, 1977, made between the South Nyanza Sugar Company Limited and the European Investment Bank, shall be exempt from tax.

[L.N. 35/1978]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the European Development Fund (an institution of the European Economic Commission established by the Treaty of Rome and having its Head Office in Brussels, Belgium), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of 26,340,000 European Units of Accounts (equivalent to approximately two hundred and sixty million Kenya Shillings) made by the European Development Fund to the Government of Kenya for the construction of the Upper Tana Multi-Purpose Reservoir under the provisions of a document described as a Finance Contract dated December 20th, 1977, made between the Government of Kenya and the European Development Fund, shall be exempt from tax.

[L.N. 129/1978]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Guinness Mahon & Company Limited (a company incorporated in the United Kingdom of Great Britain and Northern Ireland), in so far as such income represents interests accrued in or derived from Kenya in respect of a Loan of four million six hundred and fifty thousand pounds sterling (equivalent to approximately sixty-five million eight hundred and forty-four thousand Kenya shillings) made by Guinness Mahon & Company Limited to the Kenya Furfural Company Limited (a company incorporated in Kenya) under the provisions of a document described as a Financial Agreement dated 21st day of July, 1977, made between the Kenya Furfural Company Limited and Guinness Mahon & Company Limited, shall be exempt from tax.

[L.N. 258/1978]

The Cabinet Secretary responsible for Finance hereby (provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg, in so far, as such income represents interest accrued in or derived from Kenya in respect of a loan of twelve million European Units of Account (equivalent to approximately one hundred and twelve million Kenya shillings) made by the European Investment Bank to the Government of Kenya for the Upper Tana Reservoir Project under the provisions of a document described as a Finance Contract dated 3rd October, 1978 made between the Government of Kenya and the European Investment Bank, shall be exempt from

[L.N. 259/1978]

The Cabinet Secretary responsible for Finance hereby Provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one hundred thousand European Units of Account (equivalent to approximately one million Kenya shillings) made by the European Investment Bank to Kenya Tourist Development Corporation (a body incorporated in Kenya under Cap. 382 of the Laws of Kenya) under provisions of a document described as a Finance Contract dated 31st October, 1978, made between the Kenya Tourist Development Corporation and European Investment Bank, shall be exempt from tax.

[L.N. 45/1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of Osterreichische Landerbank Aktiengesellschaft (a company incorporated in Austria), in so far as such income represents interest occurred in, or derived from Kenya in respect of a Loan of one hundred forty-seven million six hundred and eighty thousand Austrian Schellings (equivalent to approximately seventy-nine million, three hundred and eighty thousand

[Subsidiary]

Kenya Shillings) made by Österreichische Landerbank Aktiengesellschaft to the Kenya Fibre Corporation Limited (a company incorporated in Kenya) under the provisions of a document described as a Loan Agreement dated the provisions of a document described as a Loan Agreement dated the provisions of a document described as a Loan Agreement dated 1st December 1977, made between the Kenya Fibre Corporation Limited and Österreichische Landerbank Aktiengesellschaft, shall be exempt from tax.

[L.N. 83/1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of the Union Bank of Switzerland (a company incorporated in Switzerland), in so far as such income represents interest accrued in, or derived from, Kenya in respect of a loan of ninety-seven million and three hundred and twenty-five thousand Swiss francs (equivalent to approximately four and twenty-five million, three hundred and ten thousand Kenya shillings) made by the Union Bank of Switzerland to the Kenya Chemical and Food Corporation Limited (a company incorporated in Kenya) under the provisions of a document described as a Loan Agreement dated 2nd December, 1977 made between the Kenya Chemical and Food Corporation Limited and Union Bank of Switzerland shall be exempt from tax.

[L.N. 79/1979]

The Cabinet Secretary responsible for Finance hereby Provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one hundred thousand European Units of Account (equivalent to approximately one million Kenya shillings) made by the European Investment Bank to Kenya Tourist Development Corporation (a body incorporated in Kenya under Cap. 382 of the Laws of Kenya) under provisions of a document described as a Finance Contract dated 31st October, 1978, made between the Kenya Tourist Development Corporation and European Investment Bank, shall be exempt from tax.

[L.N. 179/1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of the Commonwealth Development Corporation (a company incorporated in England), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one million, three hundred and forty thousand pounds sterling (equivalent to approximately twenty million, eight hundred and ninety thousand Kenya Shillings) made by the Commonwealth Development Corporation to the Development Finance Company of Kenya Limited (a company incorporated in Kenya) under the provisions of a document described as a Further Loan Agreement dated 15th September, 1978, made between the Development Finance Company of Kenya Limited and the Commonwealth Development Corporation, shall be exempt from tax.

[L.N. 127/1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of the European Development Fund (an institution of the European Economic Community established by the Treaty of Rome and having its head office in Brussels, Belgium), in so far as such income represents interest accrued in, or derived from, Kenya in respect of a loan of ten million, six hundred and eighteen thousand European Units of Account (equivalent to approximately one hundred and six million, one hundred and eighty thousand Kenya shillings) made by the European Development Fund to the Government of the Republic of Kenya under the provisions of a document described as a Finance Contract, dated 11th April, 1979, made between the Government of the Republic of Kenya and the European Development Fund, shall be exempt from tax.

[L.N. 128/1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its head office provisionally in Luxembourg), in so far as such income represents interest accrued in, or derived from, Kenya in respect of a loan of five million European Units of Account (equivalent to approximately fifty million Kenya Shillings) made by the European Investment Bank to the Development Finance Company of Kenya (a limited liability company incorporated under the Laws of Kenya and having its head office provisionally in Bima House, Nairobi) under the provisions of a document described as a Finance Contract, dated 22nd May, 1979, made between the Development Finance Company of Kenya and the European Investment Bank, shall be exempt from tax.

[L.N. 285/1979]

The Cabinet Secretary responsible for Finance provides that the income of the Industrial Development Bank of India (a corporation constituted in India), in so far as such income represents interest accrued in or derived from Kenya in respect of a credit of twenty million Indian Rupees (equivalent to approximately eighteen million, five hundred and fifty-four thousand Kenya Shillings) made by the Industrial Development Bank of India to the Industrial Development Bank Limited (a company incorporated in Kenya) under the provisions of a document described as a Credit Agreement dated 11th July, 1978, made between the Industrial Development Bank Limited and the Industrial Development Bank of India, shall be exempt from tax.

[L.N. 167/1980]

The Cabinet Secretary responsible for Finance provides that the income of the Institute of Certified Public Accountants of Kenya shall be exempt from tax.

This notice shall be deemed to have come into force on 1st January, 1980.

[L.N. 169/1980]

The Cabinet Secretary responsible for Finance provide that the incomes of the Kenya Medical Association and the East African Medical Journal shall be exempt from tax.

This notice shall be deemed to have come into force on the 1st January, 1978.

[L.N. 10/1981]

The Cabinet Secretary responsible for Finance provides that the income of Guinness Mohan & Company Limited (a company incorporated in the United Kingdom of Great Britain and Northern Ireland), in so far as that income represents interest accrued in or derived from Kenya in respect of a loan of approximately one million seven hundred and thirty one thousand three hundred and ninety nine pounds sterling, made by Guineas Mohan & Company Limited to the Kenya Furfural Company Limited (a company incorporated in Kenya), as an additional loan to the original loan of four million six hundred and fifty thousand pounds sterling, shall be exempt from tax.

[L.N. 52/1981]

The Cabinet Secretary responsible for Finance provides that the income of the Rift Valley Development Trust together with the income of its subsidiary Deloraine Estate Limited shall be exempt from tax.

This notice shall be deemed to have come into force on the 13th July, 1973.

[L.N. 155/1981]

The Cabinet Secretary responsible for Finance provides that all payments to be made under the agreement referred to in the Schedule hereto shall be exempt from withholding tax.

SCHEDULE

A loan agreement dated 16th October, 1981 between the Republic of Kenya as borrower, the Bank of Tokyo Limited, Citicorp International Bank Limited, National Westminster Bank Limited and Societe Generale as lead managers, Bankers Trust International Limited, Barclays Bank International Limited, Caisse National de Credit Agricole, Chemical Bank International Limited, State Bank of India and the Sumitomo Bank Limited as managers, The Bank of Nova Scotia, CIBC Limited, European Arab Bank (Middle East) E.C. and Lloyds Bank International Limited as co-managers, Citicorp International Bank Limited as agent and the other financial institutions named in the First Schedule to that agreement.

[L.N. 169/1982]

The Cabinet Secretary responsible for Finance provides that the incomes of the Kenya Medical Association and the East African Medical Journal shall be exempt from tax.

This notice shall be deemed to have come into force on the 1st January, 1978.

[L.N. 240/1983]

The Cabinet Secretary responsible for Finance and Planning exempts all payments to be made under the agreement referred to in the Schedule hereto from withholding tax.

SCHEDULE

A Loan Agreement dated March 25th, 1983 between the Republic of Kenya as Borrower, and Export Development Corporation as Lender.

[L.N. 72/1984]

The Cabinet Secretary responsible for Finance and Planning exempts all payments to be made under the agreement referred to in the Schedule from tax.

SCHEDULE

A Credit Agreement dated the 12th April, 1984 between the Republic of Kenya as Borrower and Skandinaviska Enskilda Banken as Lender.

[L.N. 240/1985]

IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Minister for Finance and Planning exempts all payments to be made under the agreement referred to in the Schedule from tax.

SCHEDULE

A Credit Agreement dated the 12th April, 1984 between the Republic of Kenya as Borrower and Skandinaviska Enskilda Banken as Lender.

[L.N. 3/1986]

The Cabinet Secretary responsible for Finance provides that the credit of US \$7,000,000 from the Standard Chartered Bank of 38 Bishopsgate, London, EC2N 4DE, England, to the Kenya Airways Limited of Post Office Box 19002, Nairobi, shall be exempted from income tax.

[L.N. 59/1986]

The Cabinet Secretary responsible for Finance provides that the income of the Agricultural Development Corporation established by the Agricultural Development Corporation Act accrued in and derived from Kenya shall be exempt from tax.

[L.N. 144/1986]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreement referred to in the Schedule hereto from withholding tax.

SCHEDULE

A Loan Agreement dated 25th April, 1986 between the Republic of Kenya as Borrower, and Export Development Corporation of Canada and the Barclays Bank of Canada as Lenders.

[L.N. 205/1986]

The Cabinet Secretary responsible for Finance certifies that it is in the public interest that as required by the terms of the agreements concerning the Mwangaza IV Telecommunications and Switching Equipment Project specified in the Schedule, the interest on the loans, credits, the commitment fees, the management fees, and agency fees payable by the Government as principal borrower under these agreements shall be exempt from tax.

SCHEDULE

1. The agreement described as "Loan Agreement" executed on the 14th July, 1986 by the Government of the Republic of Kenya as borrower and the following syndicate of lenders:

- (1) Banque Indosuez of 96, Boulevard Haussman, 75008 Paris, France.
- (2) Banque Paribas of 3 Rue d'Antin, 75002, Paris, France.
- (3) Societe Generale of 29, Boulevard Haussmann, 75009 Paris, France.
- (4) Banque Nationale De Paris of 16, Boulevard des italiens, 75002 Paris, France.
- (5) Credit Lyonnais of 19, Boulevard des Italiens, 75002 Paris, France.
- (6) Banque De L'Union Europeenne of 4, Rue Gaillon, 75002 Paris, France.
- (7) Barclays Bank S.A. of 33 Rue du Quatre Septembre, 75002 Paris, France.
- (8) Electrobanque of 14, Rue Cambaceres, 75008 Paris, France.
- (9) Banque Internationale Four L'Afrique Occidental of 9, Avenue de Messine, 75008 Paris, France.

2. The Mwangaza IV Telecommunications and Switching Equipment Credit Agreement dated the 14th July, 1986 made between the Government of the Republic of Kenya as the borrower and the following syndicate of lenders:

- (i) Banque Indosuez of 96 Boulevard Haussman, 75008 Paris, France.

[Subsidiary]

(ii) Banque Paribas of 3 Rue d'Antin 75002 Paris, France.

[L.N. 270/1986]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreement referred to in the Schedule from tax.

SCHEDULE

A credit agreement dated 1st August, 1986 between the Government of the Republic of Kenya as the Borrower and Banque Indosuez, whose registered office is 96 Boulevard Haussmann, 75008, Paris, France; Credit Industrie] et Commerciale De Paris, whose registered office is 66 Rue de la Victoire, 75009, Paris, France and Banque Francaise Du Commerce Exterieur whose registered office is 21 Boulevard Haussmann, 75009, Paris, France, as lenders.

[L.N. 61/1987]

The Cabinet Secretary responsible for Finance provides that the income of the Union Bank of Switzerland (a company incorporated in Switzerland) in so far as such income represents the repayments being made pursuant to the provisions of a document described as a Loan Agreement dated 24th December, 1984 between the Government of the Republic of Kenya and the Union Bank of Switzerland shall be exempt from tax.

[L.N. 72/1987]

The Cabinet Secretary responsible for Finance exempts with effect from the year of income commencing on the 1st January, 1987-

(a) the gains and profits accruing to a member of the armed forces which consist of the value of premises provided for his occupation as residential premises, by virtue of his employment in the armed forces;

(b) any house allowances paid to a member of the armed forces, in lieu of his being so provided with premises for his occupation.

[L.N. 121/1987]

The Cabinet Secretary responsible for Finance directs that the investment income of the Kenya Society for Protection and Care of Animals shall be exempt from tax.

[L.N. 193/1987]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreements, guarantees and the promissory notes specified in the Schedule hereto from deduction of withholding tax.

SCHEDULE

1. The loan agreement dated the 1st May, 1987 entered into between the Kenya Railways Corporation established under the Kenya Railways Corporation Act as borrower and the Banque Indosuez acting through its New York Branch of 1230 Avenue of the Americas, New York, New York 10020 as lender.

2. The promissory notes made by the Kenya Railways Corporation and guaranteed by the Government of Kenya in favour of the Banque Indosuez, New York Brank, in respect of the loan agreement dated 1st May, 1987 entered into between the Kenya Railways Corporation and the Banque Indosuez, New York Branch and exhibited to that loan agreement.

3. The guarantee made by the Government of Kenya in favour of the Banque Indosuez, New York Branch in respect of the loan agreement dated 1st May, 1987 entered into between the Kenya Railways Corporation and the Banque Indosuez, New York Branch and exhibited to that loan agreement.

4. The credit agreement dated the 29th May, 1987 entered into between the Kenya Railways Corporation established under the Kenya Railways Corporation Act as borrower and the Export Import Bank of the United States of 811 Vermont Avenue, N.W. Washington D.C.20571, U.S.A., as lender.

5. The promissory notes made by the Kenya Railways Corporation and guaranteed by the Government of Kenya in favour of the Export Import Bank of the United States, in respect of the credit agreement dated 29th May, 1987 entered into between the Kenya Railways Corporation and the Export Import Bank of the United States, and exhibited to that credit agreement.

6. The guarantee made by the Government of Kenya in favour of the Export Import Bank of the United States in respect of the loan agreement dated 29th May, 1987 entered into between the Kenya Railways Corporation and the Export Import Bank of the United States, and exhibited to that credit agreement.

[L.N. 5/1988]

The Cabinet Secretary responsible for Finance provides that the income of Bureau Veritas, a corporate body incorporated with limited liability in Paris, France, of 17 Bis, place des reflets, Paris-La Defense 2, 92400 Courbevoie, France, which is accrued in Kenya under the terms of the agreement between Bureau Veritas and the Central Bank of Kenya, dated 8th January, 1988, shall be exempted from tax.

This exemption shall be deemed to have come into effect on the 18th January, 1988.

[L.N. 6/1988]

The Cabinet Secretary responsible for Finance provides that the income of Cotecna Inspection S.A., a corporate body incorporated with limited liability in Geneva, Switzerland, of 58, Rue de la Terrassiere, Case Postale 213, 1211, Geneva 6, Switzerland, which is accrued in Kenya, under the terms of the agreement between the Cotecna Inspection S.A., and the Central Bank of Kenya, dated 8th January, 1988, shall be exempted from tax.

This exemption shall be deemed to have come into effect on the 18th January, 1988.

[L.N. 114/1988]

The Cabinet Secretary responsible for Finance provides that the income of the Maendeleo ya Wanawake Organization for the years of income 1980 to 1984, shall be exempt from tax.

[L.N. 167/1988]

The Cabinet Secretary responsible for Finance provides that the income of Messrs. James Cubitt and Partners of the United Kingdom and Educational Consultants India Limited of India, in so far as such income represents the payments made to the consortium working on Moi University Masterplan, shall be exempted from the provisions of the Act.

[L.N. 273/1988]

The Cabinet Secretary responsible for Finance provides, that all payments made under the, credit agreement between Nzoia Sugar Company Limited as the borrower and the Import-Export Bank of the United States, 811 Vermont Avenue, N.W. Washington D.C. 20511, USA., as the lender, shall be exempted from the provisions of the Act.

[L.N. 302/1988]

[Subsidiary]

The Cabinet Secretary responsible for Finance exempts, with effect from the year of income commencing on the 1st January, 1987, the gains or profits accruing to the holder of any of the offices specified in the Schedule which consists of the value of the premises provided for his occupation as residential premises by virtue of his employment.

SCHEDULE

Chief Justice.
Judge of Appeal.
Puisne Judge.
[L.N. 327/1988]

The Cabinet Secretary responsible for Finance provides that all the payments made under a loan agreement dated 6th June, 1988, entered into between the Nzoia Sugar Company Ltd., of P.O. Box 285, Bungoma, Kenya, as the borrower and the East African Development Bank, of P.O. Box 7128, Kampala, Uganda, as the lender shall be exempted from the provisions of the Act.

[L.N. 434/1988]

The Cabinet Secretary responsible for Finance provides that the income of the Kenya Reinsurance Corporation shall be exempt from tax.

[L.N. 4/1989]

The Cabinet Secretary responsible for Finance provides that all payments made in respect of promissory notes issued in pursuance of the Purchase Agreement dated 21st January, 1988, between Kenya Airways Limited, of P.O. Box 19002, Nairobi, Kenya, and Fokker Aircraft B.V., of P.O. Box 12222, 1100 AE Amsterdam—Zuidoost, the Netherlands, shall be exempted from tax.

[L.N. 5/1989]

The Cabinet Secretary responsible for Finance provides that all payments made under the Aircraft Lease Agreement and Technical Services Agreement, both dated 22nd September, 1988, and entered into between Air Tara Limited as lessor and Kenya Airways as lessee, shall be exempt from tax.

This exemption shall also apply to all payments to be made to the aircraft maintenance engineers and pilots engaged by Air Tara Limited for the performance of its obligations under the two agreements.

Legal Notice No. 468 of 1988 is revoked.

[L.N. 51/1989]

The Cabinet Secretary responsible for Finance provides that the income of the Armed Forces Canteen Organization (MVO) shall be exempted from Tax.

[L.N. 52/1989]

The Cabinet Secretary responsible for Finance provides that the income of Messrs. Jisaidie Cottage Industries, of Post Office Box Number 67329, Nairobi, shall be exempt from tax.

[L.N. 161/1989]

The Cabinet Secretary responsible for Finance provides that all payments made pursuant to an agreement dated the 2nd November, 1988 between the Government of the Republic of Kenya and Fabrique Nationale Herstal S.A., a corporation organized and existing under

Belgium Law and having its registered office at 33 Voie-de-Li'ege, 4400. Herstal (Belgium) shall be exempted from tax.

[L.N. 167/1989]

The Cabinet Secretary responsible for Finance provides that the contributions made to unregistered provident funds established abroad for the expatriate employees of—

- (a) Total Exploratie en Produktie Mij. E.V. incorporated under the laws of the Netherlands and having established a place of business at Chai House, Koinange Street, Nairobi;
- (b) Amoco Kenya Petroleum Company, incorporated under the laws of the State of Delaware, U.S.A. and having established a place of business in Nairobi, Kenya;
- (c) Marathon Petroleum Kenya Ltd., incorporated under the laws of the State of Delaware, U.S.A., and having established a place of business at I.C.E.A. Building, Kenyatta Avenue, Nairobi;
- (d) Mobil Exploration Kenya Ltd., incorporated under the laws of Bermuda and having established a place of business in Nairobi, Kenya; and
- (e) Fina Exploration Kenya S.A. Ltd., incorporated under the laws of Belgium and having established a place of business in Nairobi, Kenya;

and their sub-contractors, shall be exempt from the provisions of the Act.

[L.N. 248/1989]

The Cabinet Secretary responsible for Finance provides that the income of the Kenya Women Finance Trust Limited shall be exempt from tax but the exemption shall not extend to tax on interest of deposits or withholding tax paid on deposit interests.

[L.N. 394/1989]

The Cabinet Secretary responsible for Finance provides that all payments arising out of the lease agreement dated the 8th September, 1989, between Kenya Airways Limited, of P.O. Box 19002, Nairobi, Kenya, and ANSETT WorldWide Aviation Limited, of Bond Street, East Tower, 40th Floor, 89 Queensway, Hong Kong, shall be exempted from tax.

[L.N. 7/1990]

The Cabinet Secretary responsible for Finance provides that the contributions made to unregistered provident funds established abroad for the expatriate employees of—

- (a) Total Exploratie en Produktie Mij. BV incorporated under the laws of the Netherlands and having established a place of business at Finance House, Loita Street, Nairobi;
- (b) Amoco Kenya Petroleum Company, incorporated under the laws of the State of Delaware, U.S.A. and having established a place of business at Shell BP House, Hara Mbee Avenue, Nairobi;
- (c) Marathon Petroleum Kenya Ltd., incorporated under the laws of the State of Delaware, U.S.A. and having established a place of business at I.C.E.A. Building, Kenyatta Avenue, Nairobi; and
- (d) Texaco Exploration Kenya Inc. incorporated under the laws of Liberia and having established a place of business at Caltex House, Koinange Street, Nairobi,

and their sub-contractors shall be exempt from the provisions of the Act.

[L.N. 48/1990]

[Subsidiary]

The Cabinet Secretary responsible for Finance provides that all payments made under the finance agreement, the purchase agreement and the promissory notes specified in the Schedule shall be exempted from tax.

Schedule

1. The finance agreement dated 1st November, 1989 for sixteen million, five hundred and fourteen thousand, three hundred and twenty-nine U.S. dollars (US\$16,514,329) between the Kenya Airways Limited, of P.O. Box 19002, Nairobi, Kenya, as the borrower and Credit Lyonnais Bank, Nederland N.V. as the lender.

2. The purchase agreement dated 1st November, 1989 between the Kenya Airways Limited, of P.O. Box 19002, Nairobi, Kenya and the Fokker Aircraft B.V., of P.O. 1 Box 12222, 1100 AE Amsterdam, Zuidoost, the Netherlands and the promissory notes to be issued pursuant to the purchase agreement.

[L.N. 49/1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the loan agreement specified in the Schedule hereunder shall be exempt from the provisions of the Act.

SCHEDULE

A loan agreement dated 29th May, 1989 for Netherlands guilders seven million two hundred eighty-seven thousand (NLG 7,287,000) between the Kenya Ports Authority as the borrower and De Nederlandse Investeringsbank Voor Ontwikkelingslanden N.V. whose office is at 5 Carnegieplein, the Hague, Netherlands, as the lender.

[L.N. 58/1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the loan agreement dated 30th January, 1989, for Deutsche marks twenty-seven million five hundred thousand (DM 27,500,000), between the Republic of Kenya as borrower and the Kreditanstalt Für Wiederaufbau, Frankfurt am Main, of Germany as lender, shall be exempt from the provisions of the Act.

[L.N. 225/1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the credit agreement dated 31st October, 1989 for Belgian Francs one hundred million (BEC 100,000,000), between the Kenya Power and Lighting Company Limited as borrower and Indosuez Bank Belgie N.V. of Grote Markt 9, Antwerp, Belgium as lender, shall be exempt from the provisions of the Act.

Schedule

A loan agreement dated the 25th April, 1990, for Canadian dollars forty-nine million and seventy-four thousand (CDN \$49,074,000), between the Kenya Pipeline Company Limited as borrower and the Export Development Corporation of Canada as lender.

[L.N. 226/1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the credit agreement dated 31st October, 1989 for Belgian Francs one hundred million (BEC 100,000,000), between the Kenya Power and Lighting Company Limited as borrower and Indosuez Bank Belgie N.V. of Grote Markt 9, Antwerp, Belgium as lender, shall be exempt from the provisions of the Act.

[L.N. 356/1990]

The Cabinet Secretary responsible for Finance provides that the sum of five million Deutsche Marks (DM 5,000,000) invested by the German Finance Company for Investments in Developing Countries in Small Enterprises Finance Company of Kenya in form of equity and income notes shall be exempt from the provisions of the Act.

[L.N. 446/1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the agreement specified in the Schedule shall be exempt from the provisions of the Act.

SCHEDULE

1. An agreement dated the 11th January, 1990, and any amending agreements thereto between Kenya Pipeline Company Limited, Lavalin International Inc., Sogea and NKK Corporation trading under the partnership name of Propipe, for the construction and extension of an oil pipeline to Western Kenya.
2. Salaries and emoluments of expatriate personnel of Lavalin International Inc., Sogea, NKK Corporation and Propipe paid in connection with the performance of their obligations under the agreement dated 11th January, 1990.

[L.N. 478/1990]

The Cabinet Secretary responsible for Finance provides that all payments made under the Credit Agreement dated 10th September, 1990 for French Francs 130,765,399 (one hundred thirty million, seven hundred and sixty-five thousand, three hundred and ninety-nine) between the Kenya Pipeline Company Limited as borrower and the Syndicate of French bank specified in the Schedule hereto shall be exempt from the provisions of the Act.

SCHEDULE

1. Banque de L'Union Europeenne whose registered office is 4,rue Gaillon, 75002 Paris (France).
2. Banque Nationale de Paris whose registered office is 16, Boulevard des Italiens, 75009 Paris (France).
3. Banque Francaise du Commerce Exterieur whose registered office is 21, Boulevard, Haussmann, 75009 Paris (France).

[L.N. 515/1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the Lease Hire Purchase Agreement dated the 22nd October, 1990, between Air Kenya Aviation Limited and C.H.S. Aviation Limited, for the hire by Air Kenya Aviation Limited of aircraft Twin Otter DHC 6 Registration 5Y-KEG shall be exempt from payment of withholding tax for a period of two years commencing from the 1st December, 1990.

[L.N. 54/1991]

[Subsidiary]

The Cabinet Secretary responsible for Finance provides that the contributions made to unregistered provident funds established abroad for the expatriate employees of the Shell Exploration and Production Kenya B.V. incorporated under the laws of the Netherlands and having established a place of business at the Shell BP House, Harambee Avenue, Nairobi, and their subcontractors shall be exempt from the provisions of the Act.

[L.N. 99/1991]

The Cabinet Secretary responsible for Finance directs that all payments made under the loan and guarantee agreements specified in the Schedule hereto shall be exempt from the provisions of the Act.

SCHEDULE

1. The Loan Agreement No. EDC 880-KEN-4209 dated 12th December, 1990 for US dollars twenty-three million five hundred thousand (US\$ 23,500,000) between the Kenya Posts and Telecommunications Corporation as borrower and Export Development Corporation of Canada as lender.

2. The Guarantee Agreement dated 12th December, 1990 for the EDC loan No. 880-KEN-4209 between Government of the Republic of Kenya as guarantor and Export Development Corporation of Canada.

[L.N. 267/1991]

The Cabinet Secretary responsible for Finance directs that all income of the Nairobi Terminal Care Centre of P.O. Box 74818, Nairobi, shall be exempt from the provisions of the Act.

[L.N. 514/1991]

The Cabinet Secretary responsible for Finance exempts all accrued income derived from the investment of convertible currency payable on the redemption of a convertible foreign exchange bearer certificate from the provisions of the Act.

[L.N. 531/1991]

The Cabinet Secretary responsible for Finance provides that all payments arising out of the three Lease Agreements dated the 5th September, 1991 entered into between Kenya Airways Limited, of P.O. Box 19002, Nairobi, Kenya and GPA Group PLC of , GPA House, Shannon, Co. Clare, Ireland shall be exempted from the provision of this Act.

[L.N. 30/1992]

The Cabinet Secretary responsible for Finance directs that the interest on all deposits of the Registration of Certified Public Secretaries Board, deposited in any bank or financial institution shall be exempt from withholding tax.

[L.N. 31/1992]

The Cabinet Secretary responsible for Finance provides that all the income of the Kenya Wildlife Service shall be exempt from the provisions of the Act for a period of five years commencing on the 1st January, 1992. This notice shall be deemed to have come into operation on the 1st January, 1992.

[L.N. 72/1992]

The Cabinet Secretary responsible for Finance provides that all payments made under the Loan Agreement dated 11th July, 1991 for a total of three million five hundred thousand US dollars (US \$3.5m.) between Kwale Cashew Processors Limited as borrower and Messrs. West-deutsche Landesbank (Europa) Financing Services Limited, Ireland and M/s. Chartered WestLB Limited, London as lenders respectively shall be exempt from withholding tax.

The Cabinet Secretary responsible for Finance provides that all payments made under the Loan Agreement dated 11th July, 1991 for a total of three million five hundred thousand US dollars (US \$3.5m.) between Kwale Cashew Processors Limited as borrower and Messrs. West-deutsche Landesbank (Europa) Financing Services Limited, Ireland and M/s. Chartered WestLB Limited, London as lenders respectively shall be exempt from withholding tax.

[L.N. 82/1992]

The Cabinet Secretary responsible for Finance provides that the interest on deposits of the Netherlands Development Finance Company (FMO) held in various banks and financial institutions in Kenya shall be exempt from the provisions of the Act.

[L.N. 83/1992]

The Cabinet Secretary responsible for Finance provides that the income of Prefund-Project Rehabilitation Fund Limited shall be exempt from the provisions of the Act.

This notice shall be deemed to have come into operation from the 1st January, 1989.

[L.N. 27/1993]

The Cabinet Secretary responsible for Finance provides that all funds deposited in any bank or financial institution by the Missionaries of Charity in Kenya, of Post Office Box 32778, Nairobi, shall be exempt from withholding tax.

[L.N. 73/1993]

The Cabinet Secretary responsible for Finance directs that the interest on all deposits of the Kangundo Sub-district Hospital Nyayo Wards, deposited in any bank or financial institution shall be exempt from withholding tax for a period of three years with effect from 1st January, 1993.

[L.N. 164/1993]

The Cabinet Secretary responsible for Finance provides that the income of the Institute of Certified Public Secretaries of Kenya, of P.O. Box 46935, Nairobi, shall be exempt from the provisions of the Act as long as the organization remains a non-profit making organization.

[L.N. 277/1993]

1. The Cabinet Secretary responsible for finance, subject to the conditions in paragraphs (2) and (3), exempts from Income tax the lump sum received by employees of Kenya Airways Limited who opt for early retirement prior to 30th September, 1993, under the scheme known as the "Voluntary Severance Scheme" in accordance with written agreement between Kenya Airways Limited and its employees, and as approved by the Government under the Parastatal Reform Programme.

2. A person who opts for early retirement shall not be eligible for re-employment with Kenya Airways Limited in any capacity or under any terms whatsoever, whether on temporary, permanent or contract basis, before the expiration of three years from the date on which he left service under the Scheme.

3. Kenya Airways Limited shall, in addition to complying with any procedures the Commissioner of Income Tax may require, furnish the the commissioner, in respect of each retiring employee, the name, the date of, retirement from the service of Kenya Airways Limited, the amount paid, and a copy of the agreement for the Voluntary Severance Scheme duly signed by the employee.

[L.N. 322/1993]

The Cabinet Secreatry responsible for Finance, subject to conditions in paragraphs (2) and (3), exempts from income tax the lump sum payments received by employees of the Industrial Development Corporation established by the Industrial and Commercial

[Subsidiary]

Development Corporation Act who opt for early retirement within ninety (90) days of the publication of this exemption in the Gazette under the scheme known as the "Voluntary Early Retirement/Leaving Scheme" in accordance with written agreements between the Industrial and Commercial Development Corporation and its employees, and as approved by the Government of Kenya under the Parastatal Reform Programme.

2. A person who opts for early retirement shall not be eligible for re-employment with the Industrial and Commercial Development Corporation in any capacity or under any terms whatsoever, whether on temporary, permanent or contract basis or otherwise, before the expiry of three years from the date on which he left service under the Voluntary Early Retirement/Leaving Scheme.

3. The Industrial and Commercial Development Corporation shall, in addition to complying with any procedures as the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, the name, the date of retirement from the service of the Industrial and Commercial Development Corporation, the amount paid, and copy of the agreement with the employee under Voluntary Early Retirement/Leaving Scheme duly signed by the employee.

[L.N. 350/1993]

The Cabinet Secretary responsible for Finance, subject to conditions in paragraphs (2) and (3), exempts from income tax the lump sum severance payments, other than payments made in accordance with the provisions of the Pensions Act, received by employees of the Government of Kenya who opt for voluntary early retirement prior to 30th June, 1996 under the provisions of the Civil Service Reform Programme as specified in Personnel Circular No. 5 issued by the Office of the President, dated 12th October, 1993.

2. A person who opts for early retirement shall not be eligible for re-employment with the Government of Kenya in any capacity or under any terms whatsoever, whether temporary or permanent, contractual or otherwise, before the expiry of three years from the date on which he left service under the scheme.

3. Ministries, departments, provinces and districts from which employees are retiring early under the provisions of the Civil Service Reform Programme shall, in addition to complying with any procedures as the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, the name, the date of retirement from the service of the Government of Kenya and the amount paid to the employee.

4. This exemption shall be deemed to have come into effect on 1st November, 1993.

[L.N. 352/1993]

The Cabinet Secretary responsible for Finance directs that the credit or any income arising out of the Development Credit Agreement dated 30th March, 1993, in various currencies equivalent to forty-four million eight hundred thousand Special Drawing Rights (SDR44,800,000) between the Republic of Kenya and the International Development Association, for use under the Protected Areas and Wildlife Services (PAWS) Project, shall be exempt from the provisions of the Act.

[L.N. 365/1993]

The Cabinet Secretary responsible for Finance directs that all payments made under the agreements specified in the Schedule shall be exempt from the provisions of the Act.

SCHEDULE

1. Supplementary Loan Agreement dated the 20th October, 1993, for Japanese Yen one billion one hundred twenty-two million and eight hundred thousand (Yen ,122,800,000), between the Export Import Bank of Japan, the Bank of Tokyo Limited, and the Daiwa Bank Limited of Japan as Lenders and Kenya Pipeline Company Limited as Borrower.

2. A Supplementary Loan Agreement dated the 3rd November, 1993 for Canadian Dollars fifteen million five hundred thousand (CDN \$15,500,000), between the Export Development Corporation of Canada as Lender and Kenya Pipeline Company Limited as Borrower.

[L.N. 408/1993]

The Cabinet Secretary responsible for Finance provides that all payments made under the Loan Agreement dated the 9th November, 1993, for one thousand one hundred million Japanese Yen (Yen 1,100,000,000), between Tomen Corporation of Japan and East African Portland Cement Company Limited, shall be exempt from the provisions of the Act.

[L.N. 32/1994]

The Cabinet Secretary responsible for finance provides that all payments made under the Lease Agreement dated the 19th November, 1993, between Transtrade (Proprietary) Limited and Investec Bank Limited of South Africa, respectively, and the Kenya railways Corporation shall be exempt from the provisions of the Act.

[L.N. 43/1994]

The Cabinet Secretary responsible for Finance provides that the income of the African Network for the Prevention and Protection Against Child Abuse and Neglect (A.N.P.P.C.A.N.), a non-governmental organization based in Nairobi and- dealing with the promotion of the rights and welfare of African children shall, as long as- it remains a non-profit making association, be exempt from provisions of the Act.

[L.N. 143/1994]

1. The Cabinet Secretary responsible for Finance exempts from income tax the lump sum payments received by employees of the Industrial Development Bank Limited who opt for voluntary early retirement within ninety days of publication of this notice in the Gazette, under the scheme specified in the Human Resources Plan of the Industrial Development Bank Limited, approved by the Government of Kenya under the Parastatal Reform Programme, and in accordance with written agreements between the Industrial Development Bank and such employees.

2. A person who opts for early retirement shall not be eligible for re-employment with the Industrial Development Bank Limited in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the scheme.

3. The Industrial Development Bank Limited shall, in addition to complying with any procedures as the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, the name, the date of retirement from the service of the Industrial Development Bank Limited, the amount paid, and a copy of the agreement with the employee under the Human Resources Plan duly signed by the employee.

[L.N. 153/1994]

The Cabinet Secretary responsible for Finance directs that all the income of the Testimony Faith Homes, of P.O. Box 2134, Eldoret, shall be exempt from the provisions of the Act as long as the society remains a non-profit making organization and continues with maintenance, care, education and training of destitute children.

[L.N. 219/1994]

The Cabinet Secretary for Finance provides that the District Trade Development Joint Boards financial deposits in various banks shall be exempt from withholding tax.

[L.N. 330/1994]

[Subsidiary]

The Cabinet Secretary for Finance directs that all financial deposits belonging to the Wildlife Conservation International, of P.O. Box 62844, Nairobi, deposited in banks or financial institutions, shall be exempt from withholding tax.

[L.N. 379/1994]

1. The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments other than normal pension benefits in line with Corporation's Pension Scheme received by employees of Kenya Posts and Telecommunications who opt for voluntary early retirement under the Scheme approved by the Government of Kenya on 1st March, 1994, under the Parastatal Reform Programme.

2. An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Posts and Telecommunications Corporation in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the scheme.

3. The Kenya Posts and Telecommunications Corporation shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Posts and Telecommunications Corporation, the amount paid and a copy of the agreement with the employee.

[L.N. 484/1994]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of National Cereals and Produce Board, who opt for voluntary early retirement prior to 30th June, 1996, under the Structural Adjustment Programme approved by the Government of Kenya on 27th October, 1994.

An employee who opts for early retirement shall not be eligible for re-employment with National Cereals and Produce Board in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service of the Board under the Structural Adjustment Programme.

The National Cereals and Produce Board shall, in addition to complying with any procedures that the commissioner of Income Tax may require, furnish the commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the National Cereals and Produce Board, the amount paid and a copy of the agreement with the employee.

[L.N. 4/1995]

The Cabinet Secretary for Finance provides that the Finance Contract dated 24th November, 1994, for five and a half million ecus (ECUS 5.5 million), between the European Investment Bank as lender and the Republic of Kenya and Kenya Pipeline Company Limited as borrower, shall be exempt from the provisions of the Act.

[L.N. 136/1995]

1. The Cabinet Secretary responsible for Finance exempts from Income Tax, the lump sum payments received by the employees of the Kenya Wine Agency Limited who opted for voluntary early retirement prior to 31st December, 1994, under the Sector Reform Programme approved by the Government, on 2nd November, 1994.

2. An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Wine Agency Limited in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the programme.

3. The Kenya Wine Agency Limited shall in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each

retiring employee, with the name, the date of retirement from the service of the Kenya Wine Agency Limited, the amount paid and a copy of the agreement with the employee.

[L.N. 137/1995]

1. The Cabinet Secretary responsible for Finance exempts from Income Tax, the lump sum payments received by the employees of the Kenya Industrial Estates Limited who opt for voluntary early retirement prior to 31st December, 1995, under the Sector Reform Programme approved by the Government on 2nd November, 1994.

2. An employee who opts for early retirement shall not be eligible for re-employment with Kenya Industrial Estates Limited in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the scheme.

3. The Kenya Industrial Estates Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Industrial Estates Limited, the amount paid and a copy of the agreement with the employee.

[L.N. 152/1995]

1. IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Minister for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Power and Lighting Company Limited who opt for voluntary early retirement prior to 31st December, 1996 under the Sector Reform Programme approved by the Government on 2nd November, 1994.

[LN 4 of 1996]

2. An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Power and Lighting Company Limited in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the scheme.

3. The Kenya Power and Lighting Company Limited shall in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Power and Lighting Company Limited, the amount paid and a copy of the agreement with the employee.

[L.N. 205/1995]

The Cabinet Secretary responsible for Finance directs that the remuneration payable by the Panafrican Paper Mills (E.A.) Limited to Orient Paper Industries Limited of India under agreements dated 23rd September, 1994, for know-how technical services and management, and project implementation, respectively, between Orient Paper Industries Limited and Panafrican Paper Mills (E.A.) Limited, shall be exempt from the provisions of the Act for a period of five (5) years commencing from 1st July, 1994.

Legal Notice No. 51 of 1995 is revoked.

[L.N. 218/1995]

The Cabinet Secretary responsible for Finance directs that all payments made to M/s H.P. Gauff Consulting Engineers and their expatriate staff; under the Agreement' dated 20th March, 1995, between the Government of Kenya and H.P. Gauff Consulting Engineers for the supervision of Amala River -Narok Road, shall be exempt from the provisions of the Act.

[L.N. 262/1995]

1. The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Reinsurance Corporation who opt for voluntary early retirement prior to 11th September, 1995 under the Sector Reform Programme approved by the Government on 2nd November, 1994.

[Subsidiary]

2. An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Reinsurance Corporation Limited in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the scheme.

3. The Kenya Reinsurance Corporation shall in addition comply with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Reinsurance Corporation, the amount paid and a copy of the agreement with the employee.

[L.N. 330/1995]

1. The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Railways Corporation who opt for voluntary early retirement prior to 31st December, 1996 under the Sector Reform Programme approved by the Government on 22nd August, 1995.

2. An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Railways Corporation in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left the service under the scheme.

3. The Kenya Railways Corporation shall in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Railways Corporation, the amount paid and a copy of the agreement with the employee.

[L.N. 262/1996]

The Cabinet Secretary responsible for Finance provides that all the income tax which accrued in or derived from Kenya on the income earned by the Sogea S.A. (Kenya Branch) under or as a result of the contract executed by the said firm with the Government of Kenya for construction of OL-Arabel Water Supply Project of Greater Nakuru Water Supply Project (01, Arabel Pipeline Extension) is exempted from the provisions of the said Act.

[L.N. 288/1996]

The Cabinet Secretary responsible for Finance provides that the income of Acacia Fund Limited consisting of dividends and gains arising from trade in the shares of any of its venture companies, earned during the first ten (10) years of first investment in any of those companies, shall be exempt from tax, subject to compliance with any rules or regulations governing venture capital companies as may be made by the Commissioner of Income Tax.

[L.N. 289/1996]

1. The Cabinet Secretary responsible for Finance subject to the conditions in paragraphs 2 and 3 exempts from Income Tax the lump sum payments received by the employees of the Kenya Pipeline Company who opted for early retirement prior to 31st December, 1996, under the scheme known as "Voluntary Severance Scheme" in accordance with - written agreement between Kenya Pipeline Company and its employees, and approved by the Government under the Parastatal Reform Programme.

2. A person who opts for early retirement shall not be eligible for re-employment with Kenya Pipeline Company in any capacity or under any terms whatsoever, whether on temporary, permanent or contract basis, before the expiration of three (3) years from the date on which he left service under the scheme.

3. The Kenya Pipeline Company shall, in addition to complying with any procedures the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, the name, the date of retirement from the Kenya Pipeline Company, the

amount paid, and a copy of the agreement for the Voluntary Severance Scheme duly signed by the employee.

[L.N. 302/1996]

1. The Cabinet Secretary responsible for Finance subject to the conditions in paragraph (2) and (3) exempts from income tax the lump sum payments received by the employees of the Agricultural Development Corporation who opted for early retirement prior to 31st December, 1996, under the scheme known as "Voluntary Severance Scheme" in accordance with the written agreement between the Agricultural Development Corporation and its employees, and approved by the Government under the Parastatal Reform Programme.

2. A person who opts for early retirement shall not be eligible for re-employment with Agricultural Development Corporation in any capacity or under any terms whatsoever, whether on temporary, permanent or contract basis, before the expiration of three years from the date on which he left service under the scheme.

3. The Agricultural Development Corporation shall, in addition to complying with any procedures the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, the name, the date of retirement from the Agricultural Development Corporation, the amount paid, and a copy of the agreement for the Voluntary Severance Scheme duly signed by the employee.

[L.N. 39/1997]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Central Bank of Kenya, who opt for voluntary early retirement prior to the 31st December, 1997 under the Structural Adjustment Programme approved by the Government on the 27th October, 1994:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Central Bank of Kenya in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service of the Bank under the Structural Adjustment Programme; and
- (b) the Central Bank of Kenya shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, with the name, the date of retirement from the service of the Central Bank of Kenya, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 45/1997]

The Cabinet Secretary responsible for Finance provides that all the income which accrued in or derived from Kenya on the income earned by the Zenitaka Corporation under or as a result of the contract executed by the said firm with the Government of Kenya for the construction of the Kenya Institute of Surveying and Mapping, is hereby exempted from the provisions of the Act.

[L.N. 82/1997]

The Cabinet secretary responsible for Finance exempts from income tax the lump sum payments received by employees of the National Cereals and Produce Board who opt for voluntary early retirement prior to the 31st December, 1998, under the second phase of the Structural Adjustment Programme approved by the Government on the 7th April, 1997:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for employment with the National Cereals and Produce Board in any capacity or under any terms whatsoever

[Subsidiary]

- before the expiry of three years from the date on which he left service of the National Cereals and Produce Board under the Structural Adjustment Programme; and
- (b) the National Cereals and Produce Board shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, date of retirement from the service of the National Cereals and Produce Board, the amount paid and a copy of the agreement with the employee duly signed by the employee.

This exemption shall be deemed to have come into force on the 1st July, 1996.

[L.N. 155/1997]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Power and Lighting Company Limited who opt for voluntary early retirement prior to 28th February, 1998, under the Sector Reform Programme approved by the Government on 27th January, 1995, subject to the following conditions:

- (a) An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Power and Lighting Company in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left service under the scheme.
- (b) The Kenya Power and Lighting Company Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, date of retirement from the service of the Kenya Power and Lighting Company, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 156/1997]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Wildlife Service who opt for voluntary early retirement prior to 31st December, 1997, under the Sector Reform Programme approved by the Government on 7th July, 1997:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Wildlife Service in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left service under the scheme;
- (b) the Kenya Wildlife Service shall in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish that Commissioner in respect of each retiring employee, with the name, date of retirement from the Kenya Wildlife Service, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 548/1997]

The Cabinet Secretary responsible for Finance exempts from Income Tax, all income of the Kenya Wildlife Service from the provisions of the Act for a further period of five years with effect from the 1st January, 1997.

[L.N. 19/1998]

The Cabinet Secretary responsible for Finance revokes the exemption from the provisions of the Act, of all income accrued in or derived from Kenya by the Sogea S.A. (Kenya Branch), under or as a result of the contract executed by that firm with the Kenya Government for the construction of Masinga—Kitui Pipeline Water Supply Project, with effect from the 27th February, 1998.

[L.N. 20/1998]

The Cabinet Secretary responsible for Finance provides that all the income of the Friends of Conservation, shall be exempt from the provisions of the Act, for a period of five years with effect from 1st January, 1998.

[L.N. 61/1998]

The Cabinet Secretary responsible for Finance exempts from Income Tax, the lump sum payments received by employees of the Kenya Sugar Authority, who opt for voluntary early retirement prior to the 30th October, 1998, under the Sector Reform Programme, approved by the Government on the 27th July, 1997, subject to the following conditions:

- (a) An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Sugar Authority in any capacity, or under any terms whatsoever before the expiry of three (3) years from the date on which he/she left service under the scheme.
- (b) The Kenya Sugar Authority shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from service of Kenya Sugar Authority, the Amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 62/1998]

The Cabinet Secretary responsible for Finance exempts from Income Tax, the lump sum payments received by employees of the Kenya Airports Authority, who opt for voluntary early retirement prior to the 30th October, 1998, under the Sector Reform Programme, approved by the Government on the 23rd February, 1998, subject to the following conditions:

- (a) An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Airports Authority in any capacity, or under any terms whatsoever before the expiry of three (3) years from the date on which he/she left service under the scheme.
- (b) The Kenya Airports Authority shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from service of Kenya Airports Authority, the Amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 93/1998]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Wildlife Service who opt for voluntary early retirement prior to the 31st December, 1998 under the Sector Reform Programme approved by the Government on 7th July, 1997.

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Wildlife Service in any capacity or under any terms whatsoever before the expiry of three years from the date of such retirement;
- (b) the Kenya Wildlife Service shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, date of retirement from the Kenya Wildlife Service, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 3/1999]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the Kenya Reinsurance Corporation Limited, who opt for voluntary early retirement prior to the 31st March 1999, under the Sector Reform Programme approved by the Government on the 1st December, 1998:

[Subsidiary]

Provided that-

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Reinsurance Corporation Limited, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left service under the scheme;
- (b) the Kenya Reinsurance Corporation Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Reinsurance Corporation Limited, the personal identification number, the amount paid and a copy of the agreement with the employee, duly signed by the employee.

[L.N. 2/1999]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of Kenya Airports Authority, who opt for voluntary early retirement prior to 31st October, 1998, under the Voluntary Early Retirement Scheme approved by the Government on 2nd November, 1998, subject to the following conditions:

- (a) An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Airports Authority in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement.
- (b) The Kenya Airports Authority shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, date of retirement from the Kenya Airports Authority, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 97/1999]

The Cabinet Secretary responsible for Finance exempts from income tax the lumpsum payments received by employees of the National Cereals and produce Board, who opt for voluntary early retirement prior to 30th June, 1999, under the Sector Reform Programme approved by the Government on 12th October, 1998.

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the National Cereals and Produce Board in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (b) the National Cereals and Produce Board shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from National Cereals and Produce Board, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 178/1999]

The Cabinet Secretary responsible for Finance, exempts from the income tax the lump sum payments received by the employees of Mumias Sugar Company Limited, who opt for voluntary early retirement prior to 30th June, 2000, under the Sector Reform Programme approved by the Government on 4th August, 1999:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with Mumias Sugar Company Limited, in any capacity or under any terms whatsoever before the expiry of the three (3) years from the date of such retirement;

- (b) Mumias Sugar Company Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Mumias Sugar Company Limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 28/2000]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of Mumias Sugar Company Limited who opt for voluntary early retirement prior to 30th October, 2000, under the Sector Reform Programme approved by the Government on 4th August, 1999:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with Mumias Sugar Company Limited in any capacity or under any terms whatsoever before the expiry of three years from the date of such retirement.
- (b) Mumias Sugar Company Limited shall in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of Mumias Sugar Company Limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 135/2000]

The Cabinet Secretary responsible for Finance exempts from income tax the lumpsum payments received by employees of the Industrial Development Bank Limited who opt for voluntary early retirement prior to 30th September, 2000, under the Sector Reform Programme approved by the Government on 26th June, 2000:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Industrial Development Bank limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (b) the Industrial Development Bank Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from the Industrial Development Bank limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 44/2001]

The Cabinet Secretary responsible for Finance, exempts from income tax the lumpsum payments received by employees of the National Bank of Kenya, who opted for voluntary early retirement prior to 31st December, 2000, under the Sector Reform Programme, approved by the Government on 17th December, 2000.

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the National Bank of Kenya Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (b) the National Bank of Kenya Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement

[Subsidiary]

from the National Bank of Kenya Limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 45/2001]

The Cabinet Secretary responsible for Finance, exempts from income tax the lumpsum payments received by employees of the Government of the Republic of Kenya, who retire prior to 30th June, 2001, under the on-going Retrenchment Programme approved by the Government.

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Government of the Republic of Kenya in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (b) the Government of the Republic of Kenya shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from the Government of the Republic of Kenya, and a copy of the agreement with the employee duly signed by the employee.

[L.N. 117/2001]

The Cabinet Secretary responsible for Finance exempts from income tax payments received by employees of the Kenya Power and Lighting, Company Limited who retire from the 30th June, 2001 to the 30th June, 2003 under the Institutional Reorganization Programme approved by the Government;-

Provided that—

- (a) an employee who retires under the programme shall not be eligible for re-employment with the Kenya Power and Lighting Company Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (b) the Kenya Power and Lighting Company Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from Kenya Power and Lighting Company Limited and the amount paid to the employee;
- (c) this exemption shall not apply to monthly pension payments made to any of the retiring employees who are eligible for pension.

Legal Notice No. 113 of 2001 is revoked.

[L.N. 167/2001]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the Kenya Tea Development Agency Limited who opted for voluntary early retirement prior to 30th September, 1999, under the Sector Reform Programme approved by the Government on 29th June, 2001:

Provided that—

- (a) an employee who opted for early retirement shall not be eligible for re-employment with the Kenya Tea Development Agency Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (b) the Kenya Tea Development Agency Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement

from the Kenya Development Agency Limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 182/2001]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the Kenya Reinsurance Corporation Limited who opt for voluntary early retirement prior to the 28th February, 2002 under the Sector Reform Programme approved by the Government on the 29th November, 2001:

Provided that —

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Reinsurance Corporation Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he or she left service under the scheme;
- (b) the Kenya Reinsurance Corporation Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Reinsurance Corporation Limited, the personal identification number, the amount paid and a Copy of the agreement with the employee duly signed by the employee.

[L.N. 34/2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the National Irrigation Board who opted for voluntary early retirement prior to 1st February, 2002, under the Sector Reform Programme approved by the Government on 5th December, 2001.

Provided that—

- (a) an employee who opted for early retirement shall not be eligible for re-employment with the National Irrigation Board in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (b) the National Irrigation Board shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, with the name, the date of retirement from the service of the National Irrigation Board, the personal identification number, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 131/2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the Kenya Railways Corporation who opt for voluntary early retirement prior to the 30th June, 2003, under the Sector Reform Programme approved by the Government on the 10th February, 2002:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Railways Corporation in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he/she left the service under the scheme; and
- (b) the Kenya Railways Corporation shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the

[Subsidiary]

service of the Kenya Railways Corporation, the personal identification number, the amount paid and a copy of the agreement duly signed with the employee.

[L.N. 153/2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Coffee Research Foundation who opt for voluntary early retirement prior to the 30th June, 2003 under the Sector Reform Programme approved by the Government on the 5th April, 2002:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Coffee Research Foundation in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left the service under the scheme; and
- (b) the Coffee Research Foundation shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Coffee Research Foundation, the personal identification number, the amount paid and a copy of the agreement duly signed with the employee.

[L.N. 154/2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Dairy Board who opt for voluntary early retirement prior to the 30th June, 2003 under the Sector Reform Programme approved by the Government on the 19th February, 2002:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Dairy Board in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left the service under the scheme; and
- (b) the Kenya Dairy Board shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Dairy Board, the personal identification number, the amount paid and a copy of the agreement duly signed with the employee.

[L.N. 155/2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received from Pioneer Assurance Company, of P.O. Box 20333, Nairobi, by Mr. Andriano L. Ligavo, of P.O. Box 20330, Nairobi.

[L.N. 177/2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Coffee Board of Kenya, who opt for voluntary early retirement prior to the 1st November, 2003, under the Sector Reform Programme approved by the Government on the 16th July, 2002.

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Coffee Board of Kenya in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left the service under the scheme; and
- (b) the Coffee Board of Kenya shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of

the Coffee Board of Kenya, the personal identification number, the amount paid and a copy of the agreement duly signed with the employee.

[L.N. 24/2003]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the Kenya Tea Development Agency Limited, who opted for voluntary early retirement prior to the 31st December, 2001, under the Sector Reform Programme approved by the Government on the 29th June, 2001.

Provided that—

- (a) an employee who opted for early retirement shall not be eligible for re-employment with the Kenya Tea Development Agency Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left the service under the scheme;
- (b) the Kenya Tea Development Agency Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from the Kenya Tea Development Agency Limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.

[L.N. 25/2003]

The Cabinet Secretary responsible for Finance directs that the interest payable on the loan granted to Mabati Rolling Mills Limited by the European Investment Bank under the provisions of the Lome IV Convention, shall be exempt from withholding tax.

[L.N. 44/2003]

The Cabinet Secretary responsible for Finance exempts from income tax, the pension benefits payable to the former employees of the Kenya National Assurance Company following the winding-up of the Company.

[L.N. 45/2003]

The Cabinet Secretary responsible for Finance directs that all the income of the Kenya Wildlife Service derived from Kenya shall be exempt from the provisions of the Act for a period of five years commencing on the 1st of January, 2002.

This Legal Notice shall be deemed to have come into operation on the 1st of January, 2003.

[L.N. 70/2003]

The Cabinet Secretary responsible for Finance directs that interest earned on contributions paid into the Investor Compensation Fund established under the Capital Markets Act be exempt from tax.

[L.N. 155/2003]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum end of service benefits received by SOS Mothers' of SOS Children's Villages of Kenya, who retired in the year 2002.

[L.N. 164/2003]

The Cabinet Secretary responsible for Finance directs that all the income of the Registration of Accountants Board derived from Kenya shall be exempt from the provisions of the Act.

[L.N. 207/2003]

The Cabinet Secretary responsible for Finance exempts Cotecna Inspection S.A. from income tax on the remuneration for services under the contracts between Cotecna Inspection

[Subsidiary]

S.A. and the Government of Kenya dated 30th March, 1994, 24th March, 1997, 15th January, 2001 and 30th June, 2003

[L.N. 208/2003]

The Cabinet Secretary responsible for Finance exempts Bivac International S.A. from income tax on the remuneration for services under the contracts for the provision of pre-shipment inspection services between Bivac International S.A. and the Government of Kenya dated 30th March, 1994, 24th March, 1997, and 30th June, 2003.

[L.N. 51/2005]

The Cabinet Secretary responsible 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.

[L.N. 104/2005]

The Cabinet Secretary responsible for Finance directs that emoluments payable to employees of the East African Development Bank shall be exempt from tax.

[L.N. 137/2005]

The Cabinet Secretary responsible for Finance exempts from income tax the lump sum retirement benefits received by employees of the Civil Service who opt to retire early under the Voluntary Early Retirement Scheme, approved by the Government on 27th May, 2004:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment in the Civil Service in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (b) the Permanent Secretary/Director of Personnel Management shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from the Civil Service, the amount paid and a copy of a letter confirming the retirement of the employee from the parent Ministry.

[L.N. 138/2005]

The Cabinet Secretary responsible for Finance exempts from income tax the lump sum retirement benefits received by employees of the Kenya National Trading Corporation Limited, under the Retrenchment Scheme, approved by the Government on 16th April, 2004 and 28th June, 2005, respectively:

Provided that—

- (a) an employee who has been retrenched shall not be eligible for re-employment with the Kenya National Trading Corporation Limited, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retrenchment;
- (b) the Kenya National Trading Corporation Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from the Kenya National Trading Corporation Limited, the amount paid and a copy of the letter to the employee confirming such retrenchment.

[L.N. 139/2005]

The Cabinet Secretary responsible for Finance exempts from income tax the lump sum payments received by employees of the National Bank of Kenya Limited, who opted to retire prior to 31st May, 2005, under the Bank's Voluntary Early Retirement Scheme, approved by the Government on 8th September, 2005:

Provided that the Bank shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every employee who retired on that date, with the name and amount paid.

[L.N. 6/2006]

The Cabinet Secretary responsible for Finance exempts from income tax the lumpsum retirement benefits and the twenty per cent (20%) discount on the outstanding house and car loans received by employees of the Industrial and Commercial Development Corporation who opt to retire under the Voluntary Early Retirement Scheme approved by the Government on 7th October, 2005:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible, for re-employment with the Industrial and Commercial Development Corporation, in any capacity or under any terms whatsoever, before the expiry of three (3) years from the date of such retirement; and
- (b) the Industrial and Commercial Development Corporation shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every employee being retired, with the name, date of retirement from the Industrial and Commercial Development Corporation, the amount paid and a copy of a letter confirming the retirement of the employee from the Corporation.

[L.N. 68/2006]

The Cabinet Secretary responsible for Finance directs that the income of the Policyholder's Compensation Fund established under section 179(2) of the Insurance Act (Cap. 487) shall be exempt from tax.

[L.N. 94/2006]

The Cabinet Secretary responsible for Finance directs that all the income of the Kenya Ordinance Factories Corporation accruing and derived from Kenya with effect from the 25th July, 1997, shall be exempt from the provisions of the Act.

[L.N. 95/2006]

The Cabinet Secretary responsible for Finance exempts from income tax the lump sum retirement benefit received by employees of Telkom Kenya Limited retrenched under the Restructuring Scheme, approved by the Government on the 27th February, 2006 shall be exempt from the provisions of the Act:

Provided that-

- (a) an employee who has been retrenched shall not be eligible for re-employment with Telkom Kenya Limited in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment.
- (b) Telkom Kenya Limited shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner in respect of any employee being retrenched with the name, date of retrenchment, amount of retirement benefits paid and a copy of the letter to the employee confirming the retrenchment.

[L.N. 110/2006]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by 83 employees who retired under the 50 year rule with effect from 1st September, 2005, 38 who voluntarily opted to retire with effect from 1st July, 2005 and 253 who were retrenched with effect from 1st July, 2006 from the Kenya Broadcasting Corporation

[Subsidiary]

under the Staff Rationalization Programme, approved by the Government on 4th May, 2006, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
- (b) an employee who has been retired or retrenched shall not be eligible for re-employment with the Kenya Broadcasting Corporation, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement or retrenchment;
- (c) the Kenya Broadcasting Corporation shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner, in respect of every retiring or retrenched employee, with the name, date of retirement or retrenchment from the Kenya Broadcasting Corporation, the amount paid and a copy of the letter to the employee confirming such retirement or retrenchment.

[L.N. 116/2006]

The Cabinet Secretary responsible for Finance directs that the lump, sum retirement benefits received by employees of Kenya Airports Authority retrenched under the Staff Rationalization Programme, approved by the Government on 21st June, 2006, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employee⁴;
- (b) an employee who has been retrenched shall not be eligible for re-employment with the Kenya Airports Authority, in, any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retrenchment;
- (c) the Kenya Airports Authority shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner, in respect of every retrenched employee, with the name, date of retrenchment from the Kenya Airports Authority, the amount paid and a copy of the letter to the employee confirming such retrenchment.

[L.N. 163/2006]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by employees of Industrial Development Bank Capital Limited under the Voluntary Early Retirement Scheme, approved by the Government on 15th June 2006, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
- (b) an employee who opts for voluntary early retirement shall not be eligible for re-employment with the Industrial Development Bank Capital Limited, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (c) the Industrial Development Bank Capital Limited shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner in respect of every retiring employee, with the name, date of retirement from the Industrial Development Bank Capital Limited, the amount paid and a copy of the letter to the employee confirming such retirement.

[L.N. 164/2006]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by employees of Agricultural Finance Corporation retrenched under Staff

Rationalization Programme, approved by the Government on 24th July 2006, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
- (b) an employee who has been retrenched shall not be eligible for re-employment with the Agricultural Finance Corporation, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retrenchment;
- (c) the Agricultural Finance Corporation shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner in respect of every retrenched employee, with the name, date of retrenchment from the Agricultural Finance Corporation, the amount paid and a copy of the letter to the employee confirming such retrenchment.

[L.N. 21/2007]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the employees of Jomo Kenyatta Foundation retrenchment under the restructuring programme approved by the Government on 12th July, 2006, shall be exempt from income tax under the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
- (b) an employee who has been retrenched and who benefits from this exemption shall not be eligible for re-employment with the Jomo Kenyatta Foundation, in any capacity or under any terms whatsoever before the expiry of three years from the date of such retrenchment;
- (c) the Jomo Kenyatta Foundation shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner, in respect of every retrenched employee, with the name, date of retrenchment from the Jomo Kenyatta Foundation, the amount paid and a copy of the letter to the employee confirming such retrenchment.

[L.N. 2/2008]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by twenty three (23) the employees of the Kenya Broadcasting Corporation who retired with effect from 1st July, 2007 and 1st October, 2007, respectively, under the Voluntary Early Retirement Scheme approved by the Government on 4th May, 2006, shall be exempt from income tax under the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
- (b) an employee who opts for voluntary early retirement shall not be eligible for re-employment with the Kenya Broadcasting Corporation, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (c) the Kenya Broadcasting Corporation shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner, in respect of every retiring employee, the name, the date of retirement from the Kenya Broadcasting Corporation, the amount paid and a copy of the letter to the employee confirming such retirement.

[L.N. 13/2008]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the thirty five (35) employees of the Kenya Reinsurance Corporation Limited who retired prior to 31st December, 2007, under the Voluntary Early Retirement

[Subsidiary]

Scheme approved by the Government on 6th December, 2007 shall be exempt from the Income Tax under the Act;

Provided that—

3. the exemption shall not apply to other pension benefits paid to the said employees;
4. an employee who opts for early retirement shall not be eligible for re-employment in the Kenya Reinsurance Corporation Limited in any capacity or under any terms whatsoever before the expiry of three years from the date of such retirement;
5. the Kenya Reinsurance Corporation Limited shall, in addition to complying with any procedure that the Commissioner of -Income Tax may give, furnish the Commissioner in respect of every retiring employee, with the name, date of retirement from the Kenya Reinsurance Corporation Limited, the amount paid and a copy of a letter to the employee confirming such retirement.

[L.N. 63/2008]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the twenty eight and the six employees of the Kenya National Assurance Company (2001) Limited retrenched with effect from 31st January, 2008 and 31st December, 2008, respectively, shall be exempt from the provisions of the Act—

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
- (b) an employee who has been retrenched shall not be eligible for re-employment with the Kenya National Assurance Company (2001) Limited, in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
- (c) the Kenya National Assurance Company (2001) Limited shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from the Kenya National Assurance Company (2001) Limited, the amount paid and a copy of the letter to the employee confirming the retrenchment.

[L.N. 158/2008]

The Cabinet Secretary responsible for Finance directs, that the allowances paid to census personnel in respect of the 2009 Population and Housing Census shall be exempt from the provisions of the Act, with effect from 1st August, 2009.

[L.N. 46/2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the forty and the six employees of the Coffee Board of Kenya retrenched with effect from 30th November, 2009, and 31st December, 2009, respectively, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
- (b) an employee who has been retrenched shall not be eligible for re-employment with the Coffee Board of Kenya in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
- (c) the Coffee Board of Kenya shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from the Coffee

Board of Kenya, the amount paid and a copy of the letter to the employee confirming the retrenchment.

[L.N. 47/2010]

BODY

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the three hundred employees of the Kenya Post Office Savings Bank who retired under the Voluntary Early Retirement Scheme approved by the Government of Kenya on 17th June, 2008, of whom two hundred and ninety-two left the service with effect from 31st January, 2010, four from 5th February, 2010 and another four from 26th February, 2010, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
- (b) an employee who has been retrenched shall not be eligible for re-employment with the Kenya Post Office Savings Bank in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
- (c) the Kenya Post Office Savings Bank shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from the Kenya Post Office Savings Bank, the amount paid and a copy of the letter to the employee confirming the retrenchment.

[L.N. 72/2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the forty and the six employees of the Jomo Kenyatta Foundation retrenched with effect from 1st June, 2009, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
- (b) an employee who has been retrenched shall not be eligible for re-employment with the Jomo Kenyatta in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
- (c) the Jomo Kenyatta Foundation shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from the Jomo Kenyatta Foundation, the amount paid and a copy of the letter to the employee confirming the retrenchment.

[L.N. 73/2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the one thousand and thirty-eight employees of Telkom Kenya Limited retrenched on various dates, ranging from 31st December, 2008 to 28th February, 2010, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
- (b) an employee who has been retrenched shall not be eligible for re-employment with Telkom Kenya Limited in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
- (c) Telkom Kenya Limited shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from Telkom

[Subsidiary]

Kenya Limited, the amount paid and a copy of the letter to the employee confirming the retrenchment.

[L.N. 82/2010]

The Cabinet Secretary responsible for Finance revokes the exemption from income tax of the income of the Retirement Benefits Authority conferred by Legal Notice Number 169 of 2001.

[L.N. 83/2010]

FUNDS CONTRIBUTED BY MEMBERS OF THE ASSOCIATION OF KENYA INSURERS

The Cabinet Secretary responsible for Finance directs that the funds contributed directly by the members of the Association of Kenya Insurers in respect of the Integrated Motor Insurance Data Base System (IMIDS) project shall be exempt from income tax:

Provided that —

- (a) this notice shall apply to —
 - (i) the amount of Kenya shillings one million, one hundred and seventeen thousand, six hundred and fortyseven contributed by each member; and
 - (ii) the amount of Kenya shillings thirty levied on every insurance certificate;
- (b) the income to be exempted shall not exceed the cost of the project. This notice shall apply with effect from the 1st March, 2010 to the 28th February, 2011.

[L.N. 16/2011]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits paid to four hundred and three employees of the Postal Corporation of Kenya that opted for voluntary early retirement with effect from 31st December, 2010 shall be exempt from the provisions of the Act.

Provided that—

- (a) the exemption shall not apply to other pensions benefits paid to the employees;
- (b) an employee who has opted for the voluntary early retirement shall not be eligible for re-employment with the Postal Corporation of Kenya, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of retirement and
- (c) the postal corporation of Kenya shall, in addition to complying with any conditions that the Commissioner for Income Tax may impose, furnish the Commissioner in respect of every employee opting for retirement, with the name, date of retirement, the amount paid and a copy of the letter confirming the retirement.

[L.N. 147/2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits of the one hundred and fifty-seven employees of the Pyrethrum Board of Kenya retrenched with effect from the 11th August, 2009, shall be exempt from the provision of the Act:

Provided that—

- (a) the exemption shall not apply to other pensions benefits paid to the employees;
- (b) an employee who has been retrenched shall not be eligible for re-employment with the Pyrethrum Board of Kenya, in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
- (c) the Pyrethrum Board of Kenya shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner in respect of every employee being retrenched, with the name, date of retrenchment from the

Pyrethrum Board of Kenya, the amount paid and a copy of the letter to the employee confirming the retrenchment.

[L.N. 164/2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits of the seventy-two employees of the National Housing Corporation retrenched with effect from the 1st July, 2010, shall be exempt from the provision of the Act:

Provided that—

- (a) the exemption shall not apply to other pensions benefits paid to the employees;
- (b) an employee who has been retrenched shall not be eligible for re-employment with the National Housing Corporation, in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
- (c) the National Housing Corporation shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner in respect of every employee being retrenched, with the name, date of retrenchment from the National Housing Corporation, the amount paid and a copy of the letter to the employee confirming retrenchment.

[L.N. 178/2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits paid to twenty-seven employees of the East African Portland Cement Company who opted for voluntary early retirement with effect from 31st March, 2010 and 30th April, 2010, respectively, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pensions benefits paid to the employees;
- (b) an employee who has opted for the voluntary early retirement shall not be eligible for re-employment with the East African Portland Cement Company, in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
- (c) the East African Portland Cement Company shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner in respect of every employee opting for retirement, with the name, date of retirement, the amount paid and a copy of the letter confirming the retirement.

[L.N. 32/2011]

The Cabinet Secretary responsible for finance directs that the lump sum retirement benefits paid to two thousand, one hundred and sixty five employees of the Kenya Railways Corporation who were retrenched in 1998 shall be exempt from the provision of the Act.

Provided -

- (a) the exemption shall not apply to other pensions benefits paid to the employees;
- (b) an employee was not re-employed with the Kenya Railways Corporation in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of retrenchment; and
- (c) the Kenya Railways Corporation shall, in addition to complying with any conditions that the Commissioner for Income Tax may impose, furnish the Commissioner in respect of every employee that was retrenched, with the name, date of retrenchment, the amount paid and a copy of the letter confirming the retrenchment.

[L.N. 85/2011]

The Cabinet Secretary responsible for Finance directs that the interest payable on the loan agreement between Kenya Electricity Generating Company and the institutions listed in the

[Subsidiary]

Schedule hereto, for the implementation of the Olkaria II extension project, shall be exempt from the provisions of the Act.

Schedule

1. European Investment Bank dated the 31st March, 2005; and
2. Agency Francaise De Development dated the 2nd April, 2009.

[L.N. 86/2011]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits paid to fifty-two employees of the Postal Corporation of Kenya that opted for voluntary early retirement with effect from the 31st May, 2011 shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pensions benefit paid to the employees;
- (b) an employee who has opted for the voluntary early retirement shall not be eligible for re-employment with the Postal Corporation of Kenya, in any capacity or under any terms whatsoever before the expiry of three years from the date of retirement; and
- (c) the Postal Corporation shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner in respect of every employee opting for retirement, with the name, date of retirement, the amount paid and a copy of the letter confirming the retirement.

[L.N. 131/2011]

The Cabinet Secretary responsible for Finance directs that the lump-sum retirement benefits paid to thirty-two employees of the Kenya National Trading Corporation who were retired from the Corporation with effect from the 30th May, 2011, shall be exempt from the provisions of the Act—

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to employees;
- (b) an employee who has retired shall not be re-employed by the Kenya National Trading Corporation in any capacity or under any terms whatsoever before the expiry of three years from the date of retirement; and
- (c) the Kenya National Trading Corporation shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee that is retired, with the name, date of retirement from the Kenya National Trading Corporation, the amount paid and a copy of the letter of the employee confirming the retirement.

[L.N. 65/2012]

The Cabinet Secretary responsible for Finance directs that the corporate income tax on gains or profits derived by Base Titanium Limited from mining operations will be reduced by 50% from the date of commercial production for a period of 10 years.

[L.N. 62/2013]

The Cabinet Secretary responsible for Finance directs that interest payable or accrued on loans owed to Messrs. France Telecom S.A. and its subsidiaries and the Government of Kenya for the year ending 31st December, 2012 shall be exempt from tax.

[L.N. 55/2014]

Revoked by The Income Tax Act-Exemption (Legal Notice 62 of 2014) on 30 May 2014

The Cabinet Secretary responsible 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.

[L.N. 62/2014]

Revoked by The Income Tax Act-Exemption (Legal Notice 87 of 2014) on 20 June 2014

The Cabinet Secretary responsible 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.

[L.N. 87/2014]

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.

[L.N. 56/2014]

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.

[L.N. 86/2014, L.N. 45/2018]

The Cabinet Secretary for the National Treasury directs that interest payable on any bond issued outside Kenya by the National Government shall be exempt from tax.

Legal Notice No. 56 of 2014, is revoked.

[L.N. 121/2014]

The Cabinet Secretary for the National Treasury directs that the lump sum retirement benefits paid to the eight employees of the Kenya Marine and Fisheries Research Institute who opted to retire under the Voluntary Early Retirement Scheme between the 1st October, 2010 and the 1st December, 2012, shall be exempt from the provisions of the Act:

Provided that-

- (a) the exemption shall not apply to other pension benefits paid to the employees; and
- (b) the Kenya Marine and Fisheries Research Institute shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner of Income Tax in respect of every employee that retired with-
 - (i) the name and date of retirement from the Kenya Marine and Fisheries Research Institute;
 - (ii) the amount of pension benefit paid upon retirement; and
 - (iii) a copy of the letter to the employee confirming the retirement.

[L.N. 44/2018]

The Cabinet Secretary for the National Treasury directs that the gains made on the transfer of any bond issued outside Kenya by the National Government shall be exempt from tax.

[L.N. 234/2018]

[Subsidiary]

The Cabinet Secretary for the National Treasury and Planning directs that the severance pay, salary in lieu of notice, payment of accumulated leave days, transport allowance and golden handshake to three hundred and fifteen employees of the Kerio Valley Development Authority who qualify to leave service under the Voluntary Early Retirement Programme shall be exempt from the provisions of the Act:

Provided that -

- (a) this exemption shall not apply to employees who have attained the age of sixty years or have less than one year before they retire from service;
- (b) this exemption shall not apply to any payment received from the Provident Fund;
- (c) any employee who shall retire under the Voluntary Early Retirement Programme and benefit from this exemption shall not be re-employed by the Kerio Valley Development Authority in any capacity or under any terms whatsoever before the expiry of five years from the date of retrenchment;
- (d) the Kerio Valley Development Authority shall comply with any condition imposed on it by the Commissioner of Income Tax; and
- (e) the Kerio Valley Development Authority shall provide the Commissioner of Income Tax with the name of each employee who retires under the Voluntary Early Retirement Programme, the date that the retired, the total amount paid to the employee and a copy of the letter from the employee confirming the employee's retirement.

[L.N. 22/2019]

The Cabinet Secretary for the National Treasury and Planning directs that the severance pay, three months' salary in lieu of notice and payment of accumulated leave days paid to the nine employees of Kenya Airways Limited who left service between February 2018 and December 2018 under the early retirement programme shall be exempt from the provisions of the Act:

Provided that—

- (a) this exemption shall not apply to any other pension benefits paid to the employees;
- (b) the employees who left service under the early retirement programme shall not be re-employed by Kenya Airways Limited in any capacity or on any term whatsoever before the expiry of five years from the date of leaving service;
- (c) Kenya Airways Limited shall comply with any conditions imposed on it by the Commissioner of Income Tax; and
- (d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the name of every employee leaving service under the early retirement programme, the date the employee left service, the amount paid to the employee and a copy of the letter to the employee confirming that the employee has left service under the early retirement programme.

[L.N. 191/2019]

The Cabinet Secretary for the National Treasury and Planning directs that the severance pay, three months' salary in lieu of notice and payment of accumulated leave days paid to the nine employees of Kenya Airways Limited who left service between February 2018 and December 2018 under the early retirement programme shall be exempt from the provisions of the Act:

Provided that—

- (a) this exemption shall not apply to any other pension benefits paid to the employees;
- (b) the employees who left service under the early retirement programme shall not be re-employed by Kenya Airways Limited in any capacity or on any term whatsoever before the expiry of five years from the date of leaving service;

- (c) Kenya Airways Limited shall comply with any conditions imposed on it by the Commissioner of Income Tax; and
- (d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the name of every employee leaving service under the early retirement programme, the date the employee left service, the amount paid to the employee and a copy of the letter to the employee confirming that the employee has left service under the early retirement programme.

[L.N. 158/2020]

The Cabinet Secretary for National Treasury and Planning directs that the severance pay, salary in lieu of notice and payment of accumulated leave days paid to the seven employees of Kenya Airways Limited who were retrenched and left service between August 2019 and March 2020 shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
- (b) the retrenched employees shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of the retrenchment;
- (c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner of Income Tax; and
- (d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the names of the retrenched employees, the date on which the employees left the service of Kenya Airways Limited, the amount paid to each employee and a copy of the letter from the employees confirming the retrenchment.

[L.N. 15/2021]

The Cabinet Secretary for National Treasury and Planning directs that the income which accrued in or was derived from Kenya by Japanese companies, Japanese consultants and Japanese employees involved in the projects under the Financing Agreements specified in the second column of the Schedule that were signed on the corresponding dates specified in the second column of the Schedule shall be exempt from income tax to the extent specified in the Financing Agreements.

SCHEDULE

<i>S/No.</i>	<i>Agreement</i>	<i>Date</i>
1.	The Project for the Improvement of the Power Distribution System in and around Nakuru City, and around Mombasa City	18th September, 2020
2.	The Project for Infrastructure Development in Mombasa Special Economic Zone near Dongo Kundu Area	27th February, 2020
3.	The Project for Enhancing Trade Facilitation and Border Control Capacity in East Africa	6th November, 2019
4.	The Project for Human Resource Development Scholarship	18th September, 2020
5.	Health Sector Policy Loan for Attainment of the Universal Health Coverage (Phase 2)	27th August, 2020
6.	Olkaria I Unit 4 Geothermal Power Project	31st March, 2010
7.	Mwea Irrigation Development Project	16th August, 2010

[Subsidiary]

8.	Olkaria- Lessos- Kisumu Transmission Lines Project	10th December, 2010
9.	Mombasa Port Area Road Development Project (Phase 1)	2nd June, 2012
10.	Mombasa Port Area Road Development Project (Phase 2)	4th July, 2017
11.	Mombasa Port Development Project (Phase 1)	20th November, 2007
12.	Mombasa Port Development Project (Phase 2)	9th March, 2015
13.	Olkaria V Geothermal Power Development Project	9th March, 2016
14.	Olkaria I Unit 1, 2 and 3 Geothermal Power Plant Rehabilitation Project	16th March, 2018
15.	Mombasa Gate Bridge Construction Project (1)	5th December, 2019
16.	Mombasa Special Economic Zone Development Project (1)	27th February, 2020

[L.N. 24/2021]

The Cabinet Secretary for National Treasury and Planning directs that the income which accrued in or was derived from Kenya by Spanish companies, Spanish consultants and Spanish employees involved in—

(a) the construction of the Rabai — New Bamburi — Kilifi and New Bamburi — Bamburi Cement Power Generation and Evacuation Lines; and

(b) the New Bamburi Cement Substation, Extension of the Existing Rabai, Bamburi and Kilifi Substations Project,

under the Financing Agreement between the Government of Kenya and the Government of Spain signed on the 7th April, 2017 shall be exempt from withholding tax.

[L.N. 115/2021]

IN EXERCISE of the powers conferred by section 13(2) of the Income Tax Act (CAP. 470), the Cabinet Secretary for the National Treasury and Planning directs that three-months salary paid in lieu of notice, the severance pay and payments for the accumulated leave days to the one hundred and eighty-seven employees of Kenya Airways Limited who were retrenched and left services between January, 2021 and March, 2021, shall be exempt from the provisions of the Act.

Provided that—

(a) The exemption shall not apply to other pension benefits paid to the employees;

(b) The retrenched employees shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of the retrenchment;

(c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner; and

(d) Kenya Airways Limited shall furnish the Commissioner with the names of the retrenched employees, the date on which the employees left the service of Kenya Airways Limited, the amount paid to each employee and a copy of the letter to the employees confirming the retrenchment.

[L.N. 193/2022]

The Cabinet Secretary for National Treasury and Planning directs that the severance pay, salary in lieu of notice and payment of accumulated leave days paid to the six employees of Kenya Airways Limited who were retrenched and left service between August 2021 and December 2021 shall be exempt from the provisions of the Act:

Provided that-

- (a) the exemption shall not apply to other pension benefits paid to the employees;
 - (b) the employees who are retrenched shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of the retrenchment;
 - (c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner of Income Tax; and
 - (d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the name of each retrenched employee, the date the employee left the service of Kenya Airways Limited, the amount paid to the employee and a copy of the letter to the employees confirming the retrenchment.
-

Exemptions under section 13(2)(a)**THE INCOME TAX ACT -EXEMPTION**

[L.N. 116/1975]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the Kenya Accountants and Secretaries National Examinations Board shall be exempt from tax.

Exemption under section 14(2)**EXEMPTIONS UNDER SECTION 14(2)**

[L.N. 192/1987, L.N. 148/1977, L.N. 216/1987, L.N. 269/1987, L.N. 270/1987, L.N. 268/1987, L.N. 289/1987, L.N. 21/1988, L.N. 186/1988, L.N. 274/1988, L.N. 3/1989, L.N. 115/1989, L.N. 160/1989, L.N. 223/1989, L.N. 225/1989, L.N. 224/1989, L.N. 226/1989, L.N. 249/1989, L.N. 273/1989, L.N. 6/1990, L.N. 85/1990, L.N. 219/1995]

[L.N. 148/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the Federal Home Loan Bank of New York, (a Corporation incorporated in the United States of America), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of ten million United States dollars made by the Federal Home Loan Bank of New York to the City Council of Nairobi (a municipal corporate entity established under the laws of Kenya), under the provisions of a document described as a Loan Agreement dated 3rd June, 1975, made between the City Council of Nairobi and the Federal Home Loan Bank of New York shall be exempt from tax.

[L.N 192/1987]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreement referred to in the Schedule hereto from withholding tax.

Legal Notice Nos. 240 of 1983 and 29 of 1987 are revoked.

SCHEDULE

The Loan Agreement dated 25th March, 1983, as 'amended by an Amending Agreement dated 1st May, 1985, both made between the Republic of Kenya as borrower and the Export Development Corporation as lender.

[L.N 216/1987]

The Cabinet Secretary responsible for Finance directs that all payments of interest to be made under the agreement specified in the Schedule hereto shall be exempt from tax.

SCHEDULE

The Loan Agreement dated 24th June, 1987, for one million three hundred and four thousand, two hundred and ninety-four pounds sterling and pence sixty, between the Government of the Republic of Kenya as the borrower and Grindlays Bank Plc of Minerva House, P.O. Box 7, Montague Close, London SE1 9DH as the lender.

[L.N 268/1987]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the credit agreement specified in the Schedule hereto shall be exempt from tax.

SCHEDULE

The credit agreement dated 4th September, 1987, for forty-seven million seven hundred and sixty-eight thousand and four hundred and sixteen French Francs (FRF 47,768,416)

[Subsidiary]

between the Government of Kenya as the 'borrower and Banque Indosuez of 96 Boulevard Haussmann, 75008 Paris, France as the lender.

[L.N 269/1987]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the loan agreement specified in the Schedule hereto shall be exempt from tax.

SCHEDULE

The loan agreement dated 4th June, 1987, for twelve -million six hundred twenty-two thousand and five hundred pounds sterling (£12,622,500), between the Government of Kenya as borrower and Barclays Bank PLC of 54 Lombard Street, London EC3P 3AH as the lender.

[L.N 270/1987]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the loan agreement specified in the Schedule hereto shall be exempt from tax.

SCHEDULE

The loan agreement dated 4th September, 1987, for eleven million five hundred and thirty-eight thousand one hundred and four French Francs (FRF 11,538,104) between the Government of Kenya as the borrower and 'the following syndicate of lenders:

1. Banque Indosuez, whose registered office is 96, Boulevard Haussmann 75008 Paris (France).
2. Banque Paribas, whose registered office is 3, Rue d'Antin 75012 Paris (France).
3. Banque Nationale De Paris, whose registered office is 16, Boulevard des haliers 75002 Paris (France).
4. Societe Generale, whose registered office is 29, Boulevard Hausmann 75009 Paris (France).
5. Credit Lyonnais, whose central office is 19, Boulevard des Italiens 75002 Paris (France).
6. Banque Internationale Pour L'Afrique Occidentale, whose registered office is 9, Avenue de Messine 75008 Paris (France).

[L.N 289/1987]

The Cabinet Secretary responsible for Finance provides that the interest payable on the loan under the credit agreement specified in the Schedule shall be exempt from withholding tax.

SCHEDULE

The credit agreement dated the 14th September, 1987, entered into between the Government as the borrower and the following syndicate of banks as lenders—

- (i) Banque Indosuez of 96 Boulevard Haussmann, 75008 Paris, France;
- (ii) Banque Paribas of 3 Rue d'Antin, 75002 Paris, France;
- (iii) Banque Francaise Du Commerce Exterieur of 21 Boulevard Haussmann, 75009 Paris, France.

[L.N 21/1988]

The Cabinet Secretary responsible for Finance provides that all payments made under the credit agreements specified in the First, Second, Third and Fourth Schedules shall be exempt from tax.

FIRST SCHEDULE

The credit agreement dated 28th May, 1987, for 44,900,817.60 French francs, between the Government of Kenya as borrower and the following syndicate of French banks as lenders—

- (i) Societe Generale
29 Boulevard Haussmann
75009 Paris, France
- (ii) Banque Francaise du Commerce Exterieur
21 Boulevard Haussmann
75009 Paris, France

SECOND SCHEDULE

The credit agreement dated 9th May, 1987, for 7,064,499.77 French francs, between the Government of Kenya as borrower and the following syndicate of French banks as lenders—

- (i) Societe Generale
29 Boulevard Haussmann
75009 Paris, France
- (ii) Credit Lyonnais
19 Boulevard des Italiens
75002 Paris, France
- (iii) Banque Francaise du Commerce Exterieur
21 Boulevard Haussmann
75009 Paris, France

THIRD SCHEDULE

The credit agreement dated 1st September, 1987, for 18,257,155.80 French francs, between the Government of Kenya as borrower and the following syndicate of French banks as lenders-

(i) Societe Generale

29 Boulevard Haussmann

75009 Paris, France

(ii) Banque Paribas

3 Rue d'Antin

75002 Paris, France

(iii) Banque Francaise du Commerce Exterieur

21 Boulevard Haussmann

75009 Paris, France

FOURTH SCHEDULE

The credit agreement dated 9th October, 1987, for 49,970,560 French francs, between the Government of Kenya as borrower and the following syndicate of French banks as lenders-

(i) Banque Indo-Suez

96 Boulevard Haussmann

75008 Paris, France

(ii) Credit Industriel et Commercial de Paris

66 Rue de la Victoire

75009 Paris: France

(iii) Banque Francaise du Commerce Exterieur

21 Boulevard Haussmann

75009 Paris, France

[L.N 186/1988]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreements referred to in the Schedule from tax.

SCHEDULE

A loan agreement dated 29th May, 1986, between the Government of the Republic of Kenya, as the borrower and S.G. Warburg Soditic (Jersey) Limited of 18-20 Dumaesq Street, St. Helier, Jersey, Channel Islands as agent for the banks and financial institutions referred to therein, and a novation agreement dated 11th April, 1988, between the Government of the Republic of Kenya, as borrower, and S.G. Warburg Soditic (Jersey) Limited as agent aforesaid, and Banco di Napoli International S.A. of 8 Avenue de La Liberte, 1930 Luxembourg, Society

Generale of Rue de La Paix 75002, Paris, France, and the Italian International Bank Plc, of 122 Leadenhall Street, London EC3V 4PT, England, as lenders.

[L.N 274/1988]

The Cabinet Secretary responsible for Finance provides that all payments made under the financing agreement specified in the Schedule hereto shall be exempted from tax.

SCHEDULE

The Finance Agreement dated 24th February, 1988, for twentyfive million two hundred and eighty-four thousand and forty-nine U.S. dollars (US\$ 25,584,049) between the Kenya Airways Limited as the borrower and Credit Lyonnais Bank Nederland N.V. as the lender.

[L.N 3/1989]

The Cabinet Secretary responsible for Finance directs that all payments made under the credit agreement specified in the Schedule shall be exempt from tax.

SCHEDULE

A credit agreement dated the 21st October, 1988, for French francs two million nine hundred and twenty thousand eight hundred and twenty four (FRF2,920,824), between the Government of the Republic of Kenya as the borrower and a syndicate of the following French banks as the lenders:

Credit Industriel et Commercial De Paris
whose registered office is
66 rue de la victoire
75009 Paris (France)

Banque Indosuez
whose registered office is
96 Boulevard Haussmann
75008 Paris (France)

Banque Francaise du Commerce Exterieur
whose registered office is
21. Boulevard Haussmann
5009 Paris (France)

[L.N 115/1989]

The Cabinet Secretary for Finance provides that all payments made under the credit agreement specified in the First Schedule and under the loan agreement specified in the Second Schedule shall be exempt from tax.

FIRST SCHEDULE

A credit agreement dated 7th March, 1989, for French Francs two hundred and eighty-four million and two thousand (FRF 284,002,000) between the Government of the Republic of Kenya as the borrower and a consortium of French banks as the lenders led by the following:

Banque Paribas, acting as lead manager whose registered office is at rue d'Antin, Paris 2e, France.

Societe Generale, acting as co-lead manager whose registered office is at 29 Boulevard Haussmann, 75454 Paris, Cedex 09, France.

SECOND SCHEDULE

A loan agreement dated 7th March, 1989, for French Francs sixty-nine million, one hundred nineteen thousand and fifty-one (FRF 69,119,051), between the Government of the Republic of Kenya as the borrower and a syndicate of the following banks as lenders:

Banque Paribas, as lead manager of the lenders whose registered office is in 75002 Paris France, 3 rue d'Antin,

Societe Generale, as co-lead manager of the lenders whose registered office is 75009 France, 29 Boulevard Haussmann,

Credit Lyonnais, whose registered office is 75002 Paris, France, 19 Boulevard des Italiens,

Banque Francaise du Commerce Exterieur, whose registered office is in 75009 Paris, France, 21 Boulevard Haussmann,

Banque Worms, whose registered office is in 75009 Paris, France, 45 Boulevard Haussmann,

Banque Indosuez, whose registered office is in 75008 Paris, France, 96 Boulevard Haussmann,

Credit Industriel et Commercial de Paris, whose registered office is in 75009 Paris, France, 66 rue de la Victoire,

Banque Nationale de Paris, whose registered office is in 75009 Paris, France, 16 Boulevard des Italiens,

Banque Vernes et Commerciale de Paris, whose registered office is in 75008 Paris, France, 52 avenue Hoche.

[L.N 160/1989]

The Cabinet Secretary responsible for Finance provides that all payments made under the Finance Contract specified in the Schedule hereto shall be exempt from tax.

SCHEDULE

A Finance Contract dated the 1st February, 1989, for one hundred and fifty thousand ECUs (150,000 ECUs) between the Government of the Republic of Kenya as borrower and the European Investment Bank as the lender.

[L.N 223/1989]

The Cabinet Secretary responsible for Finance provides that all payments made under the Finance Contract specified in the Schedule hereto shall be exempt from the provisions of the Act.

SCHEDULE

A finance contract dated 25th May, 1989, for seventeen million ECUS (17,000,000 ECUS) between the Government of the Republic of Kenya as borrower and the European Investment Bank as the lender.

[L.N 224/1989]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the loan agreement specified in the Schedule hereto shall be exempt from tax.

SCHEDULE

The credit agreement dated 18th July, 1989 for the value of French Francs 37,533,909 (thirty-seven million five hundred and thirtythree thousand nine hundred and nine French Francs) between the Government of Kenya as the borrower and the following lenders:

1. Banque Indosuez, whose registered office is 96 Boulevard Haussmann, 75008 Paris, France.
2. Banque Francaise du Commerce Extérieur, whose registered office is 21 Boulevard Haussmann, 75009 Paris, France.

[L.N 225/1989]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the loan agreement specified in the Schedule hereto shall be exempt from tax.

SCHEDULE

The loan agreement dated 18th July, 1989, for French Francs 6,300,000 (six million three hundred thousand French Francs) between the Government of Kenya as the borrower and the following syndicate of lenders:

1. Banque Indosuez, whose registered office is 96 Boulevard Haussmann, 75008 Paris, France.
2. Banque Nationale de Paris, whose registered office is 16 Boulevard des Italiens, 75009 Paris, France.
3. Credit Lyonnais, whose registered office is 19 Boulevard des Italiens, 75002 Paris, France.
4. Credit Commercial de France, whose registered office is 103 Avenue des Champs Elysees, 75008 Paris, France.
5. Banque de L'Union Europeenne, Whose registered office is 4 Rue Gaillon, 75002 Paris, France.

[Subsidiary]

6. Banque Francaise du Commerce Exterieur, whose registered office is 21 Boulevard Haussmann, 75009 Paris, France.

[L.N 226/1989]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the loan agreement specified in the Schedule hereto shall be exempt from tax.

The loan agreement dated 18th July, 1989 for the value of French Francs 120,000,000 (one hundred and twenty million French Francs) between the Government of Kenya as the borrower and the following lenders:

1. Banque Francaise du Commerce Exterieur, whose registered office is 21 Boulevard Haussmann, 75009 Paris, France.
2. Credit National, whose registered office is 45 Rue St. Dominique, 75007 Paris, France.

[L.N 249/1989]

The Cabinet Secretary responsible for Finance provides that all payments made under the Loan Agreement specified in the Schedule hereto shall be exempt from the provisions of the Act.

SCHEDULE

A Loan Agreement dated 11th March, 1989, for five million, three hundred thousand pounds sterling (£5,300,000) between the Kenya Tea Development Authority as borrower and the Commonwealth Development Corporation as lender.

[L.N 273/1989]

The Vice-President and Minister for Finance directs that all payments made under the credit agreement specified in the Schedule hereto shall be exempt from the provisions of the Act.

Schedule

A credit agreement dated 10th August, 1989, for two hundred and eighty-eight million nine hundred and eighty-one thousand convertible Belgian Francs (DEC 288,981,000), between the Government of the Republic of Kenya as borrower and Indosuez Bank Belgic N.V. a Belgian company with its registered office in Antwerp, Grote Markt 9, Belgium, as lender.

[L.N 6/1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the agreement specified in the Schedule shall be exempt from the provisions of the Act.

SCHEDULE

A Loan Agreement dated the 4th December, 1989, for French Francs forty million six hundred ninety-eight thousand six hundred and eighty-six (FRF 40,698,686) between the Government of the Republic of Kenya as borrower and the following French banks as lenders-

1. Banque Francaise du Conimerce Exterieur whose registered , 75009, Paris. office is 21 Boulevard Haussman, 75009, Paris.

2. Credit National whose registered office is 45 Rue Saint Dominique, 75007, Paris.

[L.N 85/1990]

The Cabinet Secretary responsible for Finance provides that the credit of Swedish Kroner 8,600,000 from Skandinaviska Enskilda Banken of 5-406 40 Stockholm, Sweden to the Government of the Republic of Kenya, shall be exempted from tax.

[L.N 219/1995]

The Cabinet Secretary responsible for Finance provides that all payments made to the European Investment Bank under the Finance Contracts contained in the Schedule shall be exempt from the provisions of the Act.

SCHEDULE

1. A Finance Contract in respect of a conditional loan en risk capital resources, in an amount equivalent to twenty million (20,000,000) Ecus, dated 28th December, 1994 between the Republic of Kenya and the European Investment Bank.

2. A Finance Contract in respect of a subsidised global loan on the Bank's own resources, in an amount equivalent to fifteen million (15,000,000) Ecus, dated 28th December, 1994 between the Republic of Kenya and the European Investment Bank.

Guidelines on Allowability of Bad Debts under section 15(2)(a)**INCOME TAX ACT - GUIDELINES ON ALLOWABILITY OF BAD DEBTS**

[L.N. 37/2011]

1. A debt shall be considered to have become bad if it is proved to the satisfaction of the Commissioner to have become uncollectable after all reasonable steps have been taken to collect it.

2. A debt shall be deemed to have become uncollectable under paragraph (1) where -

- (a) the creditor loses the contractual right that comprises the debt through a court order;
- (b) no form of security or collateral is realisable whether partially or in full;
- (c) the securities or collateral have been realized but the proceeds fail to cover the entire debt;
- (d) the debtor is adjudged insolvent or bankrupt by a court of law;
- (e) the costs of recovering the debt exceeds the debt itself; or
- (f) efforts to collect the debt are abandoned for another reasonable cause.

3. A bad debt shall be a deductible expense only if it is wholly and exclusively incurred in the normal course of business.

4. For the purposes of these guidelines, a bad debt which is of a capital nature shall not be an allowable expense.

Criteria for the Determination of Rebate under section 15(2)(ab)**THE INCOME TAX ACT- CRITERIA FOR THE DETERMINATION OF REBATE**

[L.N. 132/2019]

SCHEDULE

1. This rebate program shall not apply to manufacturers involved in the generation, transmission and distribution of electrical energy and shall be subject to the Key Performance Indicators (KPIs) specified in the table below—

Table 1: Targets and Weights for the KPIs for Manufacturers

	<i>Increase in Electricity Consumption (D)</i>	<i>Increase in Capital Investment (C)</i>	<i>Increase in Sales Revenue (R)</i>
Annual Target in Percentage(%) (T)	10%	10%	10%
Weight(W)	0.30	0.30	0.40

2. The rebate entitlement shall be based on an Actual Overall Performance (AOP) in accordance with the formula below—

$$AOP = \frac{\sum (W_D * D + W_C * C + W_R * R)}{(T_D * W_D) + (T_C * W_C) + (T_R * W_R)}$$

Where; AOP is Actual Overall Performance;

W_D is Weight allocated to the Demand;

W_C is Weight allocated to increase in Capital Investment;

W_R is Weight allocated to increase in Sales Revenue;

D is actual percentage increase in Electricity Consumption;

C is actual percentage increase in Capital Investment;

R is actual percentage increase in Sales Revenue;

T_D , T_C and T_R is the target growth in Demand, Capital Investment and Sales Revenue respectively.

Note:

- The manufacturer must have a valid Tax Compliance Certificate.
- The rebate is based on an AOP up-to a maximum of 100% and a minimum of 0%.
- A manufacturer with an AOP of 100% qualifies for a maximum rebate of an extra 30% of the electricity cost incurred for purposes of computation of taxable income.
- In the first year of claim, 20% of the cost of electricity from the grid will be allowed and the remaining 10% by the weighted Key Performance Indicators.
- For subsequent years, the rebate claimed will be determined by the weighted Key Performance Indicator.

3. The Evaluation Mechanism is as set out in the table below—

Table 2: Evaluation Mechanism Criteria

<i>KPI</i>	<i>Measure</i>	<i>Evidence</i>	<i>Weight(W)</i>
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[Subsidiary]

Increase in electricity consumption by 10% for manufacturers (based on Small Commercial (SCs) and Commercial Customers (Cis) categories.	Total annual electricity consumption (Grid electricity).	Total electricity bills of the manufacturer.	0.30
Increase in Capital Investment by 10%	Additional capital investment injected by the company.	Books of accounts.	0.30
Increase in Sales Revenue by manufacturers by 10%	Turnover. It was noted that corporate tax claims are done before filing returns. One should provide for this in the books.	VAT returns Books of accounts Customs entry.	0.40

Note:

- (a) The Ministry of Energy may request the Kenya Revenue Authority to conduct an audit to evaluate the rebate.
 - (b) The manufacturer must submit a baseline report certified by an external auditor to the Ministry of Energy as a self-declaration form.
 - (c) The manufacturer shall submit quarterly financial reports to the Kenya Revenue Authority.
-

Rules under section 18(8)

THE INCOME TAX (TRANSFER PRICING) RULES

ARRANGEMENT OF RULES

1. Citation and commencement
 2. Interpretation
 3. Purpose of Rules
 4. Person to choose method
 5. Scope of guidelines
 6. Transactions subject to Rules
 7. Methods
 8. Application of methods
 9. Power of Commissioner to request for information
 10. Application of arm's length pricing
 11. Certain provisions of Act to apply
 12. Unpaid tax to be deemed additional tax
-

THE INCOME TAX (TRANSFER PRICING) RULES

[L.N. 67/2006, L.N. 52/2011, L.N. 54/2012]

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 transaction" means a transaction which is monitored to ensure payment of an arm's length price for goods or services;

"related enterprises" means one or more enterprises whereby-

- (a) one of the enterprises participates directly or indirectly in the management, control or capital of the other; or
- (b) a third person participates directly or indirectly in the management, control or capital 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-

- (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.

[LN 52 of 2011, s. 2.]

Transactions subject to Rules.

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;
- (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.

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 a controlled transaction is compared with the prices in an uncontrolled transaction and accurate adjustments made to eliminate material price differences;
- (b) the resale price method, in which the transfer price of the produce is compared with the resale price at which the product is sold to an independent enterprise:

Provided that in the application of this method the resale price shall be reduced by the resale price margin (the profit margin indicated by the reseller);

- (c) the cost plus method, in which costs are assessed using the costs incurred by the supplier of a product in a controlled transaction, with a mark-up added to make an appropriate profit in light of the functions performed, and the assets used and risks assumed by the supplier;
- (d) the profit split method, in which the profits earned in very closely interrelated controlled transactions are split among the related enterprises depending on the functions performed by each enterprise in relation to the transaction, and compared with a profit split among independent enterprises in a joint venture;
- (e) the transactional net margin method, in which the net profit margin attained by a multinational enterprise in a controlled transaction is compared to the net profit margin that would have been earned in comparable transactions by an independent enterprise; and
- (f) such other method as may be prescribed by the Commissioner from time to time, where in his opinion and in view of the nature of the transactions, the arm's length price cannot be determined using any of the methods contained in these guidelines.

Application of methods.

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.

[LN 54 of 2012, s. 2.]

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.

[Subsidiary]

- (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 tax 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 sections 94 and 95 of the Act.

Exemptions under section 35(7)**THE EXEMPTION NOTICES UNDER SECTION 35(7)**

[L.N. 286/1979, L.N. 115/1980, L.N. 116/1980]

The Cabinet Secretary responsible for Finance directs that persons resident or having a permanent establishment in Kenya and paying interest on loans made by the following banks are exempt from the requirement to deduct tax at the appropriate withholding rate on such interest as required by section 35(3).

1. Industrial Development Bank Limited
This shall be deemed to have come into operation on the 1st January, 1979.
 2. Development Finance Company of Kenya Limited
This shall be deemed to have come into operation on the 4th July, 1977.
 3. Industrial and Commercial Development Corporation Limited
This shall be deemed to have come into operation on the 4th July, 1977.
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Regulations under section 39B(2)THE INCOME TAX (SET-OFF TAX REBATE FOR
GRADUATE APPRENTICESHIPS) REGULATIONS

ARRANGEMENT OF REGULATIONS

1. Citation
 2. Interpretation
 3. Eligible employer
 4. Engagement of an apprentice
 5. Contract of apprenticeship
 6. Issuance of apprenticeship certificate
 7. Maintenance of records
 8. Deduction of tax rebate
 9. Time limit for deduction of tax rebate
-

**THE INCOME TAX (SET-OFF TAX REBATE FOR
GRADUATE APPRENTICESHIPS) REGULATIONS**

[L.N. 97/2016]

Citation.

1. These Regulations may be cited as the Income Tax (Set-off Tax Rebate for Graduate Apprenticeships) Regulations and shall come into operation on the 1st April, 2016.

Interpretation.

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

"graduate apprentice" means a university graduate who is bound by a written contract of apprenticeship to serve an employer for a period of at least six to twelve months during any year of income;

"contract of apprenticeship" means a written agreement which provides for specific terms of apprenticeship and employment including but not limited to job training;

"Director-General" means the Director-General appointed under section 4 (c) of the Industrial Training Act (Cap. 237);

"employer" has the meaning assigned to it under the Employment Act (Cap. 226):

"tax rebate" means an allowable expenditure that is in addition to the expenditure already allowed under section 15 (1) of the Act;

"university graduate" means a graduate from a university who has at least a bachelor's degree from a university recognized in Kenya;

Eligible employer.

3. An employer who is subject to tax under section 3 of the Act, other than an employer whose income is wholly exempt, shall, subject to section 39B of the Act, be eligible for a tax rebate.

Engagement of an apprentice.

4. An employer shall not engage graduate apprentice without the written permission of the Director-General of the National Industrial Training Authority.

Contract of apprenticeship.

5. (1) An employer shall, before engaging a graduate apprentice, enter into a contract of apprenticeship with the graduate apprentice for a period of apprenticeship of six to twelve months and register the contract with the Director-General of the National Industrial Training Authority.

(2) A contract of apprenticeship shall not be binding unless it has been registered by the Director-General of the National Industrial Training Authority.

Issuance of apprenticeship certificate.

6. (1) An employer of an apprentice shall, on satisfactory completion of the apprenticeship, submit a certificate of completion in the prescribed form, to the Director-General and issue a copy of the certificate to the apprentice.

(2) The Director-General shall, upon receiving a certificate of completion under paragraph (1), issue a certificate of apprenticeship to the apprentice.

[Subsidiary]

Maintenance of records.

7. An employer who is eligible for deduction of a tax rebate shall maintain certified copies of the contract of apprenticeship and the apprenticeship certificate for every apprentice certified by the Director General.

Deduction of tax rebate.

8. Notwithstanding section 15 of the Act, an employer shall, subject to regulation 7, deduct a tax rebate equal to fifty percent of the amount of salaries and wages paid to at least ten apprentices.

Time limit for deduction of tax rebate.

9. No deduction for a tax rebate for an apprentice shall be allowed after a period of three years from the due date of the employer's last tax return.

Agreement Between the Government of the Republic of Kenya and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes of Income under section 41

**THE INCOME TAX ACT-AGREEMENT BETWEEN THE GOVERNMENT OF
THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC
OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES OF INCOME**

[L.N. 147/2017]

The Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Government of the Republic of India in the articles of a convention set out in the Schedule and signed on the 11th July, 2016 with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the Republic of India desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries;

HAVE AGREED as follows:

ARTICLE 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are, in particular:
 - (a) in the case of India: the income-tax, including any surcharge thereon (hereinafter referred to as "Indian tax");
 - (b) in the case of Kenya: taxes on income chargeable under the Income Tax Act (Cap. 470) (hereinafter referred to as "Kenyan tax").
4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing

[Subsidiary]

taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "India" means the territory of India and includes the territorial sea and air space above it as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;
- (b) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also Special Economic Zone and Continental Shelf, and all installations erected thereon as defined in the Continental Shelf Act over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the sea bed, its subsoil and superjacent waters, in accordance with the international law;
- (c) the terms "Contracting State" and "the other Contracting State" mean India or Kenya as the context requires;
- (d) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term "company" means anybody corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means:
 - (i) in the case of India, the Finance Cabinet Secretary, Government of India, or his authorized representative;
 - (ii) in the case of Kenya, the Cabinet Secretary responsible for Finance or his authorized representative;
- (i) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (j) the term "tax" means Indian or Kenyan tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;
- (k) The term "fiscal year" means:
 - (i) in the case of India: the financial year beginning on the 1st day of April;
 - (ii) in the case of Kenya: the year of income beginning on the 1st day of January.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement

applies and any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a sales outlet;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
- (i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

[Subsidiary]

3. The term "Permanent Establishment" also encompasses: -

- (a) A building site, construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months.
- (b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or connected project) within a Contracting State for a period or periods aggregating more than 90 days within any 12-month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 7 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph;
- (b) as no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of that enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted

wholly or almost wholly on behalf of that enterprise and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises he will not be considered an agent of an independent status within the meaning of this paragraph.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company, a permanent establishment of the other.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State,

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the tax laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other

[Subsidiary]

charges for specific services performed or for management, or, except in the case of banking enterprises, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Notwithstanding the provisions of paragraph 1, profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.

4. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic which is supplementary or incidental to its international operation of ships or aircrafts shall be taxable only in that Contracting State unless the containers are used solely within the other contracting State.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State-and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or willful default.

ARTICLE 10**DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected

[Subsidiary]

with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by:

- (a) the Government, a political sub-division or a local authority of the other Contracting State; or
- (b) (i) in the case of India, the Reserve Bank of India and the Export-Import bank of India; and
(ii) in the case of Kenya, the Central Bank of Kenya; or government financial institution/entity as may be agreed upon from time to time between the Competent authorities of the Contracting States through exchange of letters.

4. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 percent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use any copyright of literary, artistic or scientific work including cinematograph films or films or tapes used for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the royalties being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13**FEES FOR MANAGEMENT, PROFESSIONAL AND TECHNICAL SERVICES**

1. Fees for management, professional and technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such fees for management, professional and technical services may be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner of fees for management, professional and technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the fees for management, professional and technical services.
3. The term "fees for management, professional and technical services" as used in this article means payments of any kind to any person, other than to an employee of the person making the payments and those mentioned in Articles 15 and 16 of this Agreement in consideration for any services of a managerial, technical, professional or consultancy nature including the provision of services of technical or other personnel.

[Subsidiary]

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for management, professional and technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for management, professional and technical services arise, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the fees for management, professional and technical services are effectively connected with such permanent establishment or a fixed base. In such case the provisions of Article 7 or Article 15 as the case may be shall apply.

5. Fees for management, professional and technical services shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the fees for management, professional and technical services, whether he is a resident of that State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the fees for management, professional and technical services was incurred and such fees for management, professional and technical services are borne by such permanent establishment then such fees for management, professional and technical services shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the beneficial owner of the fees for management, professional and technical services or between both of them and some other person, the amount of the fees for management, professional and technical services paid, having regard to the service for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 — months commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, surgeons, dentists and accountants.

ARTICLE 16**DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 17**DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member or on behalf of a member of the board of directors in a company which is a resident of the other Contracting State may be taxed in that other State.

Article 18**ARTISTES AND SPORTSPERSONS**

[Subsidiary]

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political subdivisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 19

PENSIONS

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

ARTICLE 20

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 21

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other State.
2. This Article shall apply to income from research if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons.
3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

ARTICLE 22

STUDENTS

1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants and scholarships be exempt from tax in that other State on:
 - (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
 - (b) remuneration which he derives from an employment, which he exercises during his full time education or training in the other Contracting State.
2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival for the purpose of his education or training in that other State.

ARTICLE 23

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 24

METHODS FOR ELIMINATION OF DOUBLE TAXATION

[Subsidiary]

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. Double taxation shall be eliminated in India as follows:

- (a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Kenya, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Kenya.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Kenya.

- (b) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. Double taxation shall be eliminated in Kenya as follows:

- (a) Where a resident of Kenya derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Kenya shall allow as a credit against the tax on the income of that resident, an amount equal to the tax paid in India.

Such credit shall not, however, exceed that portion of the tax as computed before the credit is given, which is attributable, as the case may be, to the income which may be taxed in India.

- (b) Where in accordance with any provision of the Agreement, income derived by a resident of Kenya is exempt from tax in Kenya, Kenya may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 25

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any

debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 26

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles I and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for

[Subsidiary]

such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by contracting states may be used for other purposes when such information may be used for such other purposes under the laws of both states and the competent authority of the supplying state authorizes such use.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information (including documents or certified copies of the documents) which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 28

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not

enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection, the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 29

LIMITATION OF BENEFITS

1. The provisions of this Agreement shall in no case prevent a Contracting State from the application of the provisions of its domestic law and measures concerning tax avoidance or evasion, whether or not described as such.

2. A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement.

3. Any person including legal entities not having *bonafide* business activities shall not be entitled to the benefits of this Agreement.

ARTICLE 30

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 31

ENTRY INTO FORCE

1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement.
2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.
3. The provisions of this Agreement shall have effect:
 - (a) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and
 - (b) In Kenya, in respect of:
 - (i) taxes withheld at source on amounts paid or credited to non residents on or after first January, in the calendar year following the year in which all the required formalities are completed;
 - (ii) other taxes on income arising for the year of income commencing on or after the 1st January in the calendar year in which all the required formalities are completed.
4. The Agreement between the Government of the Republic of India and the Government of the Republic of Kenya for the Avoidance of Double Taxation and Prevention of fiscal evasion with respect to taxes on income signed at Nairobi on the 12th day of April, 1985 shall cease to have effect when the provisions of this Agreement become effective in accordance with the provisions of paragraph 3

ARTICLE 32

TERMINATION

This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) in India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given;
 - (b) in Kenya:
 - (i) with regard to taxes withheld at source, on amounts paid or accrued after the end of the calendar year in which such notice is given; and
 - (ii) with regard to other taxes, on income arising for years of income beginning after the end of the calendar year in which such notice is given.
-

Agreement Between the Government of the Republic of Kenya and the Government of the Republic of Mauritius for the Avoidance of Double Taxation with Respect to Taxes on Income under section 41

AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

[L.N. 114/2020]

The Cabinet Secretary for the National Treasury and Planning declares that the arrangements made between the Government of the Republic of Kenya and the Government of the Republic of Mauritius, in the articles of the convention set out in the Schedule hereto and signed on the 10th April, 2019, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect to income tax under the Act.

SCHEDULE

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA
AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS FOR THE
AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME**

The Government of the Republic of Kenya and the Government of the Republic of Mauritius desiring to further develop their economic relationship and to enhance their cooperation in tax matters, intending to conclude an agreement for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States),

Have agreed as follows:

ARTICLE 1

Personal Scope

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.
3. This agreement shall not affect the taxation, by a Contracting State, of its residents except with respect to benefits granted under paragraph 2 of Article 9 and Articles 18, 20, 22, 23, 24 and 26.

ARTICLE 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income.

[Subsidiary]

3. The existing taxes to which this Agreement shall apply are in particular:
- (a) in Mauritius, the income tax; (hereinafter referred to as "Mauritius tax");
 - (b) in Kenya, the income tax charged in accordance with the provisions of the Income Tax Act, Cap 470 (hereinafter referred to as "Kenyan tax").
4. This Agreement shall also apply to any other taxes of a substantially similar character which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

ARTICLE 3

General Definitions

1. In this Agreement, unless the context otherwise requires:
- (a) the term "Mauritius" means the Republic of Mauritius and includes:
 - (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
 - (ii) the territorial sea of Mauritius; and
 - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised;
 - (b) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Mauritius or Kenya, as the context requires;
 - (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (e) the term "competent authority" means:
 - (i) in the case of Mauritius, the Cabinet Secretary responsible for finance or his authorised representative; and
 - (ii) in the case of Kenya, the Cabinet Secretary responsible for finance or his authorised representative.
 - (iii) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

- (g) the term "national" means any individual having the nationality or citizenship of a Contracting State and any legal person, partnership (societe) or association deriving its status as such from the laws in force in a Contracting State;
- (h) the term "person" includes an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes; and
- (i) the term "tax" means Mauritius tax or Kenyan tax, as the context requires.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

4. For the purpose of paragraph 3 of this Article, the term "place of effective management" means the place where strategic management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include:

- (a) a place of management;
- (b) a branch;

[Subsidiary]

- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (h) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than 183 days;

For the sole purpose of determining whether the period referred to in this paragraph has been exceeded,

- (i) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding 183 days; and
- (ii) where connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site, construction or installation project.

- (b) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating to more than 90 days within any 12-month period commencing or ending in the fiscal year concerned.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),

Provided that such activity or, in the case of subparagraph (f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

4A. Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State, and:

- (a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- (b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

Provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise and these contracts are:
 - (i) in the name of the enterprise, or
 - (ii) for the transfer of ownership of, or for the granting of the right to use property owned by that enterprise or that the enterprise has a right to use or,
 - (iii) for the provision of services by that enterprise,

unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4A would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of that enterprise;
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

[Subsidiary]

9. For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

ARTICLE 6

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, may be taxed in the Contracting State in which such property is situated.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to—
 - (a) that permanent establishment;
 - (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
 - (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment

including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of aircrafts in international traffic shall be taxable only in that Contracting State.

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in the other Contracting State, provided that such profits are derived from operations in that other Contracting State. However, the tax so charged shall not exceed 50 percent of the tax that is otherwise applicable in that other Contracting State.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include:

- (a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,
- (b) profits derived from the use or rental of containers or other related equipment,

if such profits are incidental to the profits to which the provisions of paragraphs 1 and 2 apply.

4. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

[Subsidiary]

Associated Enterprises

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 8 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Notwithstanding any other provision of this Agreement, where a company which is a resident of a contracting State has a permanent establishment in the other Contracting State, the profits taxable under Article 7 paragraph 1 may be subject to an additional tax in that other State in accordance with its laws but the additional charge shall not exceed 7.5% per cent of the amount of those profits.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:

- (a) the Government, a political subdivision or a local authority of the other Contracting State; or
- (b) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon

[Subsidiary]

by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 12 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for:
 - (a) the use of, or the right to use, any copyright of literary, artistic, scientific work, including cinematograph film, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or other like property or right,
 - (b) the use of, or the right to use or receipt of, or the right to receive visual images or sounds or both, that are transmitted to the public by satellite, or by cable, optic fibre, or similar technology,
 - (c) the use of, or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12A

Technical Fees

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State in accordance with its laws.
2. However, subject to the provisions of Articles 8, 15 and 16, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and

subject to the laws of that Contracting State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed 10% of the gross amount of the fees.

3. The term "fees for technical services" as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:

- (a) to an employee of the person making the payment;
- (b) for teaching in an educational institution or for teaching by an educational institution; or
- (c) by an individual for services for the personal use of an individual.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other Contracting State and the fees for technical services are effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that Contracting State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligations to pay the fees was incurred, and such fees are borne by the permanent establishment.

6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that Contracting State and carries on business in the other Contracting State or a third Contracting State through a permanent establishment situated in that other Contracting State or the third Contracting State and such fees are borne by that permanent establishment.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or

[Subsidiary]

comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.

5. Gains, other than those to which paragraph 4 applies, derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State, may be taxed in that other Contracting State if the alienator, at any time during the 12-month period preceding such alienation, held directly or indirectly at least 50 per cent of the capital of that company.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Dependent Personal Services

1. Subject to the provisions of 15, 17, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 15

Directors Fees and Remuneration of Top-Level Managerial Officials

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities, referred to in paragraph 1, performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of either Contracting State, political subdivision, a local authority or public institution thereof.

ARTICLE 17

Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, shall be taxable only in that other State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

ARTICLE 18

Government Service

1. (a) Salaries, wages, and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State, or a political subdivision, local authority or statutory body thereof.

ARTICLE 19

Professors and Teachers

1. Notwithstanding the provisions of Article 14, a professor or teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be

[Subsidiary]

exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

ARTICLE 20

Students and Business Apprentices

1. A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purposes of his maintenance, education or training.

2. In respect of grants, scholarships and remuneration for employment not covered by paragraph 1, a student or business trainee or apprentice described in paragraph 1, shall in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

ARTICLE 21

Other Income

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income from immoveable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 22

Elimination of Double Taxation

Double taxation shall be eliminated as follows:

1. In the case of Mauritius:

- (a) (i) Where a resident of Mauritius derives income from Kenya the amount of tax on that income payable in Kenya in accordance with the provisions of this Agreement may be credited against the Mauritius tax imposed on that resident.
- (ii) Where a company which is a resident of Kenya pays a dividend to a resident of Mauritius who controls, directly or indirectly, at least 5% of the capital of the company paying the dividend, the credit shall take into account (in addition to any Kenyan tax for which credit may be allowed under the provisions

of subparagraph (a) of this paragraph) the Kenyan tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid.

Provided that any credit allowed under this subparagraph shall not exceed the Mauritius tax (as computed before allowing any such credit), which is appropriate to the profits or income derived from sources within Kenya.

- (b) For the purposes of allowance as a credit the tax payable in Kenya shall be deemed to include the tax which is otherwise payable in Kenya but has been reduced or waived by Kenya in order to promote its economic development.

2. In the case of Kenya:

- (a) where a resident of Kenya derives income which in accordance with the provisions of this Agreement, may be taxed in the Republic of Mauritius, Kenya shall allow as credit against the tax on the income of that resident an amount equal to the tax paid in the Republic of Mauritius. Such credit, however, shall not exceed that portion of the tax as computed before the credit is given, which is attributable, to the income, which may be taxed in the Republic of Mauritius;
- (b) where, in accordance with the provisions of this Agreement, income derived by a resident of Kenya is exempt from tax in Kenya, Kenya may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 23

Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

1A. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and the connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to resident of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. The provisions of this Article shall apply to taxes covered by this Agreement.

ARTICLE 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment for collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 26

Diplomatic Agents and Consular Officers

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 27

Assistance in the Collection of Taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in

[Subsidiary]

accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first -mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 27A

Entitlement to Benefits

1. Subject to paragraph 2, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

2. Where a benefit under this Agreement is denied to a person under the provisions paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines

that such benefits would have been granted to that person in the absence of the transaction or arrangement. The competent authority of the Contracting State to which a request has been made under this paragraph by a resident of the other Contracting State shall consult with the competent authority of the other Contracting State before rejecting the request.

ARTICLE 28

Entry Into Force

1. Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of this Agreement shall apply:

- (a) in Mauritius, on income for any income year beginning on or after the first day of January next following the date upon which this Agreement enters into force; and
- (b) in Kenya:
 - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which the Agreement enters into force; and
 - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the date upon which the Agreement enters into force.

ARTICLE 29

Termination

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to have effect:

- (a) in Mauritius, on income for any income year beginning on or after the first day of January next following the calendar year in which such notice is given; and
- (b) in Kenya:
 - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the calendar year in which such notice is given; and
 - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the calendar year in which such notice is given.

Legal Notice No. 108/2020 is hereby revoked.

Declaration under section 41**THE INCOME TAX ACT-THE DOUBLE TAXATION
RELIEF (FEDERAL REPUBLIC OF GERMANY) NOTICE**

[L.N. 20/1980]

The Cabinet Secretary responsible for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Government of the Republic of Kenya and the Government of the Federal Republic of Germany in articles of agreement signed on the 17th May, 1977 as amended by a protocol signed on the 17th May 1977, with a view to affording relief from double taxation in relation to income tax under the Act and any taxes of a similar character imposed by the laws of the Federal Republic of Germany, shall, notwithstanding anything to the contrary in the Act or in any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the Federal Republic of Germany;

Desiring to conclude an agreement for the avoidance of double taxation with respect to taxes on income and capital;

Have agreed as follows:

ARTICLE 1***Personal Scope***

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2***Taxes Covered***

(1) This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of any property, whether immovable or other than immovable, as well as taxes on capital appreciation.

(3) The existing taxes to which this Agreement shall apply, are—

- (a) in the Federal Republic of Germany—
 - (i) the income tax (Einkommensteuer) including the surcharge (Ergänzungsabgabe) thereon;
 - (ii) the corporation tax (Körperschaftsteuer) including the surcharge (Ergänzungsabgabe) thereon;
 - (iii) the capital tax (Vermögensteuer); and
 - (iv) the trade tax (Gewerbesteuer) (hereinafter referred to as "German Tax").

(b) in Kenya—

the income tax (hereinafter referred to as "Kenyan tax").

(4) This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of those referred to in paragraph (3). The competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

(5) The provisions of this Agreement in respect of taxation of income or capital shall likewise apply to the German trade tax, computed on a basis other than income or capital.

ARTICLE 3

General Definitions

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

- (a) the terms "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany or the Republic of Kenya as the context requires, and, when used in a geographical sense, the territory in which the tax law of the State concerned is in force;
- (b) the term "tax" means German tax or Kenyan tax as the context requires, but shall not include any tax which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes;
- (c) the term "person" means an individual and a company;
- (d) the term "company" means any body corporate or any body of persons which is treated as an entity for tax purposes;
- (e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (f) the term "nationals" means:
 - (i) in respect of the Federal Republic of Germany—

all Germans in the meaning of paragraph 1 of Article 116 of the Basic Law for the Federal Republic of Germany and all legal persons, partnerships and associations deriving their status as such from the law in force in the Federal Republic of Germany;
 - (ii) in respect of Kenya— all individuals possessing the nationality of Kenya and all legal persons, partnerships and associations deriving their status as such from the law in force in Kenya;
- (g) the term "competent authority" means—
 - (i) in the case of the Federal Republic of Germany the Federal Minister of Finance;
 - (ii) in the case of Kenya the Minister for Finance or his authorized representative;
- (h) the term "international traffic" means any voyage of a ship or aircraft operated by an enterprise of a Contracting State except where the voyage is confined solely to places within the other Contracting State and it includes traffic between places in one country in the course of a voyage which extends over more than one country.

[Subsidiary]

(2) In the application of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE 4

Fiscal Domicile

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3) any person who, under the laws of that Contracting State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules—

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, oil well, quarry or other place of extraction of natural resources;
- (g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;

- (h) a building site or construction or assembly project which exists for more than six months.
- (3) The term "permanent establishment" shall not be deemed to include—
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
- (4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (6) applies—shall be deemed to be a permanent establishment of that enterprise in the first mentioned State if he has and habitually exercises in that State an authority—
 - (a) to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise; or
 - (b) to fulfil orders on behalf of the enterprise from a stock of goods or merchandise which he habitually maintains in that State and which belongs to the enterprise.
- (5) An insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph (6).
- (6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
- (7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute for either company a permanent establishment of the other.

ARTICLE 6

Income from Immovable Property

- (1) Income from immovable property may be taxed in the Contracting State in which such property is situated.
- (2) The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as

[Subsidiary]

consideration for the working of or the right to work mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) shall apply to income derived from the direct use, letting or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property used for the performance of professional services.

ARTICLE 7

Business Profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purpose of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(4) Insofar as it has been customary in a Contracting State according to the law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result be in accordance with the principles of this Article.

(5) No portion of any profits arising to an enterprise of a Contracting State shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase of goods or merchandise within that other State by the enterprise.

(6) For the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(7) Where profits include items of income which are dealt with separately in other Articles of this Agreement then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and Air Transport

(1) Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that State.

(2) The provisions of paragraph (1) shall likewise apply in respect of participations in pooled services, in a joint business or in an international operations agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

ARTICLE 9***Associated Enterprises***

Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management or control of capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management or control of capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 10***Dividends***

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State, unless the dividends are excluded from the basis upon which German tax is imposed according to paragraph (2) (a) of Article 23.

(2) However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(3) Notwithstanding the provisions of paragraph (2) German tax on dividends paid to a company being a resident of Kenya by a company being a resident of the Federal Republic of Germany, at least 25 per cent of the voting shares of which is owned directly or indirectly by the former company itself, or by it together with other persons controlling it or being under common control with it, shall not exceed 25 per cent of the gross amount of such dividends as long as the rate of German corporation tax on distributed profits is lower than that on undistributed profits and the difference between those two rates is 15 percentage points or more.

(4) The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident, distributions on certificates of an investment trust and also, in the Federal Republic of Germany, income derived by a sleeping partner from his participation as such.

(5) The provisions of paragraphs (1), (2) and (3) shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

(6) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in the other State.

ARTICLE 13***Capital Gains***

(1) Gains from the alienation of immovable property, as defined in paragraph (2) of Article 6 may be taxed in the Contracting State in which such property is situated.

(2) Gains from the alienation of any property other than immovable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of any property other than immovable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

(3) Notwithstanding the provisions of paragraph (2), gains derived by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and any property other than immovable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

(4) Gains from the alienation of shares of a company which is a resident of a Contracting State may be taxed in that State.

(5) Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1), (2), (3) and (4) shall be taxable only in that State.

ARTICLE 14***Independent Personal Services***

Income derived by a resident of a Contracting State in respect of independent scientific, literary, artistic, educational or teaching activities shall be taxable only in that State unless—

(a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case so much of the income may be taxed in that other State as is attributable to that fixed base; or

(b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the calendar year concerned,

in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.

ARTICLE 15***Dependent Personal Services***

(1) Subject to the provisions of Articles 16, 17, 18, 19, and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if—

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other State.

(3) Notwithstanding the provisions of paragraphs (1) and (2), remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Artistes and Athletes

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(2) Notwithstanding anything contained in this Agreement, where the services of a public entertainer or an athlete mentioned in paragraph (1) are provided in a Contracting State by an enterprise of the other Contracting State the profits derived by that enterprise from providing those services may be taxed in the first-mentioned State.

(3) The provisions of paragraphs (1) and (2) shall not apply to services of public entertainers and athletes, if their visit to a Contracting State is supported wholly or substantially from public funds of the other Contracting State.

ARTICLE 18

Public Funds

(1) Remuneration paid by, or out of funds created by a Contracting State, a political subdivision or a local authority thereof, to any individual in respect of an employment shall be taxable only in that State. If, however, the employment is exercised in the other Contracting State by an individual who is neither a national of the first-mentioned State nor resident in the other State solely for the purpose of rendering those services, the remuneration shall be taxable only in other State.

(2) The provisions of this Article shall not apply to remuneration in respect of an employment in connexion with any business carried on by a Contracting State, a political subdivision or a local authority thereof for the purpose of profits, or to remuneration the cost of which is reimbursed to the Contracting State first-mentioned in paragraph (1) out of funds earned or provided in the other Contracting State.

ARTICLE 19

Pensions and Annuities

(1) Any pension (other than a pension of the kind referred to in paragraph (3)) or any annuity paid to a resident of a Contracting State may be taxed in that State.

[Subsidiary]

(2) However, such pension or annuity, derived by an individual who is a resident of a Contracting State from sources within the other Contracting State may be taxed in that other State, but the tax so charged shall not exceed 5 per cent of the gross amount of the payment.

(3) Any pension paid by, or of funds created by, a Contracting State, a political subdivision or a local authority thereof, to any individual shall be taxable only in that State.

(4) The term "pension" means a periodic payment made in consideration of services rendered in the past or by way of compensation for injuries received.

(5) The term "annuity" means a stated sum payable periodically at stated times, during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 20

Teachers and Students

(1) A professor or teacher who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other education institute, shall be exempt from tax in the first-mentioned State in respect of any remuneration which he received for such work, provided that such remuneration is derived by him from outside that State.

(2) A student or business apprentice who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training shall be exempt from tax in the first mentioned State on -

- (a) payments made to him by persons residing outside the first-mentioned State for the purposes of his maintenance, education or training; and
- (b) remuneration not exceeding 6,000 DM or the equivalent in Kenya currency for a calendar year from personal services undertaken in that first-mentioned State to supplement resources available to him for his maintenance and education.

The benefits of this paragraph shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this paragraph for more than three consecutive years.

(3) An individual who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely for the purpose of study, research or training as recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his first arrival in the first-mentioned State in connexion with that visit, be exempt from tax in that State—

- (a) on the amount of such grant, allowance or award; and
- (b) on all remittances from abroad for the purposes of his maintenance, education or training.

(4) This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 21

Income Not Expressly Mentioned

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.

ARTICLE 22

Taxes on Capital

(1) Capital represented by immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

(2) Capital represented by property other than immovable property forming part of the business property of a permanent establishment of an enterprise, or by such property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) Ships and aircraft operated in international traffic by an enterprise of a Contracting State and property other than immovable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

(4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 23

Elimination of Double Taxation

(1) Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

- (a) Unless the provisions of subparagraph (b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income derived from Kenya and any item of capital situated within Kenya, which, according to this Agreement, may be taxed in Kenya. In the determination of its rate of tax applicable to any item of income or capital not so excluded, the Federal Republic of Germany will, however, take into account the item of income and capital so excluded. The foregoing provisions shall likewise apply to dividends paid to a company being a resident of the Federal Republic of Germany by a company being a resident of Kenya if at least 25 per cent of the voting shares of the Kenyan company is owned directly by the German company. There shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends of which, if paid, would be excluded from the basis upon which tax is imposed according to the immediately foregoing sentence.
- (b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German, income and corporation tax, including the surcharge thereon, payable in respect of the following items of income derived from Kenya, the Kenyan tax paid under the laws of Kenya and in accordance with this Agreement on—
 - (i) dividends to which subparagraph (a) does not apply;
 - (ii) interest to which paragraph (2) of Article 11 applies;
 - (iii) royalties and management fees to which paragraph (2) of Article 12 applies;
 - (iv) capital gains to which paragraph (4) of Article 13 applies;
 - (v) remuneration to which Article 16 applies;
 - (vi) income to which Article 17 applies;
 - (vii) pensions and annuities, to which paragraph (2) of Article 19 applies.

[Subsidiary]

The credit shall not, however, exceed that part of the German tax, as computed before the credit is given, which is appropriate to such items of income.

- (c) For the purposes of credit referred to in subparagraph (b)—
 - (i) where Kenyan tax on dividends, interest or management fees is wholly relieved or reduced below the rates of tax provided for in Articles 10, 11 or 12 by special incentive measures under Kenyan law designed to promote economic development in Kenya, there shall be allowed as a credit against German income tax and corporation tax, including the surcharge thereon, on such dividends, interest or management fees an amount corresponding to the rate of tax provided for in the respective Article;
 - (ii) Kenyan tax on royalties shall be deemed to be 20 per cent of the gross amount of the royalties.

The credit allowed under the foregoing provisions shall, however, not exceed the amount of Kenyan tax, which would have been payable under Kenyan law but for special incentive measures as mentioned before.

- (2) Tax shall be determined in the case of a resident of Kenya as follows—

- (a) where income is derived from sources within the Federal Republic of Germany which, in accordance with the provisions of this Agreement, is exempt from Kenyan tax but may be taxed in the Federal Republic of Germany, then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from sources within the Federal Republic of Germany had not been so exempted;
- (b) where income is derived from sources within the Federal Republic of Germany which may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in the Federal Republic of Germany. Such deduction, however, shall not exceed that part of the Kenyan tax as computed before the deduction is given, which is appropriate to the income derived from the Federal Republic of Germany.

ARTICLE 24

Non-Discrimination

(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The taxation of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities or any other personal circumstances which it grants to its own residents.

(3) Enterprises of a Contracting State the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement

connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

(4) In this Article the term "taxation" means taxes of every kind and description.

(5) The application of the provisions of this Article shall not be limited by the provisions of Article 1.

ARTICLE 25

Mutual Agreement Procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may notwithstanding the remedies provided by the national laws of those Contracting States, present his case to the competent authority of the State of which he is a resident. The case must be presented within three years of the date of such action or the latest of such actions as the case may be.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purposes of applying the provisions of this Agreement. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 26

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement or the determination of appeals or the prosecution of offences in relation thereto.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on one of the Contracting States the obligation—

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

(3) In order to prevent fraud or fiscal evasion concerning the taxes covered by Article 2 the competent authorities of the Contracting States may by mutual agreement exchange any relevant information. In such a case the provisions of paragraphs (1) and (2) shall likewise apply.

ARTICLE 27***Diplomatic and Consular Privileges***

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 28***Land Berlin***

The Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of Kenya within three months from the date of entry into force of this Agreement.

ARTICLE 29***Entry into Force***

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Bonn as soon as possible.

(2) This Agreement shall enter into force on the day after the date of exchange of the instruments of ratification and have effect—

- (a) in the Federal Republic of Germany, in respect of income and capital taxable for the assessment period in which this Agreement enters into force and subsequent assessment periods;
- (b) in Kenya, in respect of income arising for the year of income in which this Agreement enters into force and subsequent years.

ARTICLE 30***Termination***

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the Thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to be effective—

- (a) in the Federal Republic of Germany, in respect of income and capital taxable for the assessment period next following that in which the notice of termination is given and subsequent assessment periods;
- (b) in Kenya, in respect of income arising for the year of income next following that in which the notice of termination is given and subsequent years.

PROTOCOL**1. With Reference to Article 5,**

- (a) an enterprise shall be deemed to have a permanent establishment in a Contracting State if it carries on supervisory activities in that State for more than six months in connexion with a building site or construction or assembly project, as defined in paragraph (2) (h), which is being undertaken in that State;
- (b) the term "construction or assembly project" shall be deemed for the purposes of paragraph (2) (h) to include an installation of machinery or plant but shall not include

the mere provision of auxiliary services in connexion with the sale of such machinery or plant.

2. *With Reference to Articles 6 to 21,*

where any income, other than interest to which paragraph (3) of Article 11 applies, derived from outside of a Contracting State by a resident of that State is not subject to tax in the State by reason of its foreign origin, the provisions of these Articles shall not apply in the other Contracting State in respect of such income.

3. *With Reference to Article 7,*

- (a) if an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed to the permanent establishment unless the enterprise proves that such sales or services are not attributable to the activity of the permanent establishment;
- (b) paragraph (3) shall not be construed as obliging a Contracting State to allow the deduction of expenses which under its domestic legislation would not be deduction by an independent enterprise of that State.

4. *With Reference to Article 11,*

the provisions of paragraph (3) shall also apply to interest arising in Kenya and paid to the Kreditanstalt für Wiederaufbau or to the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft).

5. *With Reference to Article 18,*

the provisions of the first sentence of paragraph (1) shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, or of a political subdivision or local Authority thereof, out of funds exclusively supplied by that State, or by a political subdivision or local authority thereof, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

6. *With Reference to Article 23,*

notwithstanding the provisions of paragraph (2) (a), the provisions of paragraph (2) (b) but not of paragraph (2) (c) shall apply likewise to the profits of, and to the capital represented by property forming part of the business property of, a permanent establishment to dividends paid by, and to the shareholding in, a company; or to gains referred to in paragraph (2) of Article 13 of the Agreement, provided that the resident of the Federal Republic of Germany concerned does not prove that the receipts of the permanent establishment or company are derived exclusively or almost exclusively—

- (a) from producing or selling goods and merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Kenya; or
- (b) from dividends paid by one or more companies, being residents of Kenya, more than 25 per cent of the voting shares of which is owned by the first mentioned company, which themselves derive their receipts exclusively or almost exclusively from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Kenya.

7. *With Reference to Article 24,*

- (a) in the application of paragraph (1), nationals of a Contracting State who are taxable in the other Contracting State shall, if they are residents of that other Contracting

[Subsidiary]

State, receive any personal allowances, reliefs and reductions for taxation purposes on account of civil status which that other Contracting State grants to its residents;

- (b) paragraph (2) shall not be construed as disallowing Kenya to impose a tax not exceeding 9 per cent of the profits of a permanent establishment which a German company has in Kenya in addition to tax at the rate levied on profits of similar enterprises of Kenya.
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THE INCOME TAX ACT- THE DOUBLE TAXATION RELIEF (KOREA) NOTICE

[L.N. 217/2016]

The Cabinet Secretary for Finance declares that the arrangements made between the Government of the Republic of Kenya and the Government of the Republic of Korea in the articles of the agreement set out in the Schedule and signed on the 7th July, 2014, with a view to affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the Republic of Korea, desiring to promote their mutual economic relations through the conclusion between them of an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

HAVE AGREED as follows:

ARTICLE 1**PERSONS COVERED**

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are in particular:

(a) in Korea:

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the special tax for rural development; and
- (iv) the local income tax,

(hereinafter referred to as "Korean tax");

(b) in Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap. 470

(hereinafter referred to as "Kenyan tax").

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing

[Subsidiary]

taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Korea" means the Republic of Korea, and when used in a geographical sense, the territory of the Republic of Korea including its territorial sea, and any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights or jurisdiction of the Republic of Korea with respect to the sea-bed and sub-soil, and their natural resources may be exercised;
- (b) the term "Kenya" means all territory of the Republic of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Kenya, as the context requires;
- (d) the term "tax" means Korean tax or Kenyan tax, as the context requires;
- (e) the term "person" includes an individual, a company and any other body of persons;
- (f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "national", in relation to a Contracting State, means:
- (j) any individual possessing the nationality of that contracting State; and
- (k) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- (l) the term "competent authority" means:
 - (i) in Korea, the Minister of Strategy and Finance or his authorised representative;
 - (ii) in Kenya, the Cabinet Secretary responsible for matters relating to Finance or his authorised representative.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of incorporation, place of effective management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

[Subsidiary]

- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person-other than an agent of an independent status to whom paragraph 7 applies-is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
4. For the purposes of this Article the terms "profits from the operation of ships or aircraft in international traffic" shall include profits from:
 - (a) the rental of a ship or aircraft on a bare boat charter basis;
 - (b) and the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods and merchandise,

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10**DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 8 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (b) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively

connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 12 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that state if the interest is beneficially owned by or paid in respect of a loan or credit owed to, or made or guaranteed by:

- (a) the Government, a political subdivision, a local authority or the Central Bank of the other Contracting State; or
- (b) any institution which is wholly owned by the Government, a political subdivision, a local authority or the Central Bank of the other Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon

[Subsidiary]

by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing

independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

[Subsidiary]

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants and economists.

ARTICLE 16***DIRECTORS' FEES***

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17***ARTISTES AND SPORTSMEN***

1. Notwithstanding the provisions of Articles 14 and 15, income derived by resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other State if the visit to the other State is supported wholly or mainly by public funds of the first mentioned Contracting State, a political subdivision or local authorities thereof, or takes place under a cultural agreement or arrangement between the governments of the Contracting States.

ARTICLE 18***PENSIONS***

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State. However, such pensions and other similar remuneration may also be taxed in the other contracting State if they arise in that State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under public schemes, which are parts of the social security system of a Contracting State or a political sub-division or a local authority thereof, shall be taxable only in that Contracting State.

ARTICLE 19***GOVERNMENT SERVICE***

1. Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

2. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(a) is a national of that State; or

(b) did not become a resident of that State solely for the purpose of rendering the services.

3. Notwithstanding the provisions of paragraphs 1 and 2, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

4. However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

5. The provisions of Articles 14, 16, 17, and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

6. The provisions of paragraphs 1, 2, 3, 4 and 5 of this Article shall likewise apply in respect of salaries, wages and other similar remuneration paid by:

(a) in the case of Korea:

the Bank of Korea, the Korea Export-Import Bank, the Korea Trade Investment Promotion Agency, the Korea Trade Insurance Corporation, the Korea Investment Corporation, the Korea Finance Corporation, the Korea Tourism Organization and such other statutory bodies performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States;

(b) in the case of Kenya:

the Central Bank of Kenya, the Kenya Investment Authority, the Export Promotion Council and the Kenya Tourist Board and such other statutory bodies performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.

ARTICLE 20

STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 21

PROFESSORS AND TEACHERS

1. An individual who visits a Contracting State for the purpose teaching or carrying out research at a university, college, school, or other similar educational institution recognised as non-profit organization by the Government of that Contracting State and who is or was immediately before that visit a resident of the other Contracting State shall be exempted from taxation in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding 2 years from the date of his first visit for that purpose.

2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken not for public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 22

OTHER INCOME

[Subsidiary]

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

ARTICLE 23

ELIMINATION OF DOUBLE TAXATION

1. In Korea, double taxation shall be avoided as follows: the exempted income.

ARTICLE 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his

case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

4. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

5. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

[Subsidiary]

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information, solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because the information relates to ownership interests in a person.

ARTICLE 27

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

LIMITATION ON BENEFITS

1. In respect of Articles 10, 11, 12, 13, and 22 a resident of a Contracting State shall not be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention, if:

- (a) the resident is controlled directly or indirectly by one or more persons which are not residents of that Contracting State; and
- (b) the main purpose or one of the main purposes of any person concerned with the creation or assignment of a share, a debt-claim, or a right in respect of which the income is paid is to take advantage of these Articles by means of that creation or assignment.

2. Nothing in this Article shall be construed as restricting, in any manner, the application of any provisions of the law of a Contracting State which are designed to prevent the avoidance or evasion of taxes.

ARTICLE 29

ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. The Convention shall enter into force on the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

- (a) in Korea:
 - (i) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which this Convention enters into force; and
 - (ii) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which this Convention enters into force;
- (b) in Kenya:
 - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which this Convention enters into force; and to other taxes, on income arising for years of income - beginning on or after the first day of January next following the date upon which this Convention enters into force.

ARTICLE 30

TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year from the fifth year following that in which the Convention entered into force. In such event, the Convention shall cease to have effect:

(a) in Korea:

- (i) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which the notice is given; and
- (ii) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which the notice is given;

(b) in Kenya:

- (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the calendar year in which such notice is given; and
 - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the calendar year in which such notice is given.
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Declaration of Special Arrangements for Relief from Double Taxation under section 41**THE INCOME TAX ACT-DECLARATION OF SPECIAL
ARRANGEMENTS FOR RELIEF FROM DOUBLE TAXATION**

[L.N. 139/2009]

The Cabinet Secretary responsible for Finance declares that the arrangements specified in the agreement set out in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the French Republic for the Avoidance of Double Taxation with respect to air transport in international traffic, entered into on the 12th January, 1996, shall, notwithstanding anything to the contrary in the Income Tax Act or in any other written law, have effect in relation to income tax.

SCHEDULE

The Government of the French Republic and the Government of the Republic of Kenya, desiring to conclude an Agreement for the avoidance of double taxation with respect to air transport in international traffic,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

1. For the purpose of this Agreement, unless the context otherwise requires:
 - (a) The term "person" include an individual, a company and any other body of persons;
 - (b) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (c) The term "enterprise of a Contracting State" and means respectively of the other Contracting State" an enterprise carried on by a resident of a contracting State and an enterprise carried on by a resident of the other Contracting State";
 - (d) The term "competent authority" means:
 - (i) in the case of the Republic of Kenya, the Cabinet Secretary responsible for Finance or his authorized representative;
 - (ii) in the case of the French Republic, the Cabinet Secretary in charge of the Budget or his authorized representative.
2. As regards the application of this Agreement by a contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 2

This Agreement shall apply to enterprises operating aircraft in international traffic and to employees of such enterprises, where such enterprises or employees are residents of one or both of the Contracting States.

ARTICLE 3

1. This Agreement shall apply to taxes on income imposed on behalf of the Contracting State or of its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of property, as well as taxes on capital appreciation.

ARTICLE 4

1. For the purpose of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are close (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 4 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be resident of the State in which its place of effective management is situated.

ARTICLE 5

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic, including income from activities which are incidental of such operation, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. The provisions of paragraph 1 of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.
3. For the purpose of paragraph 1, interest on funds directly connected with the operation of aircraft in international traffic shall be as income from the operation of such aircraft.
4. Gains from the alienation of aircraft operated in international traffic or movable property pertaining to the operation of such aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 6

Remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard an aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 7

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or for preventing fiscal fraud or evasion concerning taxes covered by the Agreement in so far as the taxation there under is in accordance with the Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to any persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the taxes which are subject of this Agreement.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:
 - (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Contracting State;
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 8

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date on which the later of those notifications has been received and shall have effect for income (including profits and gains) relating to taxable periods beginning on or after the first day of January following the year in which all formalities have been completed.
 2. The Agreement shall remain in force indefinitely, but either of the Contracting States may, on or before 30th June in any calendar year from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event the Agreement shall cease to have effect for income (including profits and gains) relating to taxable periods beginning on or after the first day of January in the calendar year next following that in which notice of termination is given.
 3. This Agreement may be amended by mutual consent of both parties.
 4. Any dispute which might arise in connection with the implementation or interpretation of this Agreement shall be settled through diplomatic channels, or by mutual agreement of the competent authorities who may communicate with each other directly for that purpose.
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**THE INCOME TAX ACT-DECLARATION OF SPECIAL
ARRANGEMENTS FOR RELIEF FROM DOUBLE TAXATION**

[L.N. 140/2009]

The Cabinet Secretary responsible for Finance declares that the arrangements specified in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal evasion with Respect to Taxes on Income, entered into on the 4th December, 2007, shall, notwithstanding anything to the contrary in the Income Tax Act or in any other written law, have effect in relation to income tax.

SCHEDULE

The Government of the French Republic and the Government of the Republic of Kenya, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income:

HAVE AGREED AS FOLLOWS:

ARTICLE 1

PERSONAL SCOPE

This Convention shall apply to persons who are residents of one or both of the Contracting States for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
 - (a) in the case of France:
 - (i) the income tax ("*l'impôt sur le revenu*");
 - (ii) the widespread security contributions (CSG);
 - (iii) the reimbursement of the debt of social security contributions (CRDS);
 - (iv) the corporation tax ("*l'impôt sur les sociétés*");
 - (v) the tax on salaries ("*la taxe sur les salaires*");including any withholding tax, prepayment (*precompte*) or advance payment with respect to the aforesaid taxes;
(hereinafter referred to as "*French tax*");
 - (b) In the case of Kenya, taxes on income chargeable under the Income Tax Act, (Cap. 470)
(hereinafter referred to as "*Kenyan tax*")

[Subsidiary]

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

- (a) the terms "Contracting State" and "other Contracting State" mean France or Kenya, as the context requires;
- (b) the term "France" means the European and overseas departments (*departements d'Outre-mer*) of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights;
- (c) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate, or any entity which is treated, for tax purposes, as a body corporate;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means—
 - (i) in the case of France, the Cabinet Secretary in charge of the budget or his authorised representative;
 - (ii) in the case of Kenya, the Cabinet Secretary for Finance or his authorised representative;
- (i) the term "national" means —
 - (i) any individual possessing . the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies. The meaning of a term under the applicable tax laws of that State shall have priority over a meaning given to the term under other laws of that State.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent

establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. (a) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(b) Unless it can be demonstrated that another method is more appropriate, the executive and general administrative expenses shall be determined by applying a ratio of turnover or gross profits of a permanent establishment as related to that of the enterprise as a whole.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

6. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Provided that where such an enterprise derives profits from such operation in the other Contracting State;

- (a) Such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and
- (b) The tax chargeable in that other state shall be reduced by an amount equal to fifty per cent thereof.

[Subsidiary]

3. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or the boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or the boat is a resident.

4. The provisions of paragraph I shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

5. The provisions of the agreement between the Government of the French Republic and the Government of the Republic of Kenya for the avoidance of double taxation with respect to air transport in international traffic, signed on January, 12th, 1996 shall remain in force but its provisions shall apply only to cases not covered by nor subject to the provisions of this Convention.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. (a) Dividends mentioned in paragraph 1 may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

(b) This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. A resident of Kenya who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (precompte) to the extent that it was effectively paid by the company in respect of such dividends. The gross amount of the prepayment

(precompte) refunded shall be deemed to be a dividend for the purposes of the Convention. It shall be taxable in France according to the provisions of paragraph 2. The provisions of paragraph 2 shall apply to such gross amount.

4. The term "dividend" means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income treated as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident. It is understood that the term "dividend" does not include income mentioned in Article 16.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 12 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the recipient of the interest is a resident, if such recipient is the beneficial owner of such interest, and if one of the following conditions is met;

- (a) such recipient is a Contracting State, a local authority or a statutory body thereof, including the Central Bank of that State; or such interest is paid by one of those States, local authorities or statutory bodies;
- (b) such interest is paid in respect of a debt-claim or of a loan directly or indirectly guaranteed or insured or subsidised by a Contracting State or by any other person sponsored or directly or indirectly controlled by a Contracting State.

4. The term "interest" means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures,

[Subsidiary]

including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, if such resident is the beneficial owner of the royalties.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, Or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the obligation to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13

CAPITAL GAINS

1. (a) Gains derived from the alienation of immovable property referred to in Article 6 may be taxed in the Contracting State where such immovable property is situated.

(b) Gains from the alienation of shares or other rights in a company, a trust or a comparable institution, the assets or property of which consist for more than 50 per cent of their value of, or derive more than 50 per cent of their value, directly or indirectly through the interposition of one or more other companies, trusts or comparable institutions, from immovable property referred to in Article 6 and situated in a Contracting State or of rights connected with such immovable property may be taxed in that State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or to the performance of its independent personal services shall not be taken into account.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of property forming part of the business property of an enterprise and consisting of ships or aircraft operated by such enterprise in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

[Subsidiary]

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 20 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any period of twelve consecutive months commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 16

DIRECTOR'S FEES

1. Director's fees and other similar payments derived by a resident of a Contracting State in the capacity of a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, whether a resident of a Contracting State or not, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to personal activities exercised by entertainers and athletes if those activities are supported wholly or substantially from public funds of one Contracting State, its local authorities or by one of their statutory bodies; in that case, income derived from such activities by entertainers and athletes shall be taxable only in that State.

Article 18

PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State shall be taxable only in that State.

Article 19

PUBLIC REMUNERATION

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a local authority thereof, or by one of their statutory bodies of either to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.
(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.
2. (a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof or by one of their statutory bodies of either to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.
3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and other similar remuneration, and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof, or by one of their statutory bodies. such purposes. They may disclose the information in public court proceeding or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

[Subsidiary]

- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (order public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person.

Article 26

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions, of members of consular posts, and of members of permanent missions to international organizations under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total income and capital as are residents of that State.

3. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not liable in one of the independent personal services.

2. In respect of subparagraph (b) of paragraph 1 of Article 3, it is understood that the French overseas departments ("*departements d'Outre-mer*") are: Guadeloupe, Martinique, Guyane and La Reunion.

3. In relation to article 7 (1), it is agreed that, if an enterprise of a Contracting State sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or carries out business activities of the same or similar kind as those carried out by the permanent establishment, the profits of such sales or activities may be attributed to the permanent establishment if it is demonstrated that these profits are related to the activities of the permanent establishment.

4. In respect of paragraph 3 of Article 7, it is considered that the amount of expenses to be taken into account as incurred for the purposes of the permanent establishment should be the actual one so incurred and supported by documents. Subject to this, it is agreed that, in the case of general administrative expenses incurred at the head office of the enterprise, it is appropriate to take into account a proportionate part based on the ratio that the permanent establishment's turnover bears to that of the enterprise as a whole.

5. The provisions of the Convention shall not prevent the Contracting States from applying the provisions relating to thin capitalisation in accordance with their domestic laws.

6. Each of the Contracting States shall keep the right of taxing in accordance with its domestic law any income of its residents, the taxation of which is attributed to the other Contracting

State, but which is not taken into account in the tax base in that State, in cases where such double exemption results from a divergent qualification of the income concerned.

Double Taxation Relief (Burundi, Rwanda, Uganda and the United Republic of Tanzania) Notice under section 41**THE INCOME TAX ACT-DOUBLE TAXATION RELIEF (RWANDA, UGANDA AND THE UNITED REPUBLIC OF TANZANIA) NOTICE**

[L.N. 142/2014]

The Cabinet Secretary for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Governments of the Republics of Kenya, Burundi, Rwanda, Uganda and the United Republic of Tanzania in the articles of an agreement signed on the 30th November, 2010, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Governments of the Republics of Kenya, Burundi, Rwanda, Uganda and the United Republic of Tanzania desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

HAVE agreed as follows:

Article 1**Personal Scope**

This Agreement shall apply to persons who are residents of one or any of the other Contracting States.

Article 2**Taxes Covered**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Agreement shall apply are:
 - (a) in Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, (Cap.470);
 - (b) in Tanzania, the tax on income chargeable under the Income Tax Act, Cap. 332;
 - (c) in Uganda, the tax on income chargeable under the Income Tax Act, Cap. 340;
 - (d) in Rwanda, the tax on income chargeable under the Law No. 16/2005 of 18/08/2005 on direct taxes on income and the tax on rent of immovable property as provided under Law No. 17/2005 establishing the source of revenue for districts and towns and its management; and
 - (e) in Burundi, the tax on income chargeable in accordance with the provisions of the income tax acts of 1963.

4. This Agreement shall apply to any other taxes of identical or substantially similar character which are imposed by any of the Contracting States after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

5. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

Article 3

General Definitions

1. In this Agreement, unless the context otherwise requires.

- (a) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (b) the term "competent authority" means:
 - (i) in Kenya, the Cabinet Secretary for the time being responsible for finance or his authorised representative;
 - (ii) in Tanzania, the Minister for the time being responsible for finance or his authorised representative;
 - (iii) in Uganda, the Minister for the time being responsible for finance or his authorised representative;
 - (iv) in Rwanda, the Minister for the time being responsible for finance or his authorised representative; and
 - (v) in Burundi, the Minister for the time being responsible for finance or his authorised representative;
- (c) for the time being or his authorised for the time being or his authorised the term "international traffic" means any transport by water, railway or air, operated by an enterprise which has its place of effective management in a Contracting State, except when the transport is operated solely between places within a Contracting State;
- (d) the term "national" means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;
- (e) the term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.

2. In the application of the provisions of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State in relation to the taxes which are the subject of this Agreement.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature. This term does not include any person who is liable to tax in respect only of income from sources in that State.

[Subsidiary]

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of more than one of the Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in two or more States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in any of the Contracting States, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in two or more States or none of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of two or more States or of none of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of two or more Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (h) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment likewise encompasses:

- (a) a building site or a construction, installation [other than the installations referred to in 2 (h)] or assembly project, or supervisory activities in connection therewith only if the site, project or activity lasts for more than 6 months;
- (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating more than 6 months within any 12-month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character,

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of any of the other Contracting States (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that state if:

- (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of any of the other Contracting States, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

[Subsidiary]

3. The provision of paragraph 1 of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

4. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in any of the other Contracting States through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in any of the other Contracting States through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment:

- (a) there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State; and
- (b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping, Inland Waterways, Railway And Air Transport

1. Profits of an enterprise from the operation or rental of ships, trains or aircrafts in international traffic and the rental of containers, wagons, coaches, tankers and related equipment which is incidental to the operation of ships, trains or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the contracting state in which the place of effective management of the enterprise is situated.
3. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
4. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an intern ational operating agency.

Article 9

Associated Enterprises

1. Where:
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting States, and in either case conditions are made or imposed between the enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the income of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the income of an enterprise of that State and taxes accordingly profits on which an enterprise of any of the other Contracting States has been charged to tax in that State and the profits so included are income which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on that income. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.
3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.
4. The provisions of paragraph 3 of this Article shall not apply in the case of fraud, wilful default or neglect.
5. The provisions of paragraph 2 of this Article shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an

[Subsidiary]

adjustment of profits under paragraph, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of any of the other Contracting States may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged to the beneficial owner shall be fixed at 5 percent of the gross amounts of the dividends. The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from the shares by the laws of the Contracting State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in any of the other Contracting States of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in any of the other States independent personal services from a fixed base situated there and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from any of the other Contracting States, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of any of the other Contracting States may be taxed in that other Contracting State.
2. However, subject to the provisions of paragraph 3 of this Article, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall be fixed at 10 percent of the gross amount of the interest.
3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:
 - (a) the Government, a political subdivision or a local authority of the other Contracting State; or

(b) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of any of the other Contracting States may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall be fixed at 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the Contracting State in which the royalties arise, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such

[Subsidiary]

permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Management or Professional Fees

1. Management or professional fees arising in a Contracting State which are derived by a resident of any of the other Contracting States may be taxed in that other Contracting State.

2. However, such management or professional fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where the beneficial owner of such management or professional fees is a resident of the other Contracting State, the tax so charged shall be fixed at 10 percent of the gross amount of the management or professional fees.

3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial, professional or consultancy nature not covered under any other Article of this Agreement.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the management or professional fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management or professional fees arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the management and professional fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15 shall apply.

5. Management or professional fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the management or professional fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the management or professional fees was incurred, and such management or professional fees are borne by that permanent establishment or fixed base, then such management or professional fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the management or professional fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the

payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 14

Capital Gains

1. Gains derived by a resident of, a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in any of the Contracting States may be taxed in that other Contracting State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in any of the other Contracting States for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State stays in any of the other Contracting States for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for periods exceeding in aggregate more than 122 days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.
2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants and economists.

Article 16

Dependent Personal Services

1. Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in any of the other Contracting States. If the employment is so exercised, such remuneration as is derived there from may be taxed in the State in which the employment is exercised.

[Subsidiary]

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in any of the other Contracting States shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 17

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of any of the other Contracting States may be taxed in the State in which the company is resident.

Article 18

Artistes And Sportspersons

1. Notwithstanding the provisions of Articles 7, 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his or her personal activities as such, may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his or her capacity as such accrues not to the entertainer or sportsperson himself or herself but to another person, that income may notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of any of the Contracting States or local authority.

Article 19

Pensions, Annuities and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 20, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of any of the other Contracting States, shall be taxable only in the Contracting State in which the payments arise.

2. However, such pensions and other remuneration may also be taxed in any of the other Contracting States if the payment is made by a resident of any of the other Contracting States, or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

Article 20

Remuneration And Pension In Respect Of Government Service

1. Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a political subdivision, local authority or statutory body thereof in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in any of the other Contracting States creating the funds if the services are rendered in that other State and the individual is a resident of that State and:

- (a) is a national of that State; or
- (b) did not become a resident solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a political sub-division, local authority or statutory body thereof to an individual in respect of services rendered to that State or sub-division, authority or body in the discharge of governmental functions shall be taxable only in that State.

3. The provisions of Articles 16, 11 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political sub-division, local authority or statutory body thereof.

Article 21

Professors and Teachers

1. Notwithstanding the provisions of Article 16, a professor or teacher who makes a temporary visit to any one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

Article 22

Students and Business Apprentices

A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training or who is, or immediately before being so present was, a resident of any of the other Contracting States shall be exempt from tax in the (first-mentioned State) on payments received from outside that first-mentioned State for purpose of his maintenance, education and training.

Article 23

Other Income

[Subsidiary]

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement in respect of which he is subject to tax in that State, shall be taxable only in that State.
2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in any of the other Contracting States through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

Article 24

Elimination of Double Taxation

1. Where a resident of any of the Contracting States derives income which in accordance with the provisions of this Agreement may be taxed in the other Contracting States, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Provided that such deduction shall not exceed that part of the income tax as computed before the deduction is given, which is attributable as the case may be to the income which may be taxed in that other State.
2. Where in accordance with any provision of this Agreement income derived by a resident of a Contracting State is exempt from tax in that State such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 25

Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in any of the other Contracting States to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the other States in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in any of the other Contracting States shall not be less favourably levied in that other State than the taxation levied on enterprises of any of the other States carrying on the same activities.
3. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of any of the other Contracting States, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
4. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of any of the other Contracting States any personal allowances, reliefs and deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
5. In this Article the term "taxation" means taxes which are the subject of this Agreement.

Article 26

Mutual Agreement Procedure

1. Where a person considers that the actions of one or more of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of any of the other Contracting States, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.
4. The competent authorities of the Contracting States may through consultations develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate procedures, conditions, methods and techniques to facilitate the above-mentioned actions and the implementation of the mutual agreement procedure.

Article 27

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic law of the Contracting States concerning taxes covered by this Agreement in so far as the taxation there under is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts or administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.
2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of any of the other Contracting States;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of any of the other Contracting States;

[Subsidiary]

- (c) to supply information which would disclose any trade, business, industrial, commercial [or professional secret or trade process] or information, the disclosure of which would be contrary to public policy.

Article 28

Assistance in the Collection of Taxes

1. The Contracting States agree to lend each other assistance and support with a view to the collection, in accordance with their respective laws or administrative practice, of the taxes to which this Agreement shall apply and of any administrative penalties, interests and costs pertaining to the said taxes.

2. At the request of the applicant Contracting State, the requested Contracting State shall recover tax claims of the first-mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State shall not be obliged to take any executory measures, which are not provided for in the laws of the applicant State.

3. When a tax claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that tax claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That tax claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the tax claim were a tax claim of that other State.

4. When a tax claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that tax claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that tax claim in accordance with the provisions of its Income Tax law as if the tax claim were a tax claim of that other State even if, at the time when such measures are applied, the tax claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Where, at any time after a request has been made by a Contracting State under paragraphs 3 and 4 and before the other Contracting State has collected and remitted the relevant tax claim to the first-mentioned State, the relevant tax claim shall cease to be—

- (a) in the case of a request under paragraph 3, a tax claim of the first-mentioned State that is enforceable under the law of that State and is owed by a person who, at the time, cannot, under the law of that State, prevent its collection; or
- (b) in the case of a request under paragraph 4, a tax claim of the first-mentioned State in respect of which that State may, under its law, take measures of conservancy with a view to ensuring its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

6. The requested State shall not be obliged to accede to the request:

- (a) if the applicant State has not notified the requested State that it has pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty ;
- (b) if and insofar as it considers the tax claim to be contrary to the provisions of this Agreement or of any other agreement to which both of the States are parties.

7. The Contracting State in which tax is recovered in accordance with the provisions of this Article shall forthwith remit to the Contracting State on behalf of which the tax was collected the amount so recovered.

8. The applicant State shall in any event remain responsible towards the requested State for the pecuniary consequences of acts of recovery, which have been found unjustified in respect of the reality of the tax claim concerned.

9. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the provisions of this Article.

10. In this Article the term "tax claim" means an amount owed in respect of taxes covered by this Agreement together with interest, administrative penalties and costs of collection or conservancy related to such amount.

Article 29

Diplomatic Agents and Consular Officers

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 30

Entry into Force

1. The Contracting States shall notify each other of the completion of the procedures required by their laws for entry into force of this Agreement. The Agreement shall enter into force on the date of the last of these notifications.

2. The provisions of this Agreement shall apply to income for any year of income beginning on or after the first day of January next following the date upon which this Agreement enters into force.

Article 31

Termination

1. This Agreement shall remain in force indefinitely but any of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting States written notice of termination not later than 30th June of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to have effect on income for any year of income beginning on or after the first day of January next following the calendar year in which such notice is given.

Double Taxation Relief (Canada) Notice under section 41**THE DOUBLE TAXATION RELIEF (CANADA) NOTICE**

[L.N. 111/1987]

The Cabinet Secretary for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Government of the Republic of Kenya and the Government of Canada in articles of agreement signed on the 27th April, 1983, as amended by a protocol signed on the 27th April, 1983, with a view to affording relief from double taxation in relation to income tax under the Act and any taxes of similar character imposed by the laws of Canada shall notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of Kenya and the Government of Canada:

DESIRING to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

HAVE AGREED AS FOLLOWS:

ARTICLE I***Personal Scope***

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE II***Taxes Covered***

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are, in particular—
 - (a) in the case of Canada the income taxes imposed by the Government of Canada, (hereinafter referred to as "Canadian tax").
 - (b) in the case of Kenya the income taxes imposed by the Government of Kenya, (hereinafter referred to as "Kenyan tax").

3. This Agreement shall apply also to any identical or substantially similar taxes on income and to taxes on capital which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE III

General Definitions

1. In this Agreement, unless the context otherwise requires—

- (a) (i) the term "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial waters of Canada which, under the laws of Canada, is an area within which Canada may exercise rights with respect to the sea-bed and sub-soil and their natural resources;
- (ii) the term "Kenya" used in a geographical sense, means the territory of the Republic of Kenya, including any area beyond the territorial waters of Kenya which, under the laws of Kenya, is an area within which Kenya may exercise rights with respect to the sea-bed and sub-soil and their natural resources;
- (b) the terms "a Contracting State" and "the other Contracting State" means, as the context requires, Canada or Kenya;
- (c) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;
- (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes; in French, the term "societe" also means a "corporation" within the meaning of Canadian law;
- (e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" means respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (f) the term "competent authority" means—
 - (i) in the case of Canada, the Minister for National Revenue or his authorized representative;
 - (ii) in the case of Kenya, the Cabinet Secretary for Finance or his authorized representative.
- (g) the term "tax" means Canadian tax or Kenyan tax, as the context requires but shall not include any tax which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes;
- (h) the term "national" means—
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the law in force in a Contracting State.

2. In the application of the provisions of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning Which it has under the laws of that Contracting State relating to the taxes which are the subject of the Agreement.

ARTICLE IV

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[Subsidiary]

1. For the purposes of this Agreement, the term "resident of a Contracting State" is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:
 - (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his "centre of vital interests");
 - (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then its case shall be determined in accordance with the following rules:
 - (a) it shall be deemed to be a resident of the Contracting State of which it is a national;
 - (b) if it is a national of neither of the Contracting States, the competent authorities of the Contracting States shall, by mutual agreement, endeavour to settle the question and to determine the mode of application of the Agreement to such company.
4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Agreement to such person.

ARTICLE V

Permanent Establishment

1. For the purposes of the Agreement, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a sales outlet;
 - (g) a mine, quarry, oil well or other place of extraction of natural resources;
 - (h) a building site or construction or assembly project which exists for more than six months;
 - (i) the provision of supervisory activities for more than six months on a building site or construction or assembly project;
 - (j) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. The term "permanent establishment" shall not be deemed to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprises;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person—other than an agent of an independent status to whom paragraph 5 applies—acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if:

- (a) he has, and habitually exercises in the State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in that State a stock of goods or merchandise from which he regularly fulfils orders on behalf of the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However where the activities of such an agent are devoted wholly or mainly to that enterprise he shall not be considered an agent of an independent status within the meaning of this paragraph.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

7. An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums or insures risks in that other State through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 5.

ARTICLE VI

Income from Immovable Property

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. For the purposes of this Agreement, the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The terms shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

[Subsidiary]

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

ARTICLE VII

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. If an enterprise of a Contracting State which has a permanent establishment in the other Contracting State sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such sales or services may be attributed to the permanent establishment unless they are unrelated to the activities of the permanent establishment.

3. Subject to the provisions of paragraph 4, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

4. In the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

5. Insofar as it has been customary in a Contracting State according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 3 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles of this Article.

6. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

7. For the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

8. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then, the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE VIII

Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in both Contracting States according to the law of each Contracting State:

Provided that where such an enterprise derives profits from such operation in the other Contracting State, for the purposes of taxation in that other State—

- (a) such profits shall be deemed to be an amount not exceeding six per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State;
- (b) the tax chargeable in that other State shall not exceed fifty per cent of the profits as calculated under the provisions of subparagraph (a).

3. The provisions of paragraph 1 of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

ARTICLE IX

Associated Enterprises

1. Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting States,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where profits on which an enterprise of a Contracting State has been charged to tax in the State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other State, if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the first-mentioned State. In determining such an adjustment due regard shall be had to the other provisions of this Agreement in relation to the nature of the income.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

ARTICLE X

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

[Subsidiary]

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed—

- (a) 15 per cent of the gross amount of the dividends if the recipient is a company which owns at least 10 per cent of the voting shares of the the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends;
- (b) 25 per cent of the gross amount of the dividends in all other cases.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraph 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article VII or Article XV, as the case may be, shall apply.

5. Where a company is resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Notwithstanding any provision of this Agreement—

- (a) a company which is a resident of Kenya and which has a permanent establishment in Canada shall, in accordance with the provisions of Canadian law, remain subject to the additional tax on companies other than Canadian corporations, but the rate of such tax shall not exceed 15 per cent;
- (b) a company which is a resident of Canada and which has a permanent establishment in Kenya shall remain subject to an additional rate of tax in accordance with the provisions of Kenyan law, but such additional rate shall not exceed 7.5 per cent.

ARTICLE XI

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State; but the tax so charged shall, provided that the interest is taxable in the other Contracting State, not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the government of the other Contracting State, political subdivision or local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that government, political subdivision or local authority which is exempt from tax in that other State shall be exempt from tax in the first-mentioned Contracting State. The competent

authorities of the Contracting States may be determined by mutual agreement any other governmental institution or organization to which this paragraph applies.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds, or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article X.

5. The provisions of paragraph 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated there-in, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article VII or Article XV, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE XII

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of the State but the tax so charged shall, provided that the royalties are taxable in the other Contracting State, not exceed 15 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on films or tapes for use in connection with radio or television.

4. The provisions of paragraph 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right

[Subsidiary]

or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article VII or Article XV, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by the permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE XIII

Gains from the Alienation of Property

1. Gains from the alienation of immovable property may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (along or together with the whole enterprise) or of such a fixed base may be taxed in the other State. However, gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which such property is taxable according to paragraph 3 of Article XXIII.

3. Gains from the alienation of—

- (a) shares of a company, the property of which consists principally of immovable property situated in a Contracting State, and
- (b) an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State,

may be taxed in that State. For the purposes of this paragraph the term "immovable property" includes the share of a company referred to in subparagraph (a) or an interest in a partnership or a trust referred to in subparagraph (b).

4. Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

5. The provisions of paragraph 4 shall not affect the right of either of the Contracting States to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the ten years immediately preceding the alienation of the property.

ARTICLE XIV

Management and Professional Fees

1. Management or professional fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such management or professional fees may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the management or professional fees.
3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of managerial, technical, professional or consultancy nature.
4. The provisions of paragraph 2 shall not apply if the recipient of the management or professional fees, being a resident of a Contracting State, has in the other Contracting State in which the management or professional fees arise a permanent establishment with which the management or professional fees are effectively connected; in such a case the provisions of Article VII shall apply.
5. Management or professional fees shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the management or professional fees, whether he is a resident of that State, or not has in a Contracting State a permanent establishment in connection with which the liability to pay the management or professional fees was incurred and such management or professional fees are borne by such permanent establishment, then such management or professional fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.
6. Where, owing to a special relationship between the payer and the beneficial owner of the management or professional fees or between both of them and some other person, the amount of the management or professional fees paid, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE XV***Independent Personal Services***

1. Subject to the provisions of Article XIV, income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless —
 - (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case so much of the income may be taxed in that other state as is attributable to that fixed base; or
 - (b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the calendar year concerned, in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.
2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE XVI

Dependent Personal Services

1. Subject to the provisions of Articles XVII, XVIII, XIX and XX, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if—
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

ARTICLE XVII***Directors' Fees***

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member which is a resident of the other Contracting State, may be taxed in that other State.

ARTICLE XVIII***Artistes and Athletes***

1. Notwithstanding the provisions of Articles VII, XV and XVI, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.
2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles VII, XV and XVI, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply—
 - (a) to income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is wholly or substantially supported by public funds of the other Contracting State, including any political sub-division, local authority or statutory body thereof; or
 - (b) to a non-profit organization no part of the income of which was payable to, or was otherwise available for the personal benefit, of any proprietor, member or shareholder thereof.

ARTICLE XIX***Pensions and Annuities***

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State. However, in the case of periodic pension payments, the tax so charged shall not exceed 15 per cent of the gross amount of the payment.

3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise and according to the law of that State; but the tax so charged shall not exceed 15 per cent of the gross amount of the payment. However, this limitation does not apply to lump-sum payment arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an income-averaging annuity contract.

4. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE XX

Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient did not become a resident of the State solely for the purpose of performing the services.

2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

ARTICLE XXI

Students

Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned State, provided that such payments are made to him from sources outside that State.

ARTICLE XXII

Income not Expressly Mentioned

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

ARTICLE XXIII

Taxes on Capital

1. Capital represented by immovable property may be taxed in the Contracting State in which such property is situated.

[Subsidiary]

2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE XXIV

Elimination of Double Taxation

1. In the case of Canada, double taxation shall be avoided as follows:

- (a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions—which shall not affect the general principle hereof—and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Kenya on profits, income or gains arising in Kenya shall be deducted from any Canadian tax payable in respect of such profits, income or gains,
- (b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions which shall not affect the general principle hereof—for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Kenya.

2. In the case of Kenya, double taxation shall be avoided as follows:

Subject to the provisions of the law of Kenya regarding the allowances as a credit to a resident of Kenya against Kenyan tax of tax payable in a territory outside Kenya, tax payable under the laws of Canada, whether directly or by deduction, in respect of profits, income or gains, from sources within Canada shall be allowed as a credit against any Kenyan tax payable in respect of such profits, income or gains, provided that such credit shall not exceed the Kenyan tax, computed before allowing any such credit, which is appropriate to the income derived from Canada.

3. For the purposes of paragraph 1 (a), tax payable in Kenya by a resident of Canada—

- (a) in respect of profits attributable to a trade or business carried on by it in Kenya;

shall be deemed to include any amount which would have been payable as Kenyan tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under—

- (b) any of the following provisions, that is to say—
 - (i) paragraph 24 of the Second Schedule to the Income Tax Act, 1973;
 - (ii) paragraph 2(b) of the Third Schedule to the Income Tax Act, 1973;

so far as they were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; and except to the extent that any of the said provisions has the effect of exempting or relieving a source of income for a period in excess of ten years;

- (c) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States

to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

4. Where a resident of Kenya is exempt from tax in Kenya in respect of income derived from Canada, then Kenya may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax had not been so exempted.

5. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other State.

ARTICLE XXV

Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

5. In this article, the term "taxation" means taxes which are the subject of this Agreement.

ARTICLE XXVI

Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Agreement.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

3. A Contracting State shall not, after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the taxable period in which the income concerned has accrued, increase the tax base of a resident of either of the Contracting States

[Subsidiary]

by including therein items of income which have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

4. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree—

- (a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;
- (b) to the same allocation of income between a resident of a Contracting State and any associated person provided for in Article IX.

5. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Agreement.

ARTICLE XXVII

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement and of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is in accordance with this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation—

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

ARTICLE XXVIII

Diplomatic and Consular Officials

1. Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic or consular missions under the general rules of international law or under the provisions of special agreements.

2. This Agreement shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world income as are residents thereof.

ARTICLE XXIX

Miscellaneous Rules

1. Nothing in this Agreement shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada according to section 91 of the Canadian Income Tax Act.

2. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Agreement.

ARTICLE XXX

Entry into Force

Each of the Contracting States shall take all measures necessary to give this Agreement the force of law within its jurisdiction and each shall notify the other of the completion of such measures. This Agreement shall enter into force on the date on which the later notification is made and shall thereupon have effect—

- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year in which the Agreement enters into force; and
- (b) in respect of other tax for any year of income or any taxation year beginning on or after the first day of January in the calendar year in which the Agreement enters into force.

ARTICLE XXXI

Termination

This Agreement shall continue in effect indefinitely but either Contracting State may, on or before 30th June in any calendar year beginning after the expiration of five years from the date of its entry into force, give notice of termination to the other Contracting State and in such event this Agreement shall cease to have effect—

- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and
- (b) in respect of other tax for any year of income or any taxation year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

Protocol

At the moment of signing the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital, this day concluded between Canada and the Republic of Kenya, the following provisions shall form an integral part of the Agreement:

1. With reference to paragraph 4 of Article VII, it is understood that no deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment. Like-wise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
2. With reference to paragraph 2 of Article X of this Agreement, it is understood that:
 - (a) If a Convention or an Agreement for the Avoidance of Double Taxation comes into force after the date of signature of this Agreement, between Kenya and one of the countries specified in subparagraph (b), wherein provisions are made for a higher rate of Kenyan tax on dividends from substantial holdings than that provided for in subparagraph 2

[Subsidiary]

- (a) of Article X, then the provisions of subparagraphs (c) and (d) shall apply instead of the provisions of paragraph 2 of Article X of this Agreement.
- (b) For the purposes of subparagraph (a) the countries specified are Belgium, the Federal Republic of Germany, France, Italy, Japan, the United Kingdom and the United States.
- (c) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may also be taxed in the Contracting State of which the company paying the dividends is a resident; and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed the lesser of (i) 20 per cent of the gross amount of the dividends, and (ii) the rate specified in subparagraph (d).
- (d) For the purposes of subparagraph (c) the rate specified is the highest rate of Kenyan tax applicable to dividends from substantial holdings under the provisions of any Convention or Agreement referred to in subparagraph (a).
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Double Taxation Relief (India) Notice under section 41**THE INCOME TAX ACT-THE DOUBLE TAXATION RELIEF (INDIA) NOTICE**

[L.N. 61/1989]

The Cabinet Secretary responsible for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Government of the Republic of Kenya and the Government of India in the articles of an agreement signed on the 12th April, 1985, with a view to affording relief from double taxation in relation to income tax and any, taxes of similar character imposed by the laws of India, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of India desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

HAVE AGREED AS FOLLOWS:

Article 1**Personal Scope**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2**Taxes Covered**

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are, in particular—

(a) in the case of India—

the income tax including any surcharge thereon imposed under the Income Tax Act, 1961 (43 of 1961); and the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) hereinafter referred to as "Indian Tax");

(b) in the case of Kenya-

the income taxes imposed under the Income Tax Act (Cap. 470), hereinafter referred to as "Kenyan Tax".

4. This convention shall apply also to any identical or substantially similar taxes on income which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes.

The contracting states shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3

General Definitions

1. In this Convention unless the context otherwise requires—

- (a) the term "Kenya" means the Republic of Kenya, including any area outside the territorial waters of Kenya which, in accordance with international law, has been or may be designated, under the laws of Kenya concerning the Continental Shelf, as an area over which Kenya may exercise sovereign rights with respect to the exploration for and exploitation of natural resources;
- (b) the term "India" means the territory of India and includes the territorial sea and airspace above it as well as any other maritime zone referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976), in which India has certain rights and to the extent that these rights can be exercised therein as if such maritime zone is a part of the territory of India;
- (c) the terms "a Contracting States" and "the other Contracting State" mean Kenya or India as the context requires;
- (d) the term "tax" means Kenyan tax or Indian tax as the context requires, but shall not include any tax which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;
- (e) the term "person" means an individual, a company and any other body of persons treated as an entity for tax purposes;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms "Kenyan enterprise" and "Indian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Kenya and an industrial or commercial enterprise or undertaking carried on by a resident of India and the term "enterprise of a Contracting State" means a Kenya enterprise or an India enterprise, as the context requires;
- (h) the term "national" means an individual possessing the nationality of Kenya or India as the case may be and all legal persons, partnerships and associations deriving their status as such from the law in force in Kenya or India as the case may be;
- (i) the term "competent authority" means—
 - (a) in the case of Kenya, the Cabinet Secretary of Finance or his authorized representative;
 - (b) in the case of India the Cabinet Secretary of Finance (Department of Revenue);
- (j) the term "international traffic" means any voyage of a ship or aircraft operated by an enterprise of a Contracting State, except where the voyage is confined solely to places within the other Contracting State.

2. In the application of the provisions of this Convention by a Contracting State any terms not otherwise defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of the present Convention.

Article 4**Fiscal Domicile**

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his residential status shall be determined in accordance with the following rules—

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (hereinafter referred to as his "centre of vital interests");
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in either of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a company is a resident of both Contracting States, then this case shall be determined in accordance with the following rules—

- (a) it shall be deemed to be a resident of the Contracting State of which it is a national;
- (b) if it is a national of neither of the Contracting States, then it shall be deemed to be a resident of the Contracting States in which its place of effective management is situated.

4. Where by reason of the provisions of paragraph 1, a person other than an individual or a company is a resident of both Contracting States, it shall then be deemed to be a resident of the Contracting States in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

1. For the purpose of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) mine, oil well, quarry or other place of extraction of natural resources;
- (g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;
- (h) a building site or construction or assembly project which exists for more than six months;
- (f) the provision of supervisory activities for more than six months on a building site or construction or assembly project.

3. The term "permanent establishment" shall not be deemed to include—

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

[Subsidiary]

- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collection of information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have preparatory or auxiliary character for the enterprise.

4. A person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State, other than an agent of an independent status to whom the provisions of paragraph 6 apply, shall be deemed to be a permanent establishment in the first mentioned State if-

- (a) he has, and habitually exercises in that State, an authority to conclude contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or Merchandise for the enterprise; or
- (b) he maintains in that first mentioned State a stock of goods or merchandise belonging to that enterprise from which he regularly fulfils orders on behalf of that enterprise.

5. An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph 6.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, where the Activities of such an agent are devoted wholly or almost wholly on behalf, of that enterprise he would not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company, a permanent establishment of the other.

Article 6

Income from Immovable Property

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. For the purposes of this Convention, the term "immovable property" shall be defined in accordance within the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property, apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral, deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services:

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be traced in the other State but only so much of them as is attributable to (a) that permanent establishment (b) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to the permanent establishment the profit which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is the permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. In so far as it has been customary in a Contracting State, according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

5. No portion of any profits arising to an enterprise of a Contracting State shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase of goods or merchandise within that other State for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. The provisions of paragraph 1 of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting

[Subsidiary]

State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

3. For the purpose of paragraph 1, interest on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft, and the provisions of Article 12 shall not apply in relation to such interest.

Article 9

Shipping

1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in both Contracting States according to the law of each Contracting State:

Provided that where such an enterprise derives profits from such operation in the other Contracting State—

- (a) such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State;
- (b) the tax chargeable in that other State shall be reduced by an amount equal to 50 per cent thereof.

ARTICLE 10

Associated Enterprises

1. Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other State, if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment due regard shall be had to the other provisions of this convention in relation to the nature of the income.

Article 11

Dividends

1. Dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient

is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount.

3. The term "dividends" as used in this Article means income from shares or other rights not being debt-claims, participating in profits as well as income from other corporate rights assimilated to income from shares or any other item which is deemed to be a dividend of distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraph 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated there, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 16, as the case maybe, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to resident of that other state or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other. State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 12

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State:

2. However, such interest may be taxed in the Contracting State which it arises, and according to the law of that State, but the tax so charged in the Contracting State in which the interest arises shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State or local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that Government or local authority, shall be exempt from tax of the first mentioned Contracting State. The competent authorities of the Contracting State may determine on mutual agreement any other governmental institution to which this paragraph shall apply:

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures; whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraph 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7, or Article 16, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the, payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however,

[Subsidiary]

the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount, in that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such, royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax, so charged in the Contracting State in which the royalties arise shall not exceed 20 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein; or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are is effectively connected, with, such permanent establishment or fixed base: In such a case, the provisions of Article 7 or Article 16, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 14

Capital Gains

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6 may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Notwithstanding the provisions of paragraph 2 gains by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.
4. Gains from the alienation of—
 - (a) shares of a company the property of which consists principally of immovable property situated in a Contracting State; and
 - (b) interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. For the purpose of this paragraph the term "immovable property" includes the shares of a company referred to in subparagraph (a) or an interest in a partnership or a trust referred to in subparagraph (b).
5. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs 1, 2, 3 and 4 shall be taxable only in that State.

Article 15

Management and Professional Fees

1. Management or professional fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such management or professional fees may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 17% per cent of the gross amount of the management or professional fees.
3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical, professional or consultancy nature.
4. The provisions of paragraph 2 shall not apply if the recipient of the management or professional fees, being a resident of a Contracting State, has in the other Contracting State in which the management or professional fees arise a permanent establishment with which the services giving rise to the management or professional fees are effectively connected. In such a case the provisions of Article 7 shall apply.
5. Management or professional fees shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the management or professional fees, whether he is a resident of that State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the management or professional fees was incurred and such management or professional fees are borne by such permanent establishment, then such management or professional fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.
6. Where, owing to a special relationship between the payer and the beneficial owner of the management or professional fees or between both of them and some other person, the

[Subsidiary]

amount of the management or professional fees paid, having regard to the service for which they are paid, exceeds the amount which would have been in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 16

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless—
 - (a) he has a fixed base regularly available to him in the other Contracting State for the purposes of performing his activities, in which case so much of the income may be taxed in that other State as is attributable to that fixed base; or
 - (b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the calendar year concerned in the case of Kenya or the previous year concerned in the case of India, in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.
2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists, and accountants.

Article 17

Dependent Personal Services

1. Subject to the provisions of Articles 18, 19, 20, 21, 22 and 23, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such, remuneration as is derived therefrom may be taxed in the other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if—
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
 - (b) the remuneration is paid by, or on behalf of an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship, or aircraft in international traffic, may be taxed only in the Contracting State in which the place of effective management of the enterprise is

ARTICLE 18

Director Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 19

Artistes and Athletes

1. Notwithstanding the provisions of Articles 7, 16 and 17, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised
2. Notwithstanding anything contained in this Convention, where the services of a public entertainer or an athlete mentioned in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived by that enterprise from providing those services may be taxed in the first-mentioned State.
3. The provisions Of paragraphs 1 and 2 shall not apply to services of public entertainers and athletes, if their visit to a Contracting State is supported wholly or substantially from public of the other Contracting State.

Article 20***Government Service***

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or political subdivision or local authority thereof shall be taxable only in that State.
(b) However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient did not become a resident of that State solely for the purpose of performing the services.
2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

Article 21***Pensions***

1. Any pension (other than a pension of the kind referred to in paragraph (2) of this Article) and any annuity from sources within a Contracting State by an individual who is a resident of the other Contracting State by an individual who is a resident of the other Contracting State may be taxed in the first-mentioned Contracting State but if the individual is subject to tax in the other Contracting State in respect of the pension or annuity the tax so charged in the first-mentioned Contracting State shall not exceed the lower of—
 - (a) 5 per cent of the pension or annuity; or
 - (b) the amount of tax chargeable on the pension or annuity in the other Contracting State.
2. Pensions paid by, or out of funds created by, a Contracting State to an individual for services rendered to that Contracting State in the discharge of governmental functions may be taxed only in that Contracting State.
3. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 22***Students and Apprentices***

1. A student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training shall be exempt from

[Subsidiary]

tax in the first-mentioned Contracting State on payments made to him by persons residing outside that first-mentioned Contracting State for the purposes of his maintenance, education or training.

2. The benefits of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years.

ARTICLE 23

Professors and Teachers

1. A professor or teacher who visits a Contracting State for a period not exceeding one year for the purpose of teaching or conducting research at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before such visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research in respect of which he is subject to tax in the other Contracting State. However, any remuneration for such work received from sources outside the State shall not be deductible in the first-mentioned State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 24

Income not expressly mentioned

1. Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention in respect of which he is subject to tax in that State shall be taxable only in that State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

ARTICLE 25

Method of Elimination of Double Taxation

1. The laws in force in either of the Contracting State will continue to govern the taxation of income in the respective Contracting states except where provisions to the contrary are made in this Convention.

2. (a) The amount of Kenyan tax payable, under the laws of Kenya and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of income from sources within Kenya which has been subjected to tax both in India and in Kenya, shall be allowed as a credit against the Indian tax payable in respect of such income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the income derived from sources within Kenya; so, however, that where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income tax payable by the company in India, and as to the balance, if any, against surtax payable by it in India;

(b) For the purposes of the credit referred to in subparagraph (a) above, the term "Kenyan tax payable" shall be deemed to include any amount which would have been payable as Kenyan tax any year but for (i) any investment deduction granted under paragraph 24 of the Second Schedule to the Income Tax Act, Cap. 470; (ii) the lower Corporation rate of income tax provided by paragraph 2 (b) of the Third Schedule to the Income Tax Act, Cap. 470; (iii) any other provisions which may subsequently be enacted granting

an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purpose of economic development.

3. (a) The amount of Indian tax payable, under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Kenya, in respect of income from sources within India which has been subjected to tax both in India and Kenya, shall be allowed as a credit against Kenyan tax payable in respect of such income provided that such credit shall not exceed the Kenyan tax (as computed before allowing any such credit) which is appropriate to the income derived from sources within India;
- (b) For the purposes of the credit referred to in subparagraph (a) above, the term "Indian tax payable" shall be deemed to include any amount by which Indian tax has been reduced by the special incentive measures set forth in the following sections of the Income Tax Act, 1961—
 - (a) sections 10 (4), 10 (4A), 10 (6) (viiia), 10 (15) (iv), 10A, 32A, 33A, 35B, 35CC, 80HH, 80I, 80K, 80L; and
 - (b) any other provisions which may subsequently be enacted granting a deduction from taxable income or exemption from or reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development
4. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State then the first-mentioned Contracting State may, in calculating tax on the remaining income of that person apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted.

ARTICLE 26

Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
5. In this Article the term "taxation" means taxes which are the subject of this Convention.
6. Notwithstanding the provisions of the foregoing paragraphs, a company which is a resident of India and which has a permanent establishment in Kenya shall remain subject to an additional rate of tax in accordance with the provisions of Kenyan law, but such additional rate shall not exceed 7.5 per cent. However, such a company will not be subjected to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

Article 27

Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding remedies provided by the national laws of those States, present his case to the competent authority of the State of Which he is a resident. The case must be presented within three years of the date of such action or the latest of such actions as the case may be.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation, in cases not provided for in this Convention.

4. The competent authorities of the Contracting States may communicate directly with each other for the purposes of applying the provisions of this Convention. When it seems advisable in order to reach agreement to have an oral exchange of opinion, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

Article 28

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or for preventing fraud or fiscal evasion concerning taxes covered by this Convention in so far as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligations—

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 29

Diplomatic and Consular Officials

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

Article 30

Entry into Force

1. This Convention shall come into force on the date when the last of all such things shall have been done in India and Kenya as are necessary to give the Convention the force of law in India and Kenya respectively.
2. The Contracting States shall notify each other of the completion of the requirements mentioned in paragraph 1 of this Article. The exchange of diplomatic notes certifying that this requirement has been completed shall take place at Nairobi.
3. Upon the exchange of such diplomatic notes, this Convention shall have effect:
 - (a) In Kenya-
 - (i) in respect of taxes withheld at the source on amounts paid or credited to non-residents on or after 1st January, in the calendar year following the year in which all the required formalities are completed;
 - (ii) in respect of other taxes on income arising for the year of income commencing on or after the 1st January, in the calendar year in which all the required formalities are completed.
 - (b) In India, in respect of income assessable for any assessment year commencing on or after 1st day of April, in the year in which all the required formalities are completed.

ARTICLE 31**Termination**

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and in such event, this Convention shall cease to have effect :

- (a) In Kenya-
 - (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the 1st day of January, in the calendar year next following that in which the notice is given;
 - (ii) in respect of other tax on income arising for the year of income next following that in which the notice of termination is given, and subsequent years.
 - (b) In India, in respect of income assessable for the assessment year commencing on the 1st day of April, in the second calendar year next following the calendar year in which the notice is given, and subsequent years.
-

Double Taxation Relief (Iran) Notice under section 41**THE INCOME TAX ACT-DOUBLE TAXATION RELIEF (IRAN) NOTICE**

[L.N. 60/2014]

The Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Government of the Islamic Republic of Iran in the articles of an agreement signed on the 29th May, 2012 with a view to affording relief from double taxation in relation to income tax and any other taxes of similar character imposed by the laws of Iran, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of Islamic Republic of Iran desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

HAVE AGREED AS FOLLOWS:

ARTICLE 1***Personal Scope***

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2**Taxes Covered**

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State or its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on income from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
 - (a) in the case of the Islamic Republic of Iran;
 - (i) the income tax;
 - (ii) the property tax.
 - (b) in the case of the Republic of Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, Chapter 470 of the Laws of Kenya.
4. The Agreement shall apply also to any identical or substantially similar taxes, which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other within a reasonable period of any changes, which have been made in their respective taxation laws.

ARTICLE 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires, the meanings of the terms are as follows:

- (a) (i) the term "Islamic Republic of Iran" means the territory under the sovereignty and/or jurisdiction of the Islamic Republic of Iran;
- (ii) the term "Kenya" means all territory of Kenya in state boundaries including internal and territorial waters and also special economics, one and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law.
- (b) the term "person" means:
 - (i) an individual;
 - (ii) a company or any other body of persons;
- (c) the term "company" means anybody corporate or any entity, which is treated as a body corporate for tax purposes;
- (d) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between the places in the other Contracting State;
- (f) the term "competent authority" means:
 - (i) in the case of the Islamic Republic of Iran, the Cabinet Secretary of Economic Affairs and Finance or his authorized representative;
 - (ii) in the case of the Republic Kenya, the Cabinet Secretary for Finance or his authorized representative.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

ARTICLE 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his residence, domicile, place of effective management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or any local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

[Subsidiary]

- (b) if the State in which he has his center of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if his status cannot be determined under the provisions of subparagraph (c), the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of the provisions of paragraph 1 of this Article, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (h) an installation or structure used for the exploration or exploitation of natural resources.

3. The term "permanent establishment" also encompasses:

- (a) a building site, a construction, assembly or installation, project or supervisory activities in connection therewith, constitutes a "permanent establishment" but only where such site, project or activities continue for a period of more than twelve months.
- (b) the furnishing of services, including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or connected project for a period or periods aggregating more than 183 days within any 12 month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on for the enterprise, any other activity of a preparatory or auxiliary character;

- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State shall be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources including oil, gas and quarries. Ships, boats, aircraft or road vehicles and railway shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article, shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 of this Article, shall also apply to the income from immovable property of an enterprise and to the income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses including executive and general administrative expenses, insofar as they are incurred for the purposes of the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not allowed as a deduction under the taxation laws of that State.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. The profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

International Traffic

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State, in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits derived by an enterprise of a Contracting State from the participation in a pool, a joint business or an international operating agency, but only so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

ARTICLE 9

Associated Enterprises

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State,

and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary consult each other.

3. A Contracting State shall not charge the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the limits provided in its national laws.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the resident of the other Contracting State and the beneficial owner of the dividends the tax so charged shall not exceed 5 percent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" in this Article means income from shares, "Jouissancet" shares or "Jouissance" rights, founders'shares or other rights (not being debt-claims, participating in profits), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the

[Subsidiary]

dividends paid by the company, (except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State) nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

4. Notwithstanding the provisions of paragraph 2 interest arising in a Contracting State and derived by the Government of the other Contracting State or ministries, local authorities or municipalities thereof, other institutions wholly owned by that Government, the Central Bank of the Islamic Republic of Iran and the Central Bank of Kenya shall be exempt from tax in the first-mentioned State.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated there in, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films, or films or tapes or discs used for radio and television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience or for the use of, or the right to use, industrial, commercial or scientific equipment.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority thereof or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the right or property giving rise the royalties is effectively connected to, and such royalties are borne by such permanent establishment or fixed base then, such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right to use or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, with due regard to the other provisions of this Agreement.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.
3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterway transport or movable property pertaining to the operation of

[Subsidiary]

such ship, aircraft or boat, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights, in a company or any other legal entities, the assets of which directly or indirectly consist mainly of immovable property situated in the other Contracting State may be taxed in that other Contracting State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) If he has a fixed base available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days within any twelve-month period commencing or ending in the fiscal year/year of income concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, engineers, technicians, experts, lawyers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20 of this Agreement, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State in which the employment is exercised.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year/year of income concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration paid by an enterprise of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed only in that Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 17

Artistes And Sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sports person from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.
2. Where income in respect of personal activities exercised by an entertainer or a sports person in his capacity as such accrues not to the entertainer or sports person himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sports person are exercised.
3. The provisions of paragraphs 1 and 2, shall not apply to the income derived by an entertainer or a sports person from the activities performed within the framework of the cultural agreement concluded between the Contracting States.

ARTICLE 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration arising in a Contracting State and paid to a resident of a Contracting State in consideration of past employment may be taxed only in that Contracting State.
2. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other Contracting State or a permanent establishment situated therein.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under public schemes which are parts of the social security system of a Contracting State, a political subdivision or a local authority thereof shall be taxable only in that Contracting State.

ARTICLE 19

Government Services

- (1) (a) Salaries, wages and other similar remuneration paid by a Contracting State, a political subdivision or local authority thereof to an individual in respect of services rendered to that State, a political subdivision or local authority shall be taxable only in that Contracting State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
 - (i) is a national of that other Contracting State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

[Subsidiary]

2. Any pension paid by, or out of funds created by, a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, a political subdivision or local authority shall be taxable only in that Contracting State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision or a local authority thereof.

ARTICLE 20

Teachers, Students And Researchers

1. Payments which a student or business apprentice who is a national of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other Contracting State, provided that such payments arise from sources outside that other State.
2. Likewise, remuneration received by a teacher or by an instructor who is a national of a Contracting State and who is present in the other Contracting State for the purpose of teaching or engaging in scientific research for a period or periods not exceeding two years shall be exempted from tax in that other Contracting State, provided that such payments arise from sources outside that other State.
3. This paragraph shall not apply to remuneration and income from research if such research is undertaken for persons and enterprises with business purposes.

ARTICLE 21

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs independent personal services from a fixed base situated therein, and the right or property in respect of which the income is derived is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 22

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other Contracting State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other Contracting State.
3. Capital represented by ships or aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 23

Elimination Of Double Taxation

1. In the case of the Islamic Republic of Iran, double taxation shall be avoided as follows:

- (a) Where a resident of the Islamic Republic of Iran derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Republic of Kenya, the Islamic Republic of Iran shall allow:
 - (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Republic of Kenya;
 - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the Republic of Kenya.

Such deduction in either case shall not, however, exceed that part of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital.

- (b) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of the Islamic Republic of Iran is exempted from tax in that State, the Islamic Republic of Iran may notwithstanding the exemption, in calculating the amount of tax on the remaining income or capital of such resident take into account the exempted income or capital.

2. In the case of the Republic of Kenya, double taxation shall be avoided as follows:

- (a) where a resident of Kenya derives income or own capital which, in accordance with the provisions of this Agreement, may be taxed in the Islamic Republic of Iran, Kenya shall allow as a credit against the tax on the income or capital of that resident an amount equal to the tax paid in the Islamic Republic of Iran.

Such credit, however, shall not exceed that portion of the tax as computed before the credit is given, which is attributable, as the case may be, to the income which may be taxed in the Islamic Republic of Iran.

- (b) Where in accordance with any provision of the agreement, income derived by a resident of Kenya is exempt from tax in Kenya, Kenya may nevertheless, in calculating the amount of tax on the remaining income of such resident take into account the exempted income.

ARTICLE 24

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances, in particular with respect to residence, are or maybe subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

3. Enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State shall not be subjected in the first-mentioned State to any taxation or any requirement connected

[Subsidiary]

therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

These provisions shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of personal status or family responsibilities which it grants to its own residents.

ARTICLE 25

Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

3. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, may develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities including courts and administrative bodies involved in the assessment

or collection of, the enforcement or prosecution in respect of or the determination of appeals in relation to the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures against the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy. (order public)

ARTICLE 27

Members Of Diplomatic Missions And Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

Entry Into Force

1. This Agreement shall be ratified in either of the Contracting State in accordance with their laws and regulations and the instruments of ratification shall be exchanged as soon as possible.

2. The Agreement shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

- (a) In the Islamic Republic of Iran in respect of taxes on income arising, or capital owned, in any fiscal year beginning on or after the first day of Farvardin (in the Republic of Kenya corresponding to March 21) next following the calendar year in which the Agreement enters into force;
- (b) In the Republic of Kenya in respect of taxes on income arising, or capital owned, in any year of income beginning on or after the first day of January (in the Islamic Republic of Iran corresponding to Dec 11) next following the calendar year in which the Agreement enters into force.

ARTICLE 29

Termination

This Agreement shall remain in force until it is terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect in respect of any portion of the income and capital that exist or are earned at the beginning of or after the calendar year following the year in which the notice has been given.

Double Taxation Relief (Italy) Notice under section 41**THE INCOME TAX ACT-THE DOUBLE TAXATION RELIEF (ITALY) NOTICE**

[L.N. 79/2017]

The Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Italian Republic in the articles of a convention set out in the Schedule and signed on the 15th October, 1979 with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the Italian Republic desiring to conclude a Convention to avoid double taxation and to prevent fiscal evasion with respect to taxes on income;

HAVE AGREED upon the following measure:

Article 1**Personal Scope**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2**Taxes Covered**

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Convention shall apply are, in particular:
 - (a) In the case of Kenya;
 - (i) the income tax;(hereinafter referred to as Kenyan tax")
 - (b) In the case of Italy;
 - (i) the personal income tax (*l'imposta sul reddito delle persone fisiche*);
 - (ii) the corporate income tax (*l'imposta sul reddito delle persone giuridiche*); even if they are collected by withholding taxes at the source (hereinafter referred to as "Italian tax").
4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

Article 3

General Definitions

1. In this Convention, unless the context otherwise requires:

- (a) the term "Kenya" means the Republic of Kenya, including any area outside the territorial waters of Kenya which, in accordance with international law, has been or may be designated, under the laws of Kenya concerning the Continental Shelf as an area over which Kenya may exercise sovereign rights with respect to the exploration for and exploitation of natural resources;
- (b) the term "Italy" means the Republic of Italy including any area beyond the territorial waters of Italy; specifically it includes the sea-bed and the sub-soil contiguous to the territory of the Peninsula and the Italian Islands situated beyond the territorial waters within bounds indicated by the Italian law on the exploration and the exploitation of their natural resources;
- (c) the terms "a Contracting State" and "the other Contracting State" means Kenya or Italy as the context requires;
- (d) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "International traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "national means":
 - (i) any individual possessing the nationality of a Contracting State,
 - (ii) any legal person partnership or association deriving its status as such from the law in force in a Contracting State,
- (i) The term "competent authority" means:
 - (i) in the case of Kenya, the Cabinet Secretary or his authorised representative,
 - (ii) in the case of Italy, the Ministry of Finance.

2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State, relating to the taxes which are the subject of the Convention.

Article 4

Fiscal Domicile

1. For the purpose of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States then this case shall be determined in accordance with the following rules:

- (a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. For the purpose of this Article, a permanent home shall be where he dwells with his family. If he has a permanent home available to him

[Subsidiary]

- in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);
- (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, quarry, oil well or other place of extraction of natural resources;
 - (g) a building site or construction or assembly project which exists for more than 6 months;
 - (h) the provision of supervisory activities for more than 6 months on a building site or construction or assembly project;
 - (i) a farm or plantation.
3. The term "permanent establishment" shall not be deemed to include—
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person - other than an agent of an independent status to whom paragraph 5 applies - acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if—

- (a) he has, and habitually exercise in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in that State of stock of goods or merchandise from which he regularly fulfils orders on behalf of the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However where the activities of such an agent are devoted wholly or almost wholly to that enterprise he shall not be considered an agent of an independent status within the meaning of this paragraph.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. For the purpose of this Convention the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. If an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed

[Subsidiary]

to the permanent establishment unless it is established that such sales or services are not attributable to the activity of the permanent establishment.

3. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

4. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere but this does not include any expenses which, under the law of that State, would not be allowed to be deducted by an independent enterprise of that State engaged in the same or similar activities.

5. Insofar as it has been customary in the Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 3 shall preclude that Contracting State from determining the profits to be taxed by apportionment as may be customary: the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied in this Article.

6. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

7. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

8. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits from the operation of ships in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

However, such profits may be taxed in the other Contracting State, but the tax so charged shall be reduced by fifty percent.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is not such home harbour, in the Contracting State of which the operator of the ship is a resident.

4. The provisions of paragraphs 1 and 2 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

Article 9

Associated Enterprises

Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises. then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10

Dividends

1. Dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
 - (a) 15 per cent of the gross amount of the dividends if the recipient is a company which owns at least 25 per cent of the voting shares of the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends;
 - (b) 20 per cent of the gross amount of the dividends' in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights including any other item which is deemed to be a dividend or distribution of a company which is subjected to the same taxation treatment as income from shares by the taxation law of that State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State carries on in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the dividends are taxable in that other Contracting State according to its own law.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

[Subsidiary]

6. Notwithstanding any provision of this Convention:

a company which is a resident of Kenya and which has a permanent establishment in Kenya shall remain subject to an additional rate of tax in accordance with the provisions of Kenya Law. but such additional rate shall not exceed 7.5 per cent.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term -interests used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation of the State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case the interest is taxable in that other Contracting State according to its own laws.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or an administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provision of this Convention.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State; but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on films or tapes for use in connection with radio or television.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the royalties are taxable in that other Contracting State according to its own laws.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or an administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to other provisions of this Convention.

Article 13

Gains from the Alienation of Property

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base may be taxed in the other State. However, gains from the alienation of ships and aircraft operated in international traffic and of movable property pertaining to the operations of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management is situated.

3. Gains from the alienation of

- (a) shares of a company, the property of which consists principally of immovable property situated in a Contracting State, and
- (b) an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

4. Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

[Subsidiary]

5. The provisions of paragraph 4 shall not affect the right of either of the Contracting States to levy, according to its law, a tax of gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the seven years immediately preceding the alienation of the property.

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of a similar character shall be taxable only in that State unless:

- (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case so much of the income may be taxed in that other State as is attributable to that fixed base; or
- (b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the taxable year concerned, in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State, may be taxed in that other State.

Article 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.
2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is wholly or substantially supported by public funds of the other Contracting State, including any political or administrative subdivision, local authority or statutory body thereof.

ARTICLE 18***Pensions and Annuities***

1. Subject to the provisions of paragraph 2 of Article 19 pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State, but in the case of periodic pension payments, the tax so charged shall not exceed 5 per cent of the gross amount of the payment.
3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State; but the tax so charged shall not exceed 5 percent of the gross amount of the payment.

Article 19***Governmental Functions***

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political or an administrative subdivision or a local authority thereof to any individual in respect of services rendered to that state or subdivision or local authority thereof shall be taxable only in that State.
(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that other Contracting State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of performing the services.
2. Any pension paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration or pension in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political or an administrative subdivision or a local authority thereof

ARTICLE 20***Students***

1. Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned State. provided that such payments are made to him from sources outside that State.

2. The benefits of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years.

Article 21***Teachers***

1. A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a University, College, School or other Educational Institution in that Contracting State and who is, or was immediately before such visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research in respect of which he is subject to tax in the other Contracting State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 22***Income Not Expressly Mentioned***

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

Article 23***Elimination of Double Taxation***

1. In the case of Kenya, double taxation shall be avoided as follows—

Subject to the provisions of the law of Kenya regarding the allowance as a credit to a resident of Kenya against Kenyan tax of tax payable in a territory outside Kenya, tax payable under the laws of Italy and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Italy shall be allowed as a credit against any Kenyan tax payable in respect of that income; provided that such credit shall not exceed the Kenyan tax, computed before allowing any such credit, which is appropriate to the income derived from Italy.

2. In the case of Italy, double taxation shall be avoided as follows:-

If a resident of Italy owns items of income which are taxable in the Republic of Kenya, Italy, in determining its income taxes specified in Article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific

provisions of this Convention otherwise provide. In such a case. Italy shall deduct from the taxes so calculated the Kenyan tax on income paid in Kenya but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

On the contrary no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with the Italian law.

3. For the purpose of paragraphs 1 and 2 of this Article where tax on business profits arising in a Contracting State is exempted or reduced for a limited period of time in accordance with the laws of that State, such tax which has been exempted or reduced shall be deemed to have been paid at an amount not exceeding 25% of the business profits referred to under Article 7.

ARTICLE 24

Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

In particular, nationals of a Contracting State who are taxable in the other Contracting State shall, if they are residents of that other Contracting State, receive any personal allowances, reliefs and reductions for taxation purposes on account of civil status which that other Contracting State grants to its residents, but no otherwise.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Enterprises of a Contracting State, that capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4. In this Article the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 25

Mutual Agreement Procedure

Where a resident of a Contracting State considers that the actions of one or both of the Contracting State result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The claim must be lodged within two years from the date of the assessment or of the withholding of tax at the source whichever is the later.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement

[Subsidiary]

with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States or preventing fraud or fiscal evasion concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 27

Diplomatic and Consular Officials

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of International law or under the provisions of special agreements.

Article 28

Refunds

1. Taxes withheld at the source in a Contracting State will be refunded by request of the taxpayer or of the State of which he is a resident if the right to collect the said taxes is affected by the provisions of this Convention.

2. Claims for refund, that shall be produced within the time limit fixed by the law of the Contracting State which is obliged to carry out the refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident certifying the existence of the conditions required for being entitled to the application of the allowances provided for by this Convention.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, in accordance with the provisions of the Article 25 of this Convention.

Article 29

Entry into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at NAIROBI as soon as possible.

2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:

- (a) In the case of Kenya:
- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1st January 1979; and
- (b) in respect of other tax for any taxation year beginning on or after the 1st January, 1979.
- (b) In the case of Italy:

in respect of income assessable for any taxable period commencing on or after the 1st January, 1979.

Article 30

Termination

1. This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through diplomatic channels not earlier than five years after its entry into force by giving notice of termination at least six months before the end of the calendar year. In such event, the Convention shall cease to have effect:

- (a) In the case of Kenya;
- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the 1st January in the calendar year next following that in which the notice of termination is given; and
- (b) in respect of other tax for any taxation year beginning on or after 1st January in the calendar year next following that in which the notice of termination is given.
- (b) In the case of Italy;

in respect of income assessable for any taxable period commencing on or after 1st January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed the present Convention.

Done in duplicate at Nairobi the 15th day of October, 1979 in the English and Italian languages, both texts being equally authoritative.

Additional Protocol

To the Convention between the Republic of Kenya and the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

At the signing of the Convention concluded today between the Republic of Kenya and the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion

[Subsidiary]

with respect to taxes on income, the undersigned have agreed upon the following additional provisions which shall form an integral part of the said Convention.

It is understood:

- (a) that, with reference to article 7, paragraph 2, the expression "it is established" means that the competent authorities of both Contracting States, in application of the exchange of information, agree that the profits are attributable to the permanent establishment;
- (b) that, with reference to article 7, paragraph 4, the expression "expenses which are incurred for the purposes of the permanent establishment" means the expenses directly connected with the activity of the permanent establishment;
- (c) that, with reference to article 8, paragraph 2, when a Contracting State determines the profits derived from the operation of ships in international traffic as a percentage of the gross amount derived by an enterprise from transporting passengers or freight embarked in that State, this percentage shall not exceed 5 per cent of the said gross amount;
- (d) that, with reference to article 22, the tax imposed in a Contracting State on "management or professional fees" paid to a resident of the other Contracting State shall not exceed 20 per cent of the gross amount of such -management or professional fees;
- (e) that, with reference to article 25, paragraph 1, the expression "notwithstanding the remedies provided by the national laws" means that the mutual agreement procedure is not an alternative to the national contentions proceedings which shall be, in any case, preventively initiated, when the claim is related with an assessment of taxes not in accordance with this Convention;
- (f) that, the provision of paragraph 3 of Article 28 shall not affect the competent authorities of the Contracting States from the carrying out, by mutual agreement, of other practices for the allowance of the reductions for taxation purposes provided for in this Convention;
- (g) that, notwithstanding the provisions of paragraph 2 of Article 29, the provisions of paragraph 1 of Article 8 shall have effect in respect of income derived during any taxable period commencing on or after the 1st January. 1970.

Done in duplicate at Nairobi the 15th October day of 1979 in the English and Italian languages, both texts being equally authoritative.

Protocol

AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT NAIROBI ON 15TH OCTOBER, 1979.

The Government of the Republic of Kenya and the Government of the Italian Republic having regard to the Convention between them for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Nairobi on 15th October, 1979. with this Protocol have agreed on the following further provisions which will form an integral part of the said Convention.

It is understood that:

1. Article 8 shall be deleted and replaced by the following:

(1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(2) If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the

ship is situated or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

(3) The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.-

2. Paragraph 2 of Article 10 shall be deleted and replaced by the following:

"(2) However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of the State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation."

3. With reference to paragraph 2 of Article 11, the rate of interest shall be deleted and replaced by the following rate: 12.50 per cent.

4. The text of Article 12 shall be deleted and replaced by the following:

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

(2) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including software, cinematograph films and films or tapes for television or broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

(3) The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the royalties are taxable in that other Contracting State according to its own law.

(4) Where, owing to special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention."

5. Article 29 shall be deleted and replaced by the following:

"1. This Convention shall be ratified and the instrument of ratification shall be exchanged at Rome as soon as possible

2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:

- (a) in respect of taxes withheld at source, to amounts derived on or after 1st January 1997
- (b) in respect of other taxes on income, to taxes chargeable for any taxable period beginning on or after 1st January 1997"

6. Letter g) of the Additional Protocol shall be deleted.

[Subsidiary]

7. This Protocol shall be ratified and instruments of ratification shall be exchanged at Rome as soon as possible.

This Protocol shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect in accordance with the provisions of Article 29 of the Convention.

IN WITNESS WHERE OF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Done at Nairobi on 18th February, 1997, in two originals in the Italian and English languages, both texts being equally authoritative.

Double Taxation Relief (Kuwait) Notice under section 41**THE INCOME TAX ACT-THE DOUBLE TAXATION RELIEF (KUWAIT) NOTICE**

[L.N. 149/2014]

The Cabinet Secretary for Finance declares that the arrangements made between the Government of the Republic of Kenya and the Government of the State of Kuwait in the articles of an agreement set out in the Schedule and signed on the 12th of November, 2013, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the State of Kuwait desiring to promote their mutual economic relations through the conclusion between them of an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

HAVE AGREED as follows:

Article 1**Persons Covered**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2**Taxes Covered**

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which this Agreement shall apply are, in particular:
 - (a) in the case of Kuwait:
 - (i) the corporate income tax;
 - (ii) the contribution from the net profits of the Kuwaiti shareholding companies' payable to the Kuwait Foundation for Advancement of Science (KFAS);
 - (iii) the Zakat;
 - (iv) the tax subjected according to the supporting of national employee law: (hereinafter referred to as "Kuwaiti tax");
 - (b) in Kenya the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap.470; (hereinafter referred to as "Kenyan Tax").
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing

[Subsidiary]

taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "person" includes an individual, a company, and any other body of persons which is treated as an entity for tax purposes.
- (b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (d) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (e) the term "Kuwait" means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated, under the laws of Kuwait, as an area over which Kuwait may exercise sovereign rights or jurisdiction.
- (f) The term "Kenya" means land territory, internal water and territorial sea of the Republic of Kenya and the airspace above them, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which the Republic of Kenya exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of the natural resources of such areas;
- (g) the term "national", means;
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- (h) the term "tax" means Kuwaiti tax or Kenyan tax, as the context requires;
- (i) the term "competent authority" means:
 - (i) in the case of Kuwait the Cabinet Secretary of Finance or an authorized representative of the Cabinet Secretary of Finance;
 - (ii) in the case of Kenya, the Cabinet Secretary responsible for finance or his authorized representative.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State in relation to the taxes to which this Agreement applies. Provided that any meaning applicable under the tax laws of that Contracting State shall prevail over a meaning given to the term under other laws of that State.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
 - (a) In the case of Kuwait: an individual who has his domicile in Kuwait and is a Kuwaiti national, and a company which is incorporated in Kuwait;
 - (b) In the case of Kenya: any person who, under the laws of Kenya, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature. This term does not include any person who is liable to tax in respect only of income from sources in that State.
2. For the purposes of paragraph 1, a resident of a Contracting State shall include all of the following:
 - (a) the Government of that Contracting State and any political subdivision or local authority thereof;
 - (b) any governmental institution created in that Contracting State under public law such as a corporation, Central Bank, fund, authority, foundation, agency or other similar entity;
 - (c) any entity established in that State, all the capital of which has been provided by that State or any political subdivision or local authority thereof or any governmental institution as defined in subparagraph b), together with other states.
3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - (c) if he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - (d) if his status cannot be determined under the provision of subparagraph a) to c), the competent authorities of the two Contracting States agree.
4. Where by reason of the provisions of paragraphs 1 and 2 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop, and
 - (f) a warehouse, in relation to a person providing storage facilities for others;
 - (g) a mine, oil or gas well, a quarry or any other place relating to the exploration, exploitation or extraction of natural resources.

[Subsidiary]

3. A building site, a construction, assembly, erection or installation project or a supervisory activities in connection therewith carried out in a Contracting State, constitutes a permanent establishment only if such site, project or activities continue for a period of more than 9 months.

4. The furnishing of services, including consultancy or managerial services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, in the other Contracting State constitutes a permanent establishment only if activities of that nature continue for a period or periods aggregating more than 6 months within any twelve-month period.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other State if technical, mechanical or scientific equipment or machinery is used for more than 9 months within any twelve-month period, or installed, in that other State by, for or under contract with the enterprise.

6. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise,
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 8 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, in respect of any activities which that person undertakes for the enterprise, if:

- (a) he has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of such enterprise. unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph;
- (b) he has no such authority, but habitually maintains in the first mentioned Contracting State a stock of goods or merchandise belonging to such enterprise from which he regularly delivers goods or merchandise on behalf of such enterprise;

8. Notwithstanding the preceding provision of this article, an insurance enterprise of a Contracting State, shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other state or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

9. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission

agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and other enterprises, which are controlled by it or have a controlling interest in it, he shall not be considered an agent of an independent status within the meaning of this paragraph.

10. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived any other form of immovable from the direct use, letting, or use in property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

- (a) that permanent establishment;
- (b) sales in that other state of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other state of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in

[Subsidiary]

which the permanent establishment is situated or elsewhere, taking into consideration any applicable taxation law or regulations of that state.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article,

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include all of the following:

- (a) Profits from the rental on a bareboat basis of ships or aircraft;
- (b) Profits from the use, maintenance or rental of containers, including trailers and related equipment for the transport of containers, used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to

tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State, to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 5% (five per cent) of the gross amount of the dividends.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraphs 1 and 2, dividends paid by a company which is a resident of a Contracting State shall not be taxable in that Contracting State if the beneficial owner of the dividends is:

- (a) the Government, a political subdivision or a local authority of the other Contracting State; or
- (b) the Central Bank of the other Contracting State; or
- (c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting States.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

4. The provisions of paragraph 1 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from any of the other Contracting States, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of such interest may be taxable in that other Contracting State.

2. However, subject to the provisions of paragraph 3 of this Article, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 1% of the gross amount of the interest.

[Subsidiary]

3. Notwithstanding the provisions of paragraphs 1 and 2, interest paid by a company which is a resident of a Contracting State shall not be taxable in that Contracting State if the beneficial owner of the interest is:

- (a) the Government, a political subdivision or a local authority of the other Contracting State; or
- (b) the Central Bank of the other Contracting State; or
- (c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed 10% of the gross amount of such royalties

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films, tapes or discs for radio or television broadcasting any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for the use of, or the right to use industrial commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State

in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7, shall apply.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships, aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived there from may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and;
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

[Subsidiary]

4. Ground staff appointed from head office of national air carrier of a Contracting State to the other Contracting State shall be exempted from taxes levied on their remunerations in that other Contracting State.

Article 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or other similar organ of a company which is a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State.

Article 16

Artistes and sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself or herself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by entertainers or sportsmen who are residents of a Contracting State from personal activities as such exercised in the other Contracting State if their visit to that other State is substantially supported from the public funds of the first-mentioned State, including those of any political subdivision, a local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, founders or members.

Article 17

Pensions

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14, 15, and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 19

Teachers and Researchers

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned State or of a university, college, school, museum or other cultural institution in that first-mentioned State or under an official programme of cultural exchange, is present in that State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that State on his remuneration for such activity.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons

Article 20

Students and Trainees

1. Payments which a student or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State.

2. Notwithstanding the provisions of paragraph 1, remuneration which a student or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training derives from temporary services rendered in the first-mentioned State shall not be taxed in that State, provided that such services are in connection with his education or training and that the remuneration for such services is necessary to supplement the resources available to him for the purpose of his maintenance.

Article 21

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 22

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23

Elimination of Double Taxation

1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting State except where provisions to the contrary are made in this Agreement.
2. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article:
 - (a) in the case of Kuwait:

Where a resident of Kuwait derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in both Kuwait and Kenya, Kuwait shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Kenya and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Kenya;

Such deduction in either case shall not, however, exceed that part of the tax on income or on capital, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Kenya;

- (b) in the case of Kenya:
 - (i) where a resident of Kenya receives income derived from sources within Kuwait, which, in accordance with the provisions of this agreement, shall be taxable only in Kuwait and is exempt from Kenyan tax. then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from the sources within Kuwait had been not exempted:
 - (ii) where a resident of Kenya receives income derived from sources within Kuwait, which, in accordance with the provisions of this agreement may be taxed in both Contracting State, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in Kuwait. Such deduction, however, shall not exceed that part of the Kenyan tax as computed before the deduction is given, which is appropriate to the income derived from Kuwait.
3. For the purposes of allowance as a credit in a Contracting State, the tax paid in the other Contracting State shall include the tax which is otherwise payable in that other Contracting State, but has been waived or reduced in accordance with the special investment incentive law or measures designed to promote economic development in that other Contracting State.

Article 24***Non-Discrimination***

1. Individuals possessing the nationality of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which individuals possessing the nationality of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, shall not be less favorably levied in that other State than the taxation levied on enterprises of third states, carrying on the same activities, in the same circumstances. This provision shall not be construed as obliging a Contracting State to grant to residents of the other State any personal allowances, relieves and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises the capital of which is wholly or partly owned or controlled directly or indirectly by one or more residents of any third states are or may be subjected.
4. Nothing in this Article shall be interpreted as imposing a legal obligation on a Contracting State to extend to the residents of the other Contracting State, the benefit of any treatment, preference or privilege which may be accorded to any third state or its residents by virtue of the formation of a customs union, economic union, a free trade area or any regional or sub-regional arrangement relating wholly or mainly to taxation or movement of capital to which such the first mentioned State may be a party.
5. In this Article, the term "taxation" means taxes, which are the subject of this Agreement.

Article 25***Mutual Agreement Procedure***

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual Agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any Agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual Agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their

[Subsidiary]

representatives, for the purpose of reaching an Agreement in the sense of the preceding paragraphs.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*order public*).

Article 27

Miscellaneous Rules

1. The provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded either:

- (a) by the laws of a Contracting State in the determination of the tax imposed by that State;
- (b) by any other special arrangement on taxation in connection with the economic or technical cooperation between the Contracting States.

2. The competent authorities of each Contracting State may prescribe regulations in order to carry out the provisions of this Agreement.

Article 28

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29

Entry into Force

1. Each of the Contracting States shall notify the other of the completion of its constitutional procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of these notifications and its provisions shall thereupon have effect:

- (a) in Kuwait: for taxable periods beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force;
- (b) in Kenya: to income for any year of income beginning on or after the first day of January next following the date upon which this Agreement enters into force;

Article 30

Duration and Termination

This Agreement shall remain in force for a period of five years and shall continue in force thereafter for a similar period or periods unless either Contracting State notifies the other in writing, six months before the expiry of the initial or any subsequent period, of its intention to terminate this Agreement. In such event, this Agreement shall cease to have effect in both Contracting States:

- (a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following that in which the notice of termination is given;
 - (b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year next following that in which the notice of termination is given.
-

Double Taxation Relief (Mauritius) Notice under section 41**THE INCOME TAX ACT-DOUBLE TAXATION RELIEF (MAURITIUS) NOTICE**

[L.N. 59/2014]

The Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Government of Mauritius in the articles of an agreement set out in the Schedule and signed on the 7th May, 2012 with a view to affording relief from double taxation in relation to income tax and any other taxes of similar character imposed by the laws of Mauritius, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of Mauritius desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Personal Scope

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income.
3. The existing taxes to which this Agreement shall apply are in particular:
 - (a) in Mauritius, the income tax; (hereinafter referred to as "Mauritius tax");
 - (b) in Kenya, the income tax charged in accordance with the provisions of the Income Tax Act, Cap 470 (hereinafter referred to as "Kenyan tax").
4. This Agreement shall also apply to any other taxes of a substantially similar character which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

ARTICLE 3

General Definitions

1. In this Agreement, unless the context otherwise requires:
 - (a) the term "Mauritius" means the Republic of Mauritius and includes:
 - (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
 - (ii) the territorial sea of Mauritius; and
 - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised;
 - (b) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Mauritius or Kenya, as the context requires;
 - (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (e) the term "competent authority" means:
 - (i) in the case of Mauritius, the Minister responsible for finance or his authorised representative; and
 - (ii) in the case of Kenya, the Cabinet Secretary responsible for finance or his authorised representative.
 - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other contracting State;
 - (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (h) the term "national" means any individual having the nationality or citizenship of a Contracting State and any legal person, partnership (societe) or association deriving its status as such from the laws in force in a Contracting State;
 - (i) the term "person" includes an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes; and
 - (j) the term "tax" means Mauritius tax or Kenyan tax, as the context requires.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax

[Subsidiary]

laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
 - (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a warehouse, in relation to a person providing storage facilities for others;
 - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
 - (h) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment" likewise encompasses:
 - (a) a building site or construction, installation or assembly project, or supervisory activities in connection therewith only if the site, project or activity lasts more than 12 months.
 - (b) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating to more than 6 months within any 12 month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise; and
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to be a permanent establishment in that State if he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business.
7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premium in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.
8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, which carries on business in that other State (whether through a permanent

[Subsidiary]

establishment or otherwise), shall not of itself constitute either company permanent establishment of the other.

ARTICLE 6

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property including income from agriculture or forestry, may be taxed in the Contracting State in which such property is situated.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

Business Profits

1. Business Profits The profits of an enterprise of a Contracting State shall be taxable only in the State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment (b) sales in that other State of goods or merchandise of the same or similar as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken,

in determining the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and Air Transport

1. Profits of an enterprise from the operation or rental of ships or aircraft international traffic and the rental of containers and related equipment which incidental to the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between

[Subsidiary]

independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.
3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
 - (b) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
4. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which

the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:
 - (a) the Government, a political subdivision or a local authority of the other Contracting State; or
 - (b) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.
5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Dependent Personal Services

1. Subject to the provisions of Articles 15, 17, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; and
 - (b) the remuneration is paid by, or on behalf of an employer who is not resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 15

Directors Fees and Remuneration Of***Top-Level Managerial Officials***

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.
2. Salaries, wages and other similar remuneration derived by a resident of Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

[Subsidiary]

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities, referred to in paragraph 1, performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of either Contracting State, political subdivision, a local authority or public institution thereof.

ARTICLE 17

Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, shall be taxable only in that other State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

ARTICLE 18

Government Service

1. (a) Salaries, wages, and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body shall be taxable only in that State.
(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body shall be taxable only in that State.
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State, or a political subdivision, local authority or statutory body thereof.

ARTICLE 19

Professors and Teachers

1. Notwithstanding the provisions of Article 14, a professor or teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State.
2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

ARTICLE 20

Students And Business Apprentices

A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purposes of his maintenance, education or training.

ARTICLE 21

Other Income

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income other than income from immoveable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

ARTICLE 22

Elimination of Double Taxation

Double taxation shall be eliminated as follows:

1. In the case of Mauritius:
 - (a) (i) Where a resident of Mauritius derives income from Kenya the amount of tax on that income payable in Kenya in accordance with the provisions of this Agreement may be credited against the Mauritius tax imposed on that resident.
 - (ii) Where a company which is a resident of Kenya pays a dividend to a resident of Mauritius who controls, directly or indirectly, at least 5% of the capital of the company paying the dividend, the credit shall

[Subsidiary]

take into account (in addition to any Kenyan tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Kenyan tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid.

Provided that any credit allowed under this subparagraph shall not exceed the Mauritius tax (as computed before allowing any such credit), which is appropriate to the profits or income derived from sources within Kenya.

- (b) For the purposes of allowance as a credit the tax payable in Kenya shall be deemed to include the tax which is otherwise payable in Kenya but has been reduced or waived by Kenya in order to promote its economic development.

2. In the case of Kenya:

- (a) where a resident of Kenya derives income which in accordance with the provisions of this Agreement, may be taxed in the Republic of Mauritius, Kenya shall allow as credit against the tax on the income of that resident an amount equal to the tax paid in the Republic of Mauritius. Such credit, however, shall not exceed that portion of the tax as computed before the credit is given, which is attributable, to the income, which may be taxed in the Republic of Mauritius;
- (b) where, in accordance with the provisions of this Agreement, income derived by a resident of Kenya is exempt from tax in Kenya, Kenya may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 23

Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
5. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and

reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 25

Exchange Of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment for collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

[Subsidiary]

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes, The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 26

Diplomatic Agents and Consular Officers

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 27

Assistance In The Collection Of Taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:
 - (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collectionthe competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to carry out measures which would be contrary to public policy (*ordre public*);
 - (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 28

Entry Into Force

[Subsidiary]

1. Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.
2. The provisions of this Agreement shall apply:
 - (a) in Mauritius, on income for any income year beginning on or after the first day of January next following the date upon which this Agreement enters into force; and
 - (b) in Kenya:
 - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which the Agreement enters into force; and
 - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the date upon which the Agreement enters into force.

ARTICLE 29

Termination

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.
 2. In such event the Agreement shall cease to have effect:
 - (a) in Mauritius, on income for any income year beginning on or after the first day of January next following the calendar year in which such notice is given; and
 - (b) in Kenya:
 - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the calendar year in which such notice is given; and
 - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the calendar year in which such notice is given.
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Double Taxation Relief (Netherlands) Notice under section 41**THE INCOME TAX ACT-THE DOUBLE TAXATION RELIEF (NETHERLANDS) NOTICE**

[L.N. 169/2017]

The Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Kingdom of the Netherlands in the articles of a convention set out in the Schedule and signed on the 22nd July, 2015 with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the Kingdom of the Netherlands, desiring to conclude a Convention to avoid double taxation and to prevent fiscal evasion with respect to taxes on income;

HAVE AGREED as follows:

ARTICLE 1**PERSONS COVERED**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2**TAXES COVERED**

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

The existing taxes to which the Convention shall apply are in particular:

- (a) in the case of the Netherlands:
 - de inkomstenbelasting (income tax);
 - de loonbelasting (wages tax);
 - de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnbouwwet (the Mining Act);
 - de dividendbelasting (dividend tax);(hereinafter referred to as "the Netherlands tax");
- (b) in the case of Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap. 470;
(hereinafter referred to as "Kenyan tax").

[Subsidiary]

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

- (a) the terms "a Contracting State" and "the other Contracting State" mean the Kingdom of the Netherlands (the Netherlands) or Kenya, as the context requires;
- (b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;
- (c) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means:
 - (i) in the case of the Netherlands the Minister of Finance or his authorised representative;
 - (ii) in the case of Kenya the Cabinet Secretary responsible for Finance or his authorised representative;
- (i) the term "national" means:
 - (i) any individual possessing the nationality or having the citizenship of that Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term does not include any person who is liable to tax in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- (d) if the residence status of an individual cannot be determined in accordance with the provisions of subparagraphs (a), (b) and (c) above, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop, and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than nine months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

[Subsidiary]

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8**SHIPPING AND AIR TRANSPORT**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. Notwithstanding paragraph 1 of this Article where an enterprise derives profits from the operation of ships in international traffic in the other Contracting State:
 - (a) such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and
 - (b) the tax chargeable in that other state shall be reduced by an amount equal to fifty per cent thereof.
3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

[Subsidiary]

4. The provisions of paragraphs 1 and 2 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State;
- (b) or the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed

- (a) 10% of the gross amount of the dividends in case the company paying the dividends is a resident of Kenya; and
- (b) 15 % of the gross amount of the dividends in case the company paying the dividends is a resident of the Netherlands.

3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is:

- (a) a company the capital of which is wholly or partly divided into shares and which is a resident of the other Contracting State and holds directly at least 10 per cent of the capital of the company paying the dividends; or
- (b) a pension fund that is recognised and controlled according to the statutory provisions of the other Contracting State.

4. The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other state independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or a fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

8. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations, to take advantage of this Article.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, subject to the provisions of paragraph 3 of this Article, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which recipient is a resident, if such resident is the beneficial owner of such interest and if one of the following conditions is met:

- (a) such recipient is a Contracting State, a local authority or a statutory body thereof, including the Central Bank of that State; or such interest is paid by one of those States, local authorities or statutory bodies;
- (b) such interest is paid in respect of a debt-claim or of a loan directly or indirectly guaranteed or insured or subsidised by a Contracting State or by any other person sponsored or directly or indirectly controlled by a Contracting State;
- (c) such interest is paid to a pension fund that is recognised and controlled according to the statutory provisions of a Contracting State.

[Subsidiary]

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or a fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, or a local authority thereof or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the interest or with the creation or assignment of the debt-claim in respect of which the interest is paid or with the establishment acquisition or maintenance of the company that is the beneficial owner of the interest and the conduct of its operations to take advantage of this Article. The competent authority of the Contracting State has to grant the benefits shall consult with the competent authority of the other Contracting State before denying the benefits under this paragraph.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, or a local authority thereof or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the assignment of the royalties or with the creation or assignment of the rights in respect of which the royalties are paid or with the establishment acquisition or maintenance of the company that is the beneficial owner of the royalties and the conduct of its operations, to take advantage of the Article. The competent authority of the Contracting State which has to grant the benefits shall consult with the competent authority of the other Contracting State before denying the benefits under this paragraph.

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

[Subsidiary]

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18, 19 and 20 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned;
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in that State.

ARTICLE 16

DIRECTORS' FEES

Directors' fees and other remuneration derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

ARTICLE ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State, if the visit to that other State is wholly or mainly supported by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof, or takes place under a cultural agreement between the Governments of the Contracting States. In such case, the income shall be exempt from tax in the Contracting State in which the activities are exercised.

ARTICLE 18

PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS

1. Pensions, annuities and other similar remuneration, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State. The preceding sentence shall also apply to pensions paid and other payments made under the provisions of the social security legislation of a Contracting State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make payments in return for adequate and full consideration in money or money's worth.

3. The provisions of this Article shall also apply in case a lump sum payment is made in lieu of a pension, an annuity or other similar remuneration before the date on which the pension, the annuity or other similar remuneration commences.

4. A pension, an annuity or other similar remuneration shall be deemed to arise in a Contracting State if and insofar as the contributions or payments associated with the pension, annuity or similar remuneration, or the entitlements received from it qualified for tax relief in that State. The transfer of a pension from a pension fund or an insurance company in a Contracting State to a pension fund or an insurance company in another State shall not restrict in any way the taxing rights of the first-mentioned State under this Article.

ARTICLE 19

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof, to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State:

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20

PROFESSORS AND TEACHERS

[Subsidiary]

1. Notwithstanding the provisions of Article 15, a professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in that other State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

ARTICLE 21

STUDENTS AND BUSINESS APPRENTICES

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 22

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed-base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23

ELIMINATION OF DOUBLE TAXATION

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Convention, may be taxed or shall be taxable only in Kenya.

2. However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraph 6 of Article 10, paragraph 5 of Article 11, paragraph 4 of Article 12, paragraphs 1 and 2 of Article 13, paragraph 1 of Article 14, paragraph 1 of Article 15, paragraph 1 of Article 18, paragraph 1(a) of Article 19 and paragraph 2 of Article 22 of this Convention may be taxed in Kenya and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a reduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 8, paragraph 2 of Article 10,

paragraph 2 of Article 11, paragraph 2 of Article 12, Article 16, paragraphs 1 and 2 of Article 17 and paragraph 3 of Article 18 of this Convention may be taxed in Kenya to the extent that these items are included in the basis referred to in paragraph 1. The amount of this reduction shall be equal to the tax paid in Kenya on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income for which the Netherlands gives a reduction under the provisions of the Netherlands law for the avoidance of double taxation.

This paragraph shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the avoidance of double taxation, but only as far as the calculation of the amount of the reduction of Netherlands tax is concerned with respect to the aggregation of income from more than one country and the carry forward of the tax paid in Kenya on the said items of income to subsequent years.

4. Notwithstanding the provisions of paragraph 2, of this Article the Netherlands shall allow a reduction from the Netherlands tax for the tax paid in Kenya on items of income which according to paragraph 1 of Article 7, paragraph 6 of Article 10, paragraph 5 of Article 11, paragraph 4 of Article 12, paragraph 2 of Article 13 and paragraph 2 of Article 22 of this Convention may be taxed in Kenya to the extent that these items are included in the basis referred to in paragraph 1, insofar as the Netherlands under the provisions of the Netherlands law for the avoidance of double taxation allows a reduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this reduction the provisions of paragraph 3 of this Article shall apply accordingly.

5. In Kenya double taxation shall be eliminated as follows:

- (a) where a resident of Kenya receives income derived from sources within the Netherlands, which, in accordance with the provisions of this Convention, shall be taxable only in the Netherlands and is exempt from Kenyan tax, then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from the sources within the Netherlands had not been exempted;
- (b) where a resident of Kenya receives income derived from sources within the Netherlands, which, in accordance with the provisions of this Convention may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in the Netherlands. Such a deduction, however, shall not exceed that part of the Kenyan tax as computed before the deduction is given, which is appropriate to the income derived from the Netherlands.

ARTICLE 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

[Subsidiary]

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph I of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. Contributions paid by, or on behalf of, an individual who exercises employment or self-employment in a Contracting State to a pension scheme that is recognised for tax purposes in the other Contracting State shall be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension scheme that is recognised for tax purposes in that first-mentioned State:

Provided that:

- (a) such individual was contributing to such pension scheme before he became a resident of the first-mentioned State; and
- (b) the competent authority of the first-mentioned State agrees that the pension scheme generally corresponds to a pension plan recognised for tax purposes by that State.

For the purpose of this paragraph, "pension scheme" includes a pension scheme created under a public social security system.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the

Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where:

- (a) under paragraph 1 of this Article, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of this Article within two years from the presentation of the case to the competent authority of the other Contracting State, any unresolved issues arising from the case shall be submitted to arbitration if the person so requests.

Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. The Contracting States may release to the panel of arbitrators, established under the provisions of paragraph 5 of Article 25, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 2 of this Article with respect to any information so released.

4. In no case shall the provisions of the previous paragraphs be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

[Subsidiary]

5. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 4 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

6. In no case shall the provisions of paragraph 4 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. The provisions of this Article shall apply only to a revenue claim that forms the subject of an instrument permitting enforcement in the applicant State and, unless otherwise agreed between the competent authorities, that is not contested. However, where the claim relates to a liability to tax of a person as a non-resident of the applicant State, this Article shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested. The revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purpose of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (a) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

For the purposes of the Convention, an individual who is a member of a diplomatic mission or consular post of a Contracting State in the other Contracting State or in a third State and who is a national of the sending State shall be deemed to be a resident of the sending State if he is subjected therein to the same obligations in respect of taxes on income as are residents of that State.

The Convention shall not apply to international organisations, organs and officials thereof and members of a diplomatic mission or consular post of a third State, being present in a Contracting State, if they are not subjected therein to the same obligations in respect of taxes on income as are residents of that State.

ARTICLE 29

TERRITORIAL EXTENSION

This Convention may be extended, either in its entirety or with any necessary modifications, to Aruba, Curaçao, Sint Maarten, or the Caribbean parts of the Kingdom of the Netherlands (Bonaire, Saba and Sint Eustatius), if the part concerned imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and shall be Subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

Unless otherwise agreed the termination of the Convention shall not also terminate any extension of the Convention to any country to which it has been extended under this Article.

ARTICLE 30

ENTRY INTO FORCE

This Convention shall enter into force on the last day of the month following the month after the latter of the dates on which the respective Contracting Parties have notified each other in writing that the formalities required by its law for the bringing into force of this Agreement have been complied with. Its provisions shall thereupon have effect as follows:

- (a) in the Netherlands for taxable years and periods beginning on or after the first day of January in the calendar year following that in which the Convention has entered into force;
- (b) in Kenya:

to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which the Convention enters into force; and to other taxes, on income arising for years of income beginning on or after the first day of January next following the date upon which the Convention enters into force.

ARTICLE 31

TERMINATION

1. This Convention shall remain in force indefinitely. Either Contracting State may terminate the Convention through diplomatic channels, by giving to the other Contracting State written notice of termination not later than the 30th June of any calendar year starting five years after the year in which the Convention entered into force.

2. In such event the Convention shall cease to have effect:

- (a) in the Netherlands: on income for the taxable year or period beginning on or after the first day of January next following the calendar year in which such notice is given;
- (b) in Kenya:
 - (i) with regard to taxes withheld at source, on amounts paid or accrued after the end of the calendar year in which such notice is given; and
 - (ii) with regard to other taxes, on income arising for years of income beginning after the end of the calendar year in which such notice is given.

PROTOCOL

At the signing of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, this day concluded between the Kingdom of the Netherlands and the Republic of Kenya the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I In case an entity that is treated as a body corporate for tax purposes is liable as such to tax in a Contracting State, but the income of that entity is taxed in the other Contracting State as income of the participants in that entity, the competent authorities shall take such measures that on the one hand no double taxation remains, but on the other hand it is prevented that merely as a result of application of the Convention income is (partly) not subject to tax.

II It is understood that if the competent authorities of the Contracting States, by mutual agreement, have reached a solution within the context of the Convention, for cases in which double taxation or double exemption would occur:

- (a) as a result of the application of paragraph 2 of Article 3 with respect to the interpretation of a term not defined in the Convention; or

(b) as a result of differences in qualification (for example of an item of income or of a person), this solution-after publication thereof by both competent authorities - shall also be binding in other similar cases in the application of the provisions of the Convention.

III Ad Article

1 Notwithstanding Article 1, a company which is treated as a *vrijgestelde beleggingsinstelling* (tax exempt investment institution) according to article 6a Wet op de Vennootschapsbelasting 1969 (Dutch Corporate Income Tax Act 1969) or any identical or substantially similar regime introduced after today shall not be entitled to the benefits of Articles 10, 11, 12, 13, 22 and 23 of the Convention and the corresponding articles of the Protocol.

2. The competent authorities of the Contracting States shall by mutual agreement decide to which extent other specific categories of residents of one of the Contracting States shall not be entitled to the benefits of this Convention.

IV Ad Article 4

A company shall be regarded to be liable to tax:

- (a) in the Netherlands, if the company is a resident of the Netherlands for the purposes of the company tax;
- (b) in Kenya, if the company has its place of management in Kenya, provided that the income derived by that company is treated under the tax laws of that State as income of that company.

V Ad Article 4

An individual living aboard a ship without any real domicile in either of the Contracting States shall be deemed to be a resident of the Contracting State in which the ship has its home harbour.

VI Ad Article 7

- (i) In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business.
- (ii) Specifically, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract that is carried out by the permanent establishment in the Contracting State in which the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

VII Ad Article 7

In relation to paragraph 1 of Article 7, it is agreed that, if an enterprise of a Contracting State sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or carries out business activities of the same or similar kind as those carried out by the permanent establishment, the profits of such sales or activities may be attributed to the permanent establishment if it is demonstrated:

[Subsidiary]

- (a) that these profits are related to the activities of the permanent establishment;
- (b) and that no sound business reasons exist for not conducting the activities through the permanent establishment.

VIII Ad Article 7 and 15

Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for consultancy or supervisory services shall be deemed to be payments to which the provisions of Article 7 or Article 14, as the case may be, apply.

IX Ad Article 7

The competent authorities of the Contracting States may by mutual agreement adopt a new method of attribution of profits to permanent establishments as developed by the OECD or the UN.

X Ad Articles 7 and 9

It is understood that the fact that associated enterprises have concluded arrangements, such as cost sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in paragraph 1 of Article 9.

XI Ad Article 8

It is understood that the provisions of Article 8 shall also apply to taxes on income levied on the basis of the gross receipts in respect of the carriage of passengers and cargo in international traffic.

XII Ad Articles 8, 13, and 22

1. For the purposes of Articles 8, 13 and 22 the place of effective management of the aircraft enterprise of Koninklijke Luchtvaartmaatschappij N.V. (KLM N.V.) shall be deemed to be situated in the Netherlands, as long as the Netherlands has an exclusive taxing right with respect to the aircraft enterprise of KLM N.V. under the Agreement between the Government of the Kingdom of the Netherlands and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with Protocol); Paris, 16 March 1973, as amended by the Protocol of the 7th of April 2004.

2. The provision of paragraph 1 of this Article shall also apply if the aircraft enterprise of the existing KLM N.V. is continued fully or substantially by another person.

XIII Ad Article 10

The provisions of paragraph 3 of Article 10 shall apply as long as, under the provisions of the Income Tax Laws of the Contracting State of which the company that beneficially owns the dividends is a resident applies a full tax exemption to dividends which that company receives from a company which is resident of the other Contracting State.

XIV Ad Article 10

The determination of the purpose referred to in paragraph 8 of Article 10 shall be based on all facts and circumstances including:

- (a) the nature and volume of the activities of the company in its country of residence in relation to the nature and volume of the dividends;

- (b) both the historical and the current ownership of the company; and
- (c) the business reasons for the company residing in its country of residence including the extent to which the company that beneficially owns the dividends would be entitled to treaty benefits comparable to those afforded by this Convention if it had been a resident of the country of residence of the majority of its shareholders.

The competent authority of the Contracting State which has to grant the benefits shall consult with the competent authority of the other Contracting State before denying the benefits under paragraph 8 of Article 10.

XV Ad Articles 10, 11 and 12

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

XVI Ad article 12

Notwithstanding paragraph 2 of Article 12 the competent authorities of the Contracting States may decide by mutual agreement on exemption at source of royalties paid as a consideration for the use or the right to use agricultural or environmental technologies.

XVII Ad Articles 10 and 13

1. Notwithstanding the provisions of paragraphs 1, 2 and 7 of Article 10 dividends paid by a company whose capital is divided into shares and which under the laws of the Netherlands is a resident of the Netherlands, to an individual who has a qualified shareholding in that company and who is a resident of Kenya may be taxed in the Netherlands in accordance with its own laws.
2. Notwithstanding the provisions of paragraph 4 of Article 13, the Netherlands may, in accordance with its own laws, including the interpretation of the term "alienation", levy tax on gains derived by an individual who and is a resident of Kenya from the alienation of shares in, "jouissance" rights or debt-claims on a company whose capital is divided into shares and which, under the laws of the first-mentioned Contracting State, is a resident of that State, and from the alienation of part of the rights attached to the said shares, "jouissance" shares or debt-claims, provided that individual has a qualified shareholding in that company.
3. The term "qualified shareholding" means a shareholding by an individual - either alone or with his or her spouse - or one of their relations by blood or marriage in the direct line directly or indirectly of at least 5 per cent of the issued capital of a particular class of shares in a company.

XVIII Ad Articles 10 and 13

1. It is understood that income received in connection with the (total or partial) liquidation of that company or a purchase of own shares or a purchase or redemption of own profit sharing certificates by that company, such income is treated as income from shares and not as capital gains.
2. Notwithstanding paragraphs 1, 2 and 3 of Article 10 and paragraph 4 of Article 13, the Netherlands may apply the following provisions relating to the prevention of tax avoidance:

Article 17, paragraph 3, subparagraph (b) in connection with article 17a, paragraph 1, subparagraph c of the Corporate Income tax act 1969, or any identical or substantially similar provisions replacing these articles.

IXX Ad Article 16

[Subsidiary]

Where a company is a resident of the Netherlands, the term "member of the board of directors" includes both a "bestuurder" and a "commissaris". The terms "bestuurder" and "commissaris" mean respectively persons who are charged with the general management of the company and persons who are charged with the supervision thereof.

XX Ad Article 25

The competent authorities of the States may also agree, with respect to any agreement reached as a result of a mutual agreement procedure as meant in Article 25, if necessary contrary to their respective national legislation, that the State in which there is an additional tax charge as a result of the aforementioned agreement shall not impose any increases, surcharges, interest and costs with respect to this additional tax charge, to the extent that a corresponding deduction of tax is made in the other State as a result of the agreement and no interest is payable in that State with respect to such a reduction of tax.

Double Taxation Relief (Qatar) Notice under section 41**THE INCOME TAX ACT-THE DOUBLE TAXATION RELIEF (QATAR) NOTICE**

[L.N. 59/2015]

The Cabinet Secretary for Finance declares that the arrangements made between the Government of the Republic of Kenya and the Government of the State of Qatar in the articles of an agreement set out in the Schedule and signed on the 23rd of April, 2014, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the State of Qatar desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

HAVE AGREED as follows:

Article 1**PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income, all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are:
 - (a) in the case of Qatar, taxes on income or profits (hereinafter referred to as "Qatari tax"); and
 - (b) in the case of Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act (Cap 470) (hereinafter referred to as "Kenyan tax").
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective tax laws.

Article 3**GENERAL DEFINITIONS**

[Subsidiary]

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Qatar" means the State of Qatar, and when used in a geographical sense, it means Qatar's lands, internal waters, territorial sea including its bed and subsoil, the air space over them, the exclusive economic zone and the continental shelf, over which the State of Qatar exercises sovereign rights and jurisdiction in accordance with the provisions of international law and Qatar's national laws and regulations;
- (b) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also exclusive economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
- (c) the term "a Contracting State" and "the other Contracting State" means Qatar or Kenya as the context requires;
- (d) the term "person" includes an individual, a partnership, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means—
 - (i) in the case of Qatar, the Cabinet Secretary for Finance, or his authorized representative, and
 - (ii) in the case of Kenya, the Cabinet Secretary responsible for Finance or his authorized representative:
- (i) the term "national", in relation to a Contracting State, means—
 - (i) any individual possessing the citizenship or nationality of that Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State.

2. When implementing the provisions of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:

- (a) in the case of Qatar, any individual who has a permanent home, his centre of vital interest, or habitual abode in Qatar, and a company incorporated or having its place of effective management in Qatar. The term also includes the State of Qatar and any political subdivision, local authority or statutory body thereof;
- (b) in the case of Kenya, any person who, under the laws of Kenya, is liable to tax therein by reason of his domicile, place of incorporation, residence, place of management

or any other criterion of a similar nature, and also includes Kenya and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in Kenya in respect only of income from sources in Kenya.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State in which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- (d) if the residence status of an individual cannot be determined in accordance with the provisions of subparagraphs (a), (b) and (c) above, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) premises used as sales outlet;
- (g) a farm or plantation; and
- (h) a mine, an oil or gas well, a quarry or any other place of exploration, extraction or exploitation, of natural resources.

3. The term "permanent establishment" also encompasses:

- (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period or periods aggregating more than six months within any twelve month period; and
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if the activities of that nature continue (for the same or a connected project) within a Contracting State for period or periods aggregating more than six months within any twelve month period.

[Subsidiary]

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 7 applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums on the territory of that other Contracting State or insures risks situated therein through a person, other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any

case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

[Subsidiary]

1. Profits from the operation of ships or aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall apply to profits from the use or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise.
4. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and

in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State-and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxable in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (a) five (5) per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 10 percent of the capital of the company paying the dividends;

- (b) ten (10) per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding provisions of paragraphs 1 and 2 of this Article, dividends paid by a company which is a resident of a Contracting State shall not be taxable in that Contracting State if the beneficial owner of the dividend is the other Contracting State, its political subdivisions, local authorities, statutory bodies, Central Bank or any entity wholly owned directly or indirectly by that other State, including, in the case of Qatar, Qatar Investment Authority and Qatar Holding.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in the other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxable only in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding provisions of paragraphs 1 and 2 of this Article, interest paid by a resident of a Contracting State shall not be taxable in that Contracting State if the beneficial owner of the interest is the other Contracting State, its political subdivisions, local authorities, statutory bodies, Central Bank or any entity wholly owned directly or indirectly by that other State, including, in the case of Qatar, Qatar Investment Authority and Qatar Holding.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

[Subsidiary]

5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in the other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a contracting State or not, has in a contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in the other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircrafts operated in international traffic or movable property pertaining to the operation of such ships or aircrafts, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 in this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
 - (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
 - (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable year or year of income concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall

[Subsidiary]

be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 (one hundred eighty three) days in any twelve-month period commencing or ending in the taxable year or year of income concerned; and
- (b) the remuneration is paid by, or on behalf of an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived from an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sports person are exercised.

3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempted from tax in that other State if the visit to that other State is supported wholly or substantially by funds of either Contracting State, a political subdivision or a local authority thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

Article 18

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, pensions, other similar remuneration and annuities paid to a resident of a Contracting State in consideration of past employment may be taxed in that State.

2. However, such pensions, annuities and other remuneration may also be taxed in the other Contracting State if the payment is made by a resident of the other Contracting State or a permanent establishment situated therein.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

Article 19

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State;

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who:

- (i) is a national of that other State; or
- (ii) did not become a resident of that other State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of Articles 15, 16, 11, and 18 of this Agreement shall apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

TEACHERS AND RESEARCHERS

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who at the invitation of the Government of the first-mentioned Contracting State or of a university, college, school, museum or other cultural institutions in that first-mentioned Contracting State or under an official program of cultural exchange, is present in that Contracting State for a period not exceeding three consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institutions shall be exempt from tax in that Contracting State on his remuneration for such activities.

2. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the calendar year in which he visits the other Contracting State or in the immediately preceding calendar year.

Article 21**STUDENTS, BUSINESS APPRENTICES AND TRAINEES**

1. A student, trainee or a business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants and scholarships be exempt from tax in that other State on:

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration which he derives from an employment, which he exercises during his full time education or training in the other Contracting State.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival for the purpose of his education or training in that other State.

Article 22**OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State, if the recipient of such income carries on business in the Contracting State through a permanent establishment situated therein, or performs in the other State independent personal services from a fixed base situated therein, and the right or properly in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23**ELIMINATION OF DOUBLE TAXATION**

Where a resident of a Contracting State derives income which, in accordance with the provisions of this Agreement, is taxable in other Contracting State, then the first-mentioned Contracting State shall allow as a deduction from the tax on income of that resident an amount equal to the tax paid in the other Contracting State provided that such deduction shall not exceed that part of the tax, as computed before the deduction is given, which is attributable to the income derived from the other Contracting State.

Article 24**NON-DISCRIMINATION**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the

other Contracting State any personal allowances, relief and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The non taxation of Qatari nationals under Qatari tax law shall not be regarded as a discrimination under the provision of this Article.

6. In this Article the term "taxation" means taxes which are the subject of this Agreement.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2 of this Agreement.

2. Any information received under paragraph (1) of this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that

[Subsidiary]

State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in paragraph (1) of this Article. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs (1) and (2) of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

4. If information is requested by a Contracting State in accordance with this article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph (3) of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph (3) of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank or other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 28

LIMITATION OF BENEFITS

A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement.

Article 29

ENTRY INTO FORCE

1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by their laws for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of this Agreement shall have effect:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the year in which the Agreement enters into force; and

- (b) with regard to other taxes, in respect of taxable years/years of income beginning on or after the first day of January of the calendar year immediately following the year in which the Agreement enters into force.

Article 30

TERMINATION

1. This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year following the expiration of a period of five years from the date of its entry into force.

2. This Agreement shall cease to have effect:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the year in which the notice is given; and
 - (b) with regard to other taxes, in respect of taxable year or year of income beginning on or after the first day of January of the calendar year immediately following the year in which the notice is given.
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Double Taxation Relief (Seychelles) Notice under section 41**THE INCOME TAX ACT-THE DOUBLE TAXATION RELIEF (SEYCHELLES) NOTICE**

[L.N. 9/2015]

The Cabinet Secretary for Finance declares that the arrangements made between the Republic of Kenya and the Government of the Republic of Seychelles in the articles of an agreement set out in the Schedule and signed on the 17th March, 2014, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the Republic of Seychelles desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

HAVE AGREED as follows:

Article 1**PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its county governments, political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Agreement shall apply are:
 - (a) In Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, (Cap. 470) of the Laws of Kenya;
(hereinafter referred to as "Kenya" tax)
 - (b) In Seychelles:
 - (i) the business tax;
 - (ii) the income and non-monetary benefits tax; and
 - (iii) the petroleum income tax.(hereinafter referred to as "Seychelles" tax)
4. This Agreement shall also apply to any identical or substantially similar taxes that are imposed by the Contracting States after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall

notify each other of any significant changes which have been made in their respective taxation laws by means of an Exchange of Notes.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (b) the term "competent authority" means:
 - (i) in Kenya, the Cabinet Secretary responsible for finance or his authorized representative;
 - (ii) in Seychelles, the Cabinet Secretary responsible for finance or his authorized representative;
- (c) the term "international traffic" means any transport by ship or aircraft, operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (d) the term "national", means:
 - (i) any individual possessing the nationality or citizenship of a Contracting State; and
 - (ii) any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;
- (e) the term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.
- (f)
 - (i) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploring and exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law,
 - (ii) the term "Seychelles" means the territory of the Republic of Seychelles including its exclusive economic zone and continental shelf where Seychelles exercises sovereign rights and jurisdiction in conformity with the provisions of the United Nations Convention on the Law of the Sea;
- (g) the terms "a Contracting State" and "the other Contracting State" means Kenya or Seychelles, as the context requires;
- (h) the term "business" includes the performance of professional services and of other activities of an independent character;
- (i) the term "enterprise" applies to the carrying on of any business;
- (j) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (k) the term "tax" means Kenya tax or Seychelles tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that State for the purposes of the taxes to which the Agreement

[Subsidiary]

applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or registration or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which a permanent home is available to him. If a permanent home is available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others; and
- (g) a mine, an oil or gas well, a quarry or any other place of exploration, extraction or exploitation of natural resources including any installation or structure used for the exploration, extraction or exploitation of natural resources.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction, installation or assembly project, or supervisory activities in connection therewith, but only if such site, project or activities last for more than 6 months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only

where activities of that nature continue for the same or a connected project within the Contracting State for a period or periods exceeding in the aggregate 6 months in any twelve month period commencing or ending in the tax year concerned.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise; or for collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 7 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if:

- (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.

[Subsidiary]

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other state of goods or merchandise of the same or similar kind as those sold through that permanent establishment; (c) other business activities carried on in that other state of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment:

- (a) there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not allowed as a deduction under the taxation laws of that State; and
- (b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. For the purpose of this Article, profits from the operation in international traffic of ships or aircraft shall include in particular:
 - (a) profits derived from the rental or lease by the enterprise on a bare boat charter basis of ships or aircraft used in international traffic where such rental or lease is ancillary to the transportation of passengers or cargo;
 - (b) profits derived from the use, maintenance, rental or lease of containers by the enterprise where such use, maintenance, rental or lease is ancillary to the transportation of cargo.
3. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where:
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and where the competent authorities of the Contracting State agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two

[Subsidiary]

enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws.

4. The provisions of paragraph 3 shall not apply in the case of fraud, evasion, wilful default or neglect.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends and is a resident of the other Contracting State, the tax so charged to the beneficial owner shall not exceed 5 percent of the gross amounts of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from the shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:

- (a) the Government, its county governments, political subdivisions or local authorities of the other Contracting State; or
- (b) any institution, body or board which is wholly owned by the Government, its county governments, political subdivisions or local authorities of the other Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7, as the case may be shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, its county governments, political subdivisions or local authorities or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount of interest. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for:

- (a) the use of, or right to use any patent, invention, design or model, secret formula or process, trademark, or other like property or right;
- (b) the use of, or right to use any copyright of a literary, artistic, or scientific work (including computer software, cinematograph films or films or video tapes or discs for use in connection with radio or television broadcasting;

[Subsidiary]

- (c) the receipt of, or right to receive, any visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
- (d) the supply of any technical, industrial, commercial, or scientific knowledge, experience, or skill;
- (e) the use of or right to use any industrial, commercial, or scientific equipment; or
- (f) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any property or right referred to in paragraphs (a) through (e).

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, its county governments, political subdivisions or local authorities or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

MANAGEMENT, PROFESSIONAL OR TECHNICAL FEES

1. Management, professional or technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

2. However, such management, professional or technical fees may also be taxed in the Contracting State in which they arise, and according to the law of that State, but where the beneficial owner of such management, professional or technical fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the management, professional or technical fees.

3. The term "management, professional or technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial, professional or consultancy nature.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the management, professional or technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management, professional or technical fees arise through a permanent establishment situated therein, and the management, professional or technical fees are effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Management, professional or technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, its county governments, political subdivisions or local authorities or a resident of that State. Where, however, the person paying the management, professional or technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the management, professional or technical fees was incurred, and such management, professional or technical fees are borne by that permanent establishment, then such management, professional or technical fees shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the management, professional or technical fees paid exceeds, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 14

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18 and 19 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the tax year; and

[Subsidiary]

- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

4. The term "tax year" means a year of income.

Article 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State'

Article 17

ENTERTAINERS AND SPORTSMEN

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned Contracting State or takes place under a cultural agreement or arrangement between the Governments of the Contracting States, their county governments, political subdivisions or local authorities.

Article 18

PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 19, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, may be taxed in the first-mentioned State.

2. However, such pensions and other remuneration may also be taxed in the other Contracting State if the payment is made by a resident of the other Contracting State, or a permanent establishment situated therein.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

4. Notwithstanding the provisions of paragraphs 1 and 2 pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State, its county governments, political subdivisions or local authorities, shall be taxable only in that State.

Article 19

REMUNERATION AND PENSION IN RESPECT OF GOVERNMENT SERVICE

1. Remuneration, other than a pension, paid by, or out of funds created by a Contracting State, its county governments, political subdivisions or local authorities in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in the other Contracting State creating the funds if the services are rendered in that other State and the individual is a resident of that State and:

- (a) is a national of that State; or
- (b) did not become a resident solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State, its county governments, political subdivisions or local authorities to an individual in respect of services rendered to that State or sub-division, authority or body in the discharge of governmental functions shall be taxable only in that State.

- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, its county governments, political subdivisions or local authorities.

Article 20

PROFESSORS, TEACHERS AND RESEARCHERS

1. Notwithstanding the provisions of Article 15, a professor, teacher or researcher who makes a temporary visit to the other Contracting State for a period not exceeding three years from the date of first arrival in that State, solely for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

Article 21

STUDENTS AND BUSINESS APPRENTICES

A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training or who is, or immediately before being so present was, a resident of the other Contracting State shall be exempt from tax in the (first-mentioned State) on payments received from outside that first-mentioned State for purpose of his maintenance, education and training.

Article 22

OTHER INCOME

[Subsidiary]

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2, Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

Article 23

ELIMINATION OF DOUBLE TAXATION

1. Where a resident of a Contracting State derives income which in accordance with the provisions of this Agreement may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Provided that such deduction shall not exceed that part of the income tax as computed before the deduction is given, which is attributable as the case may be to the income which may be taxed in that other State.
2. The tax payable in a Contracting State mentioned in paragraph 1 shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of that Contracting State and which are designed to promote economic development.

Provided that the income tax that would have been payable but for the tax incentives granted under the laws of a Contracting State shall not be allowed for deduction in the other Contracting State.

Article 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 5 of Article 14 apply, interest, royalties, technical fees and

other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. The term "taxation" means taxes which are the subject of this Agreement.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. If it seems desirable to amend any Article of the Agreement without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of exchange of diplomatic notes.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic law concerning taxes covered by this Agreement in so far as the taxation there under is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1.

2. Any information so exchanged shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts or administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

[Subsidiary]

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process or information, the disclosure of which would be contrary to public policy.

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular posts under the general rules of international law or under the provisions of special agreements.

Article 28

ENTRY INTO FORCE

1. The Contracting States shall notify each other, by means of exchange of diplomatic notes, of the completion of the procedures required by their laws for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the latter of these notifications.

2. The provisions of the Agreement shall apply as follows:

- (a) In the case of Kenya, to income in respect of any year of income beginning on or after the first day of January next following the date upon which this Agreement enters into force.
- (b) In the case of Seychelles, with regard to taxes withheld at source, in respect of amounts paid or credited on or after the thirtieth day following the date upon which the Agreement enters into force; and with regard to other taxes, in respect of years of assessment beginning on or after the date upon which this Agreement enters into force.

Article 29

TERMINATION

1. This Agreement shall remain in force indefinitely but any of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting State written notice of termination not later than 30th June of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to have effect as follows:

- (a) In the case of Kenya, to income in respect of any year of income beginning on or after the first day of January next following the date upon which such notice is given.

- (b) In the case of Seychelles,
- (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the thirtieth day following the date upon which such notice is given; and
 - (ii) with regard to other taxes, in respect of years of assessment beginning on or after the date upon which such notice is given.

PROTOCOL

At the signing of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of Seychelles for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the said Agreement.

1. With reference to Article 6

For the purpose of this Article, both parties have agreed that the term "agriculture" includes fish farming, breeding and processing and raising aquatic species including specifically prawns, crayfish, oysters and shell fish.

2. With reference to paragraph 3 of Article 13

For the purpose of this Article, both parties have agreed that the term "management, professional or technical fees" shall also include payments in consideration for any agency or contractual services.

3. With reference to Article 26

For the purpose of this Article, both parties have agreed to the wording for a "Mode of Application" that prescribes the process to be followed for the exchange of information between each Contracting States.

The Mode of Application for the exchange of information is reproduced hereunder.

MODE OF APPLICATION FOR THE EXCHANGE OF INFORMATION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES REGARDING ARTICLE 26 OF THE AGREEMENT

The Government of the Republic of Kenya and the Government of the Republic of Seychelles on signing the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have added the following provisions with respect to the application of Article 26 of the Agreement.

1. It is agreed that the competent authority of the Contracting State from which information is sought (hereinafter referred to as the "Requested State") shall provide on request of the competent authority of the Contracting State requesting the information (hereinafter referred to as the "Requesting State") for purposes referred to in Article 26 of the Agreement.
2. The competent authority of the Requesting State shall provide in support of its written request to the competent authority of the Requested State, relevant evidence and include the following information when presenting a request for information under the Agreement, to demonstrate the foreseeable relevance of the information to the request:
 - (a) the identity of the person under examination or investigation and, if banking records are sought by the Requesting State, the identity of the specific bank from which information is sought; and in every case a statement of all supporting evidence and other circumstantial proof which the request is based upon;

[Subsidiary]

- (b) the precise period on which information is requested;
- (c) the indications on the information sought, notably its nature and the form in which the Requesting State wishes to receive information from the Requested State;
- (d) the tax purpose for which the information is requested;
- (e) a statement of whether or not the person under examination or investigation has committed or is suspected of having committed an offence under the laws of the Requesting State; and, if so, specify what offence or suspected offence, with reference to the applicable statute or other law of the Requesting State;
- (f) reasons which allow the Requesting State to conclude that the information requested is held in the Requested State or is in the possession or under the control of a person within the jurisdiction of the Requested State;
- (g) the name and, to the extent known, address of any person which the Requesting State believes to be in possession of the requested information;
- (h) a written declaration that the request is in conformity with the law, regulations and the recognised administrative practices of the Requesting State, that if the requested information was within the jurisdiction of the Requesting State, then the competent authority of the Requesting State would be able to obtain the information under the laws of the Requesting State or in the normal course of administrative practices and that it is in conformity with this Agreement;
- (i) a statement that the Requesting State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

3. The competent authority of the Requested State may decline to provide the requested information if the request is not made in conformity with the Agreement or in accordance with this Mode of Application for the Exchange of Information.

4. The competent authorities have mutually agreed that ordinary costs that are incurred for the purpose of responding to a request for information will be borne by the Requested State. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs such as the cost of couriers.

The competent authorities have also mutually agreed that each of them shall reimburse the other for all direct extraordinary costs incurred in providing information pursuant to this Agreement.

If a direct/extraordinary cost pertaining to a specific request is expected to exceed five hundred United States dollars, the Requested State will contact the competent authority of the Requesting State to determine whether the Requesting State wishes to pursue the request and to bear the cost.

Examples of direct/extraordinary costs include, but are not limited to, the following:

- (i) legal fees for non Government counsel appointed or retained with approval of the competent authority of the Requesting State, for litigations in the courts or pre-litigations processes of Requested State related to a specific request for information;
- (ii) reasonable costs for stenographic reports of interviews, depositions or testimony;
- (iii) reasonable costs of locating, reproducing and transporting documents or records to the competent authority of the Requesting State;
- (iv) fees and expenses, determined in accordance with amounts allowed under applicable law or common practices, of a person who voluntarily appears in the Requested State for interview, deposition or testimony relating to a particular information request; and
- (v) reasonable remuneration for persons, if any, hired by the Government of the Requested State, specifically and exclusively to administer requests received under the Agreement.

5. The competent authorities may jointly decide, in writing, to amend this Mode of Application for the Exchange of Information at any time, including in the case of introducing a form of request.

Any amendment will take effect from the date of the jointly signed letter confirming the amendment.

Double Taxation Relief (South Africa) Notice under section 41**THE INCOME TAX ACT-DOUBLE TAXATION RELIEF (SOUTH AFRICA) NOTICE**

[L.N. 141/2014]

The Cabinet Secretary for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Government of the Republic of Kenya and the Government of the Republic of South Africa in the articles of an agreement signed on the 26th November, 2010, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the Republic of South Africa desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

HAVE AGREED as follows:

Article 1**Persons Covered**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2**Taxes Covered**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivision or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages and salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are:
 - (a) in Kenya: the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap.470, of the laws of Kenya; (hereinafter referred to as "Kenyan tax"); and
 - (b) in South Africa:
 - (i) the normal tax;
 - (ii) the secondary tax on companies;
 - (iii) the withholding tax on royalties; and
 - (iv) the tax on foreign entertainers and sportspersons;(hereinafter referred to as "South African tax").
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law; and
- (b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
- (c) the term "a Contracting State" and "the other Contracting State" mean Kenya or South Africa, as the context requires;
- (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term "competent authority" means:
 - (i) in Kenya, the Cabinet Secretary responsible for Finance or an authorized representative of the Cabinet Secretary; and
 - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorized representative of the Commissioner;
- (f) the term "enterprise" applies to the carrying on of any business;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "national", in relation to a Contracting State, means:
 - (i) any individual possessing the nationality of that Contracting State; and
 - (ii) any legal person or association deriving its status as such from the Laws in force in that Contracting State; and
- (j) the term "person" includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.

2. As regards the application of the provisions of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of incorporation, place of management or any other criterion of a

[Subsidiary]

similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting State, then that individual's status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the state with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
- (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
- (d) if the individual is a national of both States or of neither of them, the component authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be Deemed to be a resident only of the State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop, and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity lasts for more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise any other activity of a preparatory or auxiliary character; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 7 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such a person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State stock of goods or merchandise from which such person regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, such agent will not be considered an agent of an independent status within the meaning of this paragraph.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment or the other.

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircrafts shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraph 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7***Business Profits***

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

that permanent establishment;

sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or

- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

However, the profits derived from the sales or activities described in subparagraphs (b) and (c) shall not be taxable in the other Contracting State if the enterprise demonstrates that such sales or activities have been carried out for reasons other than obtaining a benefit under this Agreement.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deductions shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the

determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in that State.

However, such profits derived from sources within the other Contracting State may also be taxed in that other State provided that the tax so charged in that other State shall be reduced by 50 per cent.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include profits derived from the rental on a bare boat basis of ships or aircrafts used in international traffic, if such profits are incidental to the profits to which the provisions of paragraphs 1 and 2 apply.

4. The provisions of paragraphs 1 and 2 shall apply to profits from the use or rental of containers (including trailers, barges and related equipment of the transport of containers) used for the transport in international traffic of goods or merchandise.

5. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other

[Subsidiary]

Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other state shall make an appropriate adjustment to the amount of tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting State shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident or the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights participating in profits (not being debt-claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid

or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident

[Subsidiary]

of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains of an enterprise of a Contracting State from the alienation of ships or aircrafts operated in international traffic or movable property pertaining to the operation of such ships or aircrafts, shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if the individual has a fixed base regularly available in the other Contracting State for the purpose of performing the individual's activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if the individual's stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from the activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, engineers, lawyers, dentists, architects and accountants.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Article 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and
- (c) the remuneration is not borne by a permanent establishment or fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international naffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16

Directors' Fees

[Subsidiary]

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 7, 14 and 15 income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 18

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

Article 19

Government Service

1. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.

3. The provisions of Article 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20***Professors, Teachers and Researchers***

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution which is recognized by the competent authority in the first-mentioned Contracting State, visits that first-mentioned Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research, provided that such remuneration is derived from outside the first-mentioned Contracting State.
2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken by the individual primarily for the private benefit of a specific person or persons.

Article 21***Students***

Payments which a student, business trainee or apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of the student, business trainee or apprentice's education or training receives for the purpose of the student, business trainee or apprentice's maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 22***Other Income***

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraphs 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that the other State independent personal services from a fixed base situated therein, and the right or properfy in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

Article 23***Elimination of Double Taxation***

Double taxation shall be eliminated as follows:

- (a) in Kenya, where a resident of Kenya receives income which, in accordance with the provisions of this Agreement, may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person, an amount equal to the tax paid in South Africa. Such a deduction, however, shall not exceed that part of the Kenyan tax, as computed before the deduction is given, which is attributable to the income derived from South Africa;

[Subsidiary]

(b) in South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), Kenyan tax paid by residents of South Africa in respect of income taxable in Kenya, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

Article 24

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise or a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. Nothing contained in this Article shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of Kenya, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting State may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as may be necessary for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions in so far as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

The competent authorities shall through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

[Subsidiary]

4. If the information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institutions, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

Assistance in the Collection of Taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting State may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, in so far as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection, the competent authority of the first mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 28

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29

Entry into Force

1. Each of the Contracting States shall notify to the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Agreement shall apply:

- (a) in Kenya
 - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which the Agreement enters into force;
 - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the date upon which the Agreement enters into force;
- (b) in South Africa:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which the Agreement enters into force; and
 - (ii) with regard to other taxes, in respect of years of assessment beginning on or after the first day of January next following the date upon which the Agreement enters into force.

Article 30**Termination**

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to apply:

- (a) in Kenya
 - (i) to taxes withheld at source, on amounts paid or accrued after the end of the calendar year in which such notice is given; and
 - (ii) to other taxes, on income arising for years of income beginning after the end of the calendar year in which such notice is given;
 - (b) in South Africa
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and
 - (ii) with regard to other taxes, in respect of years of assessment beginning after the end of the calendar year in which such notice is given.
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**Double Taxation Relief (The United Republic of Tanzania and the Republic of Uganda)
Notice under section 41**

**THE INCOME TAX ACT-THE DOUBLE TAXATION RELIEF (THE UNITED
REPUBLIC OF TANZANIA AND THE REPUBLIC OF UGANDA) NOTICE**

[L.N. 45/1999]

The Cabinet Secretary responsible for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Government of the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda in articles of agreement signed on 28th April, 1997, with a view to affording relief from double taxation in relation to income tax under the Income Tax Act and any taxes of similar character imposed by the laws of the United Republic of Tanzania and the Republic of Uganda shall notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Governments of the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1

PERSONAL SCOPE

This agreement shall apply to persons who are residents of one or any of the other Contracting States—

Article 2

TAXES COVERED

1. This agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this agreement shall apply are—
 - (a) in Kenya the income tax chargeable in accordance with the provisions of the Income Tax Act (Cap. 470).
 - (b) in Tanzania the tax on income chargeable under the Income Tax Act 1973 (Act 33 of 1973); and
 - (c) in Uganda the tax on income chargeable under the Income Tax Decree of 1974 (Decree 1 of 1974).
4. This agreement shall apply to any other taxes of identical or substantially similar character which are imposed by any of the Contracting States after the date of signature of this agreement in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article, of this agreement, without affecting the general principles

[Subsidiary]

thereof, the necessary amendments may be made by mutual consent by means of exchange of notes.

Article 3

GENERAL DEFINITIONS

In this agreement, unless the context otherwise requires:

1. (a) The term "Company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes.
 - (b) The term "competent authority" means—
 - (i) in Kenya, the Cabinet Secretary for the time being responsible for finance or his authorized representative;
 - (ii) in Tanzania, the Minister for the time being responsible for finance or his authorized representative; and
 - (iii) in Uganda, the Minister for the time being responsible for finance or his authorized representative.
 - (c) The term "international traffic" means any transport by sea or air, operated by an enterprise which has its place of effective management in a Contracting State, except when the transport is operated solely between places within a Contracting State.
 - (d) The term "national" means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State.
 - (e) The term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.
2. In the application of the provisions of this agreement by a Contracting State, any term not otherwise defined, shall, unless the context otherwise requires, have the meaning which it has under the laws of that State in relation to the taxes which are the subject of this agreement.

Article 4

RESIDENT

1. For the purposes of this agreement, the term "resident of a Contracting State" means any person who under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature. This term does not include any person who is liable to tax in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of more than one of the Contracting States, then his status shall be deemed in accordance with the following rules—
 - (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him in two or more States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interest);
 - (b) if the state in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in any of the Contracting States, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in two or more States or none of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he is a national of two or more States or of none of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of two or more Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purpose of this agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (h) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment" likewise encompasses—

- (a) a building site or a construction, installation or assembly project or supervisory activities in connection therewith only if the site, project or activity lasts for more than 6 months;
- (b) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating more than 6 months within any 12 month period.

4. Notwithstanding the preceding provisions of this article, the term "permanent establishment" shall be deemed not to include—

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise; or for collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraph 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of any of the other Contracting States (other than an agent of an independent status to whom paragraph 6 of this Article applies)

[Subsidiary]

notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if—

- (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of any of the other Contracting States, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions for general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include—

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise; or for collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraph 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of any of the other Contracting States (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if; from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

6. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from -immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in any of the other Contracting States through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributed to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in any of the other Contracting States through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment—

- (a) there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State; and
- (b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprises or any of its other offices, by way of royalties, fees or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits on the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the results shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

[Subsidiary]

7. Where profits include items of income which are dealt with separately in other articles of this agreement, then the provisions of those articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise from the operation or rental of ships or aircraft in international traffic and the rental of container and related equipment which is incidental to the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

3. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income which would, but for those conditions have accrued to one of the enterprises, but, by reason of those conditions, not so accrued, may be included in the income of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the income of an enterprise of that State and taxes accordingly—profits on which an enterprise of any of the other Contracting States has been charged to tax in that State and the profits so included are income which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those income. In determining such adjustment, due regard shall be had to the other provisions of this agreement and the competent authorities of the Contracting State shall if necessary consult each other.

3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.

4. The provisions of paragraph 3 of this Article shall not apply in the case of fraud, wilful default or neglect.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of any of the other Contracting States may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged to the beneficial owner shall not exceed 15 per cent of the gross amounts of the dividends. The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term "dividends" as used in this Article means income from shares or other rights, not being debt claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from the shares by the laws of the Contracting State of which the company making the distribution is a resident.
4. The provisions of paragraph 1 and 11 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in any of the other Contracting States of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in any of the other States independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. Where the company which is a resident of a Contracting State derives profits or income from any of the other Contracting States, no tax may be imposed on the beneficial owner in that other state on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, not subject to the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of any of the other Contracting States may be taxed in that other Contracting State.
2. However, Subject to the provisions of paragraph 3 of this Article, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 20 per cent of the gross amount of the interest.
3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by—
 - (a) the Government, a political subdivision or a local authority of the other Contracting State; or
 - (b) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this agreement.

[Subsidiary]

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base, is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this agreement.

Article 12

ROYALTIES

1. Royalties arising in Contracting State and paid to a resident of any of the other Contracting States may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 20 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration of the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula, or process, or for the use of, or the right to use industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State carries on business in the Contracting State in which the royalties arise, through a permanent establishment situated therein or performs in that other state independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this agreement.

Article 13

MANAGEMENT OR PROFESSIONAL FEES

1. Management or professional fees arising in a Contracting State which are derived by a resident of any of the other Contracting States may be taxed in that other State.

2. However, such management or professional fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where the beneficial owner of such management or professional fees is a resident of the other Contracting State, the tax so charged shall not exceed 20 per cent of the gross amount of the management or professional fees.

3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration of any services of a technical, managerial, professional or consultancy nature not covered under any other Article of the agreement.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the management or professional fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management or professional fees arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the management and professional fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, shall apply.

5. Management or professional fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the management or professional fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the management or professional fees was incurred, and such management or professional fees are borne by that permanent establishment or fixed base, then such management or professional fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the management or professional fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this agreement.

Article 14

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in any of the Contracting States may be taxed in that other Contracting State.

[Subsidiary]

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in any of the other Contracting States for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State stays in any of the other Contracting States for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for periods exceeding in aggregate more than 122 days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.
2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants and economists.

Article 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17, 19, 20 and 21, salaries wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in any of the other Contracting States. If the employment is exercised, such remuneration as is derived therefrom may be taxed in the State in which the employment is exercised.
2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in any of the other Contracting States shall be taxable only in the first-mentioned State if—
 - (a) the recipient is present in the other for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
 - (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised abroad a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 17

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of any of the other Contracting States may be taxed in the State in which the company is resident.

Article 18

ENTERTAINERS AND SPORTSMEN

1. Notwithstanding the provisions of Articles 7, 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities a such, may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16 be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of any of the Contracting States or local authority.

Article 19

PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 20, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of any of the other Contracting States, shall be taxable only in the Contracting State in which the payments arise.

2. However, such pensions and other remuneration may also be taxed in any of the other Contracting States if the payment is made by a resident of any of the other Contracting States, or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

ARTICLE 20

REMUNERATION AND PENSION IN RESPECT OF GOVERNMENT SERVICE

[Subsidiary]

1. Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a political subdivision, local authority or statutory body thereof in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in any of the other Contracting States creating the funds if the services are rendered in that other State and the individual is a resident of that State and;

- (a) is a national of that State; or
- (b) did not become a resident solely for the purpose of rendering the services.

2. Any person paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body in the discharge of governmental functions shall be taxable only in that State.

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political subdivision, local authority or statutory body thereof.

Article 21

PROFESSORS AND TEACHERS

1. Notwithstanding the provisions of Article 16, a professor or teacher who makes a temporary visit to any one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

Article 22

STUDENT'S AND BUSINESS APPRENTICES

A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training or who is, or immediately before being so present was, a resident of any of the other Contracting States shall be exempt from tax in the (first-mentioned State) on payments received from outside that first, mentioned State for purpose of his maintenance, education and training.

ARTICLE 23

OTHER INCOME

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this agreement in respect of which he is subject to tax in that State, shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in any of the other Contracting States through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

Article 24**ELIMINATION OF DOUBLE TAXATION**

1. Where a resident of any of the Contracting States derives income which in accordance with the provisions of this agreement may be taxed in the other Contracting States the first mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Provided that such deduction shall not exceed that part of the income tax as computed before deduction is given, which is attributable as the case may be to the income which may be taxed in that other State.

2. Where in accordance with any provision of this agreement income derived by a resident of a Contracting State is exempt from tax in that State such State may nevertheless, in calculating the amount of tax on the remaining income of such resident take into account the exempted income.

Article 25**NON-DISCRIMINATION**

1. The nationals of a Contracting State shall not be subjected in any other Contracting States to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the other States in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in any of the other Contracting States shall not be less favourably levied in that other State than the taxation levied on enterprises of any of the other States carrying on the activities.

3. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of any of the other Contracting States, shall not be subjected in the first mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of any of the Contracting States any personal allowances, reliefs and deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. In this article the term "taxation" means taxes which are the subject of this agreement.

Article 26**MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or more of the Contracting States results or will result for him in taxation not in accordance with this agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of any of the other Contracting States, with a view to the avoidance of taxation which is not in accordance with the agreement. Any agreement

[Subsidiary]

reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this agreement.

4. The competent authorities of the Contracting States may through consultations develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate procedures, conditions, methods and techniques to facilitate the above mentioned actions and the implementation of the mutual agreement procedure.

Article 27

EXCHANGE OF INFORMATION

1. The competent authorities of Contracting States shall exchange such information as is necessary for carrying out the provisions for this agreement or of the domestic law of the Contracting States concerning taxes covered by this agreement so far as the taxation thereunder is not contrary to the agreement in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts or administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligations—

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of any of the other Contracting States;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of any other Contracting States;
- (c) to supply information which would disclose any trade, business, industrial, commercial or information, the disclosure of which would be contrary to public policy.

Article 28

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 29

ENTRY INTO THE FORCE

1. The Contracting States shall notify each other of the completion of the procedures required by their laws for entry into the force of this agreement. The agreement shall enter into force on the date of the last of these notifications.

2. The provisions of this agreement shall apply to income for any year of income beginning on or after the first day of January next following the date upon which this agreement enters into force.

Article 30

TERMINATION

1. This agreement shall remain in force indefinitely but any of the Contracting States may terminate the agreement through diplomatic channels, by giving to other Contracting States written notice of termination not later than 30th June of any calendar year starting five years after the year in which the agreement entered into force.

2. In such event the agreement shall cease to have effect on income for any year of income beginning on or after the first day of January next following the calendar year in which such notice is given.

Double Taxation Relief (United Arab Emirates) Notice under section 41**THE INCOME TAX ACT- THE DOUBLE TAXATION
RELIEF (UNITED ARAB EMIRATES) NOTICE**

[L.N. 218/2016]

The Cabinet Secretary for Finance declares that the arrangements made between the Government of the Republic of Kenya and the Government of the United Arab Emirates in the articles of the agreement set out in the Schedule and signed on the 21st of November, 2011, with a view to affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the United Arab Emirates desiring to enhance the existing economic cooperation by concluding an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

HAVE AGREED as follows:

ARTICLE 1***Persons Covered***

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2***Taxes Covered***

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local government or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Agreement shall apply are:
 - (a) in the case of the United Arab Emirates; the income tax; and the corporate tax; (hereinafter referred to as "United Arab Emirates tax");
 - (b) in case of Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, (Cap. 470); (hereinafter referred to as "Kenyan Tax")
4. The Agreement shall apply to any other taxes of identical or substantially similar character which are imposed by a Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

ARTICLE 3**General Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the terms "Contracting State" and "other Contracting State" mean United Arab Emirates or Kenya, as the context requires;
 - (b) the term "United Arab Emirates" when used in geographical sense, means the territory of the United Arab Emirates which is under its sovereignty as well as the territorial sea, airspace and submarine areas over which the United Arab Emirates exercises, in conformity with international law and the laws of the United Arab Emirates, sovereign rights in respect of any activity carried on in connection with the exploration for or the exploitation of natural resources;
 - (c) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
 - (d) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
 - (e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (f) the term "competent authority" means:
 - (i) in the case of Kenya, the Cabinet Secretary for the National Treasury or his authorized representative;
 - (ii) in the case of the United Arab Emirates, the Minister of Finance or his authorized representative;
 - (g) the term "international traffic" means any transport by sea or air, operated by an enterprise which has its place of effective management in a Contracting State, except when the transport is operated solely between places within a Contracting State;
 - (h) the term "national" means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;
 - (i) the term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.
2. In the application of the provisions of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State in relation to the taxes which are the subject of this Agreement.

ARTICLE 4**Resident**

[Subsidiary]

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
 - (a) in the case of Kenya, any person who under the laws of Kenya, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature. This term does not include any person who is liable to tax in respect only of income from sources in Kenya;
 - (b) in the case of the United Arab Emirates:
 - (i) an individual who under the laws of the United Arab Emirates or of any political subdivision or local government thereof is a national;
 - (ii) any person other than an individual that is incorporated or otherwise recognized under the laws of the UAE or any political subdivision;
 - (iii) or local government thereof.
2. For the purposes of paragraph 1, a resident of a Contracting State includes:
 - (a) the Government of that Contracting State and any political subdivision or local authority thereof;
 - (b) any person other than an individual owned or controlled directly or indirectly by that State or any political subdivision or local government or county government or local authority thereof;
 - (c) a registered pension fund;
 - (d) charities or religious, educational and cultural organizations.
3. Where by reason of the provisions of paragraph 1 of this Article, an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
 - (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - (d) if he is a national of both States or of none of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
4. Where by reason of the provisions of paragraph 1 of this Article, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a warehouse, in relation to a person providing storage facilities for others;
 - (g) a mine, oil or gas well, a quarry or any other place of exploration for or extraction of natural resources and any other related activities including an offshore drilling site.
3. The term "permanent establishment" likewise encompasses:
 - (a) a building site or construction, assembly project and supervisory activities in connection therewith or drilling rig used for exploration or exploitation of natural resources constitutes a permanent establishment only if the site, rig, project or activity lasts for more than 6 months;
 - (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating more than 4 months within any 12-month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 7 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if:
 - (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his

[Subsidiary]

- activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.
6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.
7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from Hydrocarbons

Notwithstanding any other provision of this Agreement nothing shall affect the right of either one of the contracting States, or any of their local government or local authorities thereof to apply to the domestic laws and regulations related to the taxation of income, and profits derived from hydrocarbons and its associated activities situated in the territory of the respective Contracting State, as the case may be.

Article 7

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated, but the tax so charged shall be reduced by 50% if the beneficial owner of the income derived from immovable property is the state itself or local authorities, political subdivision, local governments, county governments or local financial institutions wholly owned by the Government of a Contracting State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provision of paragraph 1 of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

4. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 8

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment:
 - (a) there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, in accordance with the taxation laws of that State, whether in the State in which the permanent establishment is situated or elsewhere;
 - (b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 9

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
Provided that where such an enterprise derives profits from such operation in the other Contracting State:
 - (a) such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and
 - (b) the tax chargeable in that other State shall be reduced by an amount equal to fifty per cent thereof.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 10***Associated Enterprises***

1. Where:
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.
3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.

4. the provisions of paragraph 3 of this Article shall not apply in the case of fraud, wilful default or neglect.

ARTICLE 11

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged to the beneficial owner shall not exceed 5 percent of the gross amounts of the dividends. The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.
3. Notwithstanding the provisions of paragraphs 1 and 2, dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other Contracting State if the beneficial owner of the dividends is:
 - (a) the Government, political subdivision or a local authority of other Contracting State;
 - (b) the Central Bank of the other Contracting State; or
 - (c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting State.
4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from the shares by the laws of the Contracting State of which the company making the distribution is a resident.
5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in any of the other States independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.
6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 12

Interest

[Subsidiary]

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraphs 1 and 2, interest paid by a company which is a resident of a Contracting State shall be taxable only in that other Contracting State if the beneficial owner of the interest is:
 - (a) the Government, political subdivision or a local authority of other Contracting State;
 - (b) the Central Bank of the other Contracting State; or
 - (c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting State.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 11 of this Agreement.
5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13***Royalties***

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the Contracting State in which the royalties arise, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 7, and situated in the Contracting State shall be taxed in that other Contracting State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, shall be taxed in that other State.

[Subsidiary]

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State stays in any of the other Contracting States for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for periods exceeding in aggregate more than 122 days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.
2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants and economists.

ARTICLE 16

Dependent Personal Services

1. Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived there from may be taxed in the State in which the employment is exercised.
2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned;
 - (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. An individual who is both a national of a Contracting State and an employee of an enterprise having its place of effective management in that Contracting State, the principal business of which consists of the operation of aircraft in international traffic, and who derives remuneration in respect of duties performed in the other Contracting State shall be taxable only in that Contracting State (place of effective management of the enterprise).

ARTICLE 17

Directors Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in the State in which the company is resident.

ARTICLE 18

Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 8, 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his or her personal activities as such, may be taxed in the Contracting State in which these activities are exercised.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his or her capacity as such accrues not to the entertainer or sportsperson himself or herself but to another person, that income may, notwithstanding the provisions of Articles 8, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or The sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.
4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of the Contracting State or local authority.

ARTICLE 19

Pensions, Annuities and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 20, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, shall be taxable only in the Contracting State in which the payments arise.
2. However, such pensions and other remuneration may also be taxed in the other Contracting State if the payment is made by a resident of the other Contracting State, or a permanent establishment situated therein.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

[Subsidiary]

4. Income arising in a Contracting State that is derived by a registered pension fund resident in the other Contracting State shall be taxable only in that other Contracting State.

ARTICLE 20

Remuneration and Pension in Respect of Government Service

1. Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a political sub-division, local authority or statutory body thereof in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in the other Contracting State creating the funds if the services are rendered in that other State and the individual is a resident of that State and: is a national of that State; or did not become a resident solely for the purpose of rendering the services.
2. Any pension paid by, or out of funds created by, a Contracting State or a political sub-division, local authority or statutory body thereof to an individual in respect of services rendered to that State or sub-division, authority or body in the discharge of governmental functions shall be taxable only in that State.
3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political sub-division, local authority or statutory body thereof.

ARTICLE 21

Professors, Teachers and Researchers

1. Notwithstanding the provisions of Article 16, a professor or teacher who makes a temporary visit to the Contracting State for a period not exceeding four years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.
2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

ARTICLE 22

Students and Business Apprentices

A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training or who is, or immediately before being so present was, a resident of the other Contracting State shall besides grants and scholarships be exempt from tax in the (first-mentioned State) on payments received from outside that first-mentioned State for purpose of his maintenance, education and training.

ARTICLE 23

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement in respect of which he is subject to tax in that State, shall be taxable only in that State.
2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 25

Non-discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the other States in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of any of the other States carrying on the same activities.
3. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that firstmentioned State are or may be subjected.
4. Notwithstanding the provisions of paragraphs 1, 2 and 3 of this Article, nothing in this Article shall affect the right of either Contracting State to grant exemption or reduction of tax in accordance with its own laws, regulations or administrative practice to its own nationals and companies.
5. In this Article the term "taxation" means taxes which are the subject of this Agreement.

ARTICLE 26

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within two years or as stipulated by the domestic law of a Contracting State, from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

[Subsidiary]

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.
3. The competent authorities of the Contracting States may through consultations develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate procedures, conditions, methods and techniques to facilitate the above-mentioned actions and the implementation of the mutual agreement procedure.

ARTICLE 27

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement relevant or to the administration or enforcement of the domestic laws of the Contracting State concerning taxes covered by this Agreement imposed on behalf of a Contracting State, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 28

Diplomatic Agents and Consular Officers

Nothing in this agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Entry into force

1. The Contracting States shall notify each other of the completion of the procedures required by their laws for entry into force of this Agreement. The Agreement shall enter into force on the date of the last of these notifications.
2. The provisions of this Agreement shall have effect:
 - (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the year in which the Agreement enters into force; and
 - (b) with regard to other taxes, in respect of taxable years/years of income beginning on or after the first day of January of the calendar year immediately following the year in which the Agreement enters into force.

ARTICLE 30

Termination

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting State written notice of termination not later than 30th June of any calendar year starting five years after the year in which the Agreement entered into force.
 2. This Agreement shall cease to have effect:
 - (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the year in which the notice is given; and
 - (b) with regard to other taxes, in respect of taxable years/years of income beginning on or after the first day of January of the calendar year immediately following the year in which the notice is given
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Double Taxation Relief (United Kingdom of Great Britain and Northern Ireland) Notice under section 41**DOUBLE TAXATION UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND**

[L.N. 253/1977]

The Cabinet Secretary responsible for Finance and Plan declares that the arrangements specified in the Schedule arrangements made between the Government of the Kenya and the Government of the United Kingdom of and Northern Ireland in articles of agreement signed 1973, as amended by a protocol signed on 20th January by an exchange of letters signed on 8th February, 1977 to affording relief from double taxation in relation to under the Act and any taxes of a similar character imposed by the laws of the United Kingdom of Great Britain and Northern Ireland, shall, notwithstanding anything to the contrary in the Act or in any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;

Have agreed as follows:

ARTICLE 1***Personal Scope***

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2***Taxes Covered***

(1) The taxes which are the subject of this Agreement are:—

- (a) in the United Kingdom of Great Britain and Northern Ireland:
 - (i) the income tax;
 - (ii) the corporation tax; and
 - (iii) the capital gains tax;
- (b) in Kenya:
 - (i) the income tax; and
 - (ii) the graduated personal tax.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any changes which are made in their respective taxation laws.

ARTICLE 3***General Definitions***

- (1) In this Agreement, unless the context otherwise requires-
- (a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
 - (b) the term "Kenya" means the Republic of Kenya, including any area adjacent to the territorial waters of Kenya designated, in accordance with international law, as an area within which Kenya may exercise rights with respect to the sea bed and sub-soil and their natural resources;
 - (c) the term "nationals" means-
 - (i) in relation to the United Kingdom, all citizens of the United Kingdom and Colonies who derive their status as such from their connection with the United Kingdom and all legal persons, partnerships and associations deriving their status as such from the law in force in the United Kingdom;
 - (ii) in relation to Kenya, all citizens of the Republic of Kenya and all legal persons, partnerships and associations deriving their status as such from the law in force in Kenya;
 - (d) the term "United Kingdom tax" means tax imposed by the United Kingdom being tax to which this Agreement applies by virtue of the provisions of Article 2; the term "Kenya tax" means tax imposed by Kenya being tax to which this Agreement applies by virtue of the provisions of Article 2; but neither of these terms are to include any tax payable in the United Kingdom or Kenya which is payable in respect of any default or omission in relation to the taxes which are the subject of this Agreement or which represents a penalty imposed under the law of the United Kingdom or Kenya relating to those taxes;
 - (e) the term "tax" means United Kingdom tax or Kenya tax, as the context requires;
 - (f) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Kenya, as the context requires;
 - (g) the term "persons" means-
 - (i) in relation to the United Kingdom an individual, a company and any other body of persons;
 - (ii) in relation to Kenya an individual, a company and any other body of persons treated as an entity for tax purposes;
 - (h) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (i) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (j) the term "competent authority" means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorized representative, and in the case of Kenya the Minister for Finance or his authorized representative.
- (2) As regards the application of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has

[Subsidiary]

under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE 4

Fiscal Domicile

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3) of this Article, any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. The terms "resident of the United Kingdom" and "resident of Kenya" shall be construed accordingly.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then, his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, oil well, quarry or other place of extraction of natural resources;
- (g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;
- (h) a building site or construction of assembly project which exists for more than six months;

- (i) the provision of supervisory activities for more than six months on a building site or construction or assembly project.
- (3) The term "permanent establishment" shall not be deemed to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
- (4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on the activity of providing the services within that other Contracting State of public entertainers or athletes referred to in Article 19.
- (5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph (7) of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned State if:
 - (a) he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purpose of goods or merchandise for the enterprise; or
 - (b) he maintains in that State a stock of goods or merchandise belonging to the enterprise from which he regularly fulfils orders on behalf of that enterprise.
- (6) An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph (7).
- (7) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. An agent shall not, however, be deemed to be an agent of an independent status within the meaning of this paragraph if his activities are devoted wholly or almost wholly to the business of that enterprise.
- (8) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Limitation of Relief

Where under any provision of this Agreement any person is relieved from tax in a Contracting State on certain income if (with or without other conditions) that person is subject to tax in the other Contracting State in respect of that income and that person is subject to tax in respect of that income in that other State by reference to the amount thereof which is remitted to or received in that other State, the relief from tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply only to the amounts so remitted or received.

ARTICLE 7

Income from Immovable Property

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) (a) The term "immovable property" shall, subject to the provisions of subparagraph (b) below be defined in accordance with the law of the Contracting State in which the property in question is situated.

(b) The term "immovable property" shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraph (1) and (3) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

(4) In so far as it has been customary in a Contr according to its law, to determine the profits to be at permanent establishment on the basis of an apportion total profits of the enterprise to its various parts, not graph (2) of this Article shall preclude that Contractin determining the profits to be taxed by such an apportion be customary; the method of apportionment adopted sh be such that the result shall be in accordance with the this Article.

(5) Notwithstanding the preceding provisions of this Article profits derived by an agricultural, forestry or plantation enterprise shall be dealt with in accordance with the provisions of Article 8.

ARTICLE 8

Business Profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities

under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment situated in a Contracting State, there shall be allowed as deductions expenses of the enterprise (other than expenses which would not be deductible under the law of that State if the permanent establishment were a separate enterprise) which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred whether in the State in which the permanent establishment is situated or elsewhere.

(4) In so far as it has been customary in a Contracting State, according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles of this Article.

(5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(7) Where profits include items which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 9

Shipping and Air Transport

A resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined solely to places in the other Contracting State.

Article 10

Associated Enterprises

Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 11

Dividends

(1) (a) Dividends derived from a company which is a resident of the United Kingdom by a resident of Kenya may be taxed in Kenya.

[Subsidiary]

- (b) Where a resident of Kenya is entitled to tax credit in respect of such a dividend under paragraph (2) of this Article tax may also be charged in the United Kingdom and according to the laws of the United Kingdom on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.
- (c) Except as aforesaid dividends derived from a company which is a resident of the United Kingdom by a resident of Kenya who is subject to tax in Kenya on them shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of Kenya who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of paragraph (3) of this Article and provided he is subject to tax in Kenya on the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of such credit over the liability to United Kingdom tax.

(3) Paragraph (2) of this Article shall not apply where the recipient of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. For the purpose of this paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

(4) Dividends derived from a company which is a resident of Kenya by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Kenya but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends if the recipient of the dividends is subject to tax on them in the United Kingdom.

(5) The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident and also includes any other item (other than interest or royalties relieved from tax under the provisions of Article 12 or Article 13 of this Agreement) which under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(6) If the recipient of the dividends being a resident of a Contracting State owns 10 per cent or more of the class of shares in respect of which the dividends are paid then paragraphs (1) and (2) or as the case may be paragraph (4) of this Article shall not apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending 12 months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the recipient of the dividends became the owner of 10 per cent or more of the class of shares in question:

Provided that this paragraph shall apply only if the shares are acquired primarily for the purpose of securing the benefit of this Article and not for *bona fide* commercial reasons.

(7) The provisions of paragraphs (1) and (2), or as the case may be paragraph (4) of this Article shall not apply where a resident of a Contracting State has in the other Contracting State a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment. In such a case the provisions of Article 8 shall apply.

(8) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State that other State may not impose any tax on the dividends paid by the company to persons who are not resident of that other State or subject the

company's undistributed profits to a tax on undistributed profits, even the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

Article 12

Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State; but where such interest is paid to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged in the Contracting State in which the interest arises shall not exceed 15 per cent of the gross amount of the interest.

(3) Notwithstanding the provision of paragraph (2)-

- (a) interest arising in a Contracting State, and paid to the Government of the other Contracting State or a local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that Government or local authority shall be exempt from tax in the firstmentioned Contracting State. The competent authorities of the Contracting States may determine by mutual agreement any other Governmental institution to which this paragraph shall apply;
- (b) interest arising in Kenya which is paid to a resident of the United Kingdom, other than to a person mentioned in subparagraph (a) of this paragraph, may be exempt from Kenya tax at the discretion of the competent authority of Kenya.

(4) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

(5) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment and the debt-claim from which the interest arises is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is home by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(7) Any provision of the law of one of the Contracting State which relates only to interest paid to a non-resident company with or without any further requirement, shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be left out of account as a deduction in computing the taxable profits of the company paying the interest as being a dividend or distribution. The preceding sentence shall not however apply to interest received by a company which is a resident of one of the Contracting States in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons resident in the other Contracting State.

[Subsidiary]

(8) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State due regard being had to the other provisions of this Agreement.

ARTICLE 13

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State; but where such royalties are paid to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged in the Contracting State in which the royalties arise shall not exceed 15 per cent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by that permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Where, owing to a special relationship, between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14

Management Fees

(1) Management fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) Notwithstanding Article 8, management fees may also be taxed in the State in which they arise and according to the law of that State; but where such management fees are paid

to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged in the Contracting State in which the management fees arise shall not exceed 12f per cent of the gross amount of the management fees arising there.

(3) The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the management fees, being a resident of a Contracting State, has in the other Contracting State in which the management fees arise a permanent establishment with which the management fees are effectively connected. In such a case the provisions of Article 8 shall apply.

ARTICLE 14

Management Fees

(1) Management fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) Notwithstanding Article 8, management fees may also be taxed in the State in which they arise and according to the law of that State; but where such management fees are paid to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged in the Contracting State in which the management fees arise shall not exceed 12% per cent of the gross amount of the management fees arising there.

(3) The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the management fees, being a resident of a Contracting State, has in the other Contracting State in which the management fees arise a permanent establishment with which the management fees are effectively connected. In such a case the provisions of Article 8 shall apply.

ARTICLE 15

Capital Gains

(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 7, may be taxed in the Contracting State in which such property is situated.

(2) Capital gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

(3) Notwithstanding the provisions of paragraph (2) of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

(4) Capital gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

[Subsidiary]

(5) The provisions of paragraph (4) of this Article shall not affect the right of a Contracting State to levy according to its own law a tax on capital gains from the alienation of any property derived by a person who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the ten years immediately preceding the alienation of the property.

Article 16

Independent Personal Services

- (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case so much of the income may be taxed in that other Contracting State as is attributable to that fixed base; or
- (b) he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days in the fiscal year concerned, in which case so much of the income may be taxed in that other Contracting State as is attributable to the activities performed in that other Contracting State.

(2) The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 17

Employments

(1) Subject to the provisions of Articles 18, 20, 21, 22 and 23, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other

Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if—

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

Article 18

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 19

Artistes and Athletes

Notwithstanding the provisions of Articles 16 and 17, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised. Provided that this Article shall not apply to public entertainers and athletes whose visit to a Contracting State is supported wholly or substantially from the public funds of the other Contracting State.

Article 20***Pensions***

(1) Any pension (other than a pension of the kind referred to in paragraph (2) of this Article) and any annuity, derived from sources within a Contracting State by an individual who is a resident of the other Contracting State may be taxed in the first-mentioned Contracting State, but if the individual is subject to tax in the other Contracting State in respect of the pension or annuity the tax so charged in the first-mentioned Contracting State shall not exceed the lower of—

- (a) 5 per cent of the pension or annuity; or
- (b) the amount of tax chargeable on the pension or annuity in the other Contracting State.

(2) Pensions paid by, or out of funds created by, a Contracting State to an individual for services rendered to that Contracting State in the discharge of governmental functions may be taxed only in that Contracting State.

(3) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 21***Governmental Functions***

(1) Remuneration paid by, or out of funds created by, a Contracting State to an individual for services rendered to that Contracting State in the discharge of governmental functions shall be exempt from tax in the other Contracting State if the individual is not a resident of that other Contracting State or is resident there solely for the purpose of rendering those services.

(2) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting States for purposes of profit.

Article 22***Students***

(1) A student or business apprentice who is or was before visiting a Contracting State a resident of the other State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training shall be exempt from tax in that first-mentioned Contracting State on—

- (a) payments made to him by persons residing outside that first-mentioned Contracting State for the purposes of his maintenance, education or training; and

[Subsidiary]

- (b) remuneration from employment in that first-mentioned Contracting State, provided that the remuneration constitutes earnings reasonably necessary for his maintenance and education.

(2) The benefits of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years.

ARTICLE 23

Teachers

A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching in respect of which he is subject to tax in the other Contracting State.

ARTICLE 24

Income Not Expressly mentioned

Items of income of a resident of a Contracting State being income of a class or from sources not expressly mentioned in the foregoing Articles of this Agreement in respect of which he is subject to tax in that State shall be taxable only in that State. Provided that this Article shall not be construed as affecting the taxation of income attributable to a permanent establishment which a resident of one Contracting State has in the other Contracting State.

ARTICLE 25

Capital

(1) Capital represented by immovable property, as defined in paragraph (2) of Article 7, may be taxed in the Contracting State in which such property is situated.

(2) Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) Notwithstanding the provisions of paragraph (2) of this Article, ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State of which the operator is a resident.

(4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 26

Elimination of Double Taxation

(1) Subject to the provisions of the law of regarding the allowance as a credit against Un tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof)—

- (a) Kenya tax payable under the laws of Kenya and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from

sources within Kenya shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Kenya tax is computed. Provided that in the case of a dividend the credit shall take into account only such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

- (b) In the case of a dividend paid by a company which is a resident of Kenya to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend the credit shall take into account (in addition to any Kenya tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Kenya tax payable by the company in respect of the profits out of which such dividend is paid.

(2) For the purpose of paragraph (1) of this Article, the term "Kenya tax payable" shall be deemed to include any amount which would have been payable as Kenya tax for any year but for—

- (a) a reduction of tax granted for that year or any part thereof under paragraph (2) (b) of the Second Schedule to the Income Tax (Allowances and Rates) (No. 2) Act, 1971, so far as it was in force on, and has not been modified since, the date when this Agreement was signed, or has been modified only in minor respects so as not to affect its general character; or
- (b) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the United Kingdom and Kenya to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Kenya tax was first granted in respect of that source.

(3) Where a resident of Kenya—

- (a) derives income from sources within the United Kingdom which, in accordance with the provisions of this Agreement, is exempt from Kenya tax but may be taxed in the United Kingdom, then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from sources within the United Kingdom had not been so exempted;
- (b) derives income from sources within the United Kingdom which may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in the United Kingdom. Such deduction, however, shall not exceed that part of the Kenya tax as computed before the deduction is given, which is appropriate to the income derived from the United Kingdom.

(4) For the purposes of paragraphs (1) and (3) of this Article income, profits and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other Contracting State.

ARTICLE 27

Personal Allowances

[Subsidiary]

(1) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of Kenya shall be entitled to the same personal allowances, reliefs and reductions for the purpose of United Kingdom tax as British subjects not resident in the United Kingdom.

(2) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Kenya tax as Kenya citizens not resident in Kenya.

(3) Nothing in this Agreement shall entitle an individual who is a resident of a Contracting State and whose income from the other Contracting State consists solely of dividends, interest or royalties (or solely of a combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in this Article for the purpose of taxation in that other Contracting State.

Article 28

Non-Discrimination

(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on an enterprise of that other Contracting State carrying on the same activities. Provided that this paragraph shall not prevent the Government of one of the Contracting States from imposing on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the other Contracting State a tax not exceeding 7% per cent of those profits in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of that Contracting State.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

(4) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

ARTICLE 29

Mutual Agreement Procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 30

Exchange of Information

The competent authorities of the Contracting States shall exchange such information (being information which is provided under their respective taxation laws in the normal administration) as is necessary for carrying out the provisions of the Agreement or for the prevention of fraud or the administrative provisions against legal avoidance in relation to which the subject of this Agreement. Any information exchanged shall be treated as secret but may be disclosed (including to a court or administrative body) concerned with collection, enforcement or prosecution in respect of tax the subject of this Agreement. No information shall be disclosed which would disclose any trade, business, industrial or secret or any trade process.

Article 31

Territorial Extension

(1) This Agreement may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those to which this Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged for this purpose.

(2) Unless otherwise agreed by both Contracting States, the termination of this Agreement shall terminate the application of this Agreement to any territory to which it has been extended under the provisions of this Article.

ARTICLE 32

Entry into Force

This Agreement shall come into force on the date when the last of all such things shall have been done in Kenya and the United Kingdom as are necessary to give the Agreement the force of law in Kenya and the United Kingdom respectively, and shall thereupon have effect—

- (a) in the United Kingdom—
 - (i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6th April, 1976;
 - (ii) as respects corporation tax, for any financial year beginning on or after 1st April, 1976;
- (b) in Kenya—

as respects income arising for the year of income 1976 and subsequent years.

Article 33

Termination

This Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the thirtieth day of June in any calendar year after the year

[Subsidiary]

1978, give notice of termination to the other Contracting Government and, in such event, the Agreement shall cease to be effective—

- (a) in the United Kingdom—
 - (i) as respects income tax, surtax and capital gains tax for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;
 - (ii) as respects corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;
 - (b) in Kenya—
 - as respects income arising for the year of income next following that in which the notice is given and subsequent years.
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Rules under section 82

THE INCOME TAX (LOCAL COMMITTEES) RULES

ARRANGEMENT OF RULES

1. Citation
 2. Interpretation
 3. Appointment of clerk
 4. Form of and time for lodging an appeal
 5. Memorandum of appeal
 6. Statement of facts of appellant
 7. Service memorandum
 - 7A. Response by Commissioner
 8. Revoked
 9. Notice and place of hearing
 10. Procedure
 11. Local committee to determine own procedure in certain matters
 12. Copies of documents admissible
 13. Fees and costs
-

THE INCOME TAX (LOCAL COMMITTEES) RULES

[L.N. 7/1974, L.N. 103/1976, L.N. 53/2012]

Citation.

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

Interpretation.

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

"appeal" means an appeal to a local committee under section 86 or section 89;

"appellant" means a person entering an appeal and the advocate or duly authorized agent of such person;

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

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

"respondent" includes a person who under section 89(3)(c) or (d) is entitled to appear on an appeal as if he were a party thereto and the advocate or duly authorized agent of that person;

"section" means a section of the Act.

Appointment of clerk.

3. (1) The Commissioner shall appoint an officer of the Income Tax Department to be the clerk to a local committee:

Provided that one officer may, in the discretion of the Commissioner, be appointed as clerk to two or more local committees.

(2) A clerk shall, in matters relating to appeals to the local committee and procedure therefor, comply with any general and special directions lawfully given by the chairman.

(3) A clerk shall by notice in the *Gazette* notify his address for the presentation or service of documents for the purpose of these Rules and shall in the same manner notify any change in such address.

Form of and time for lodging an appeal.

4. An appeal shall be entered by presentation of a memorandum of appeal to the clerk within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 86 (1):

Provided that where the local committee is satisfied that owing to absence from his normal place of residence, sickness or other reasonable cause the appellant was prevented from presenting a memorandum within such period and that there has been no unreasonable delay on his part, the local committee may extend that period within which such memorandum may be presented.

Memorandum of appeal.

5. A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

Statement of facts of appellant.

6. (1) A memorandum shall be accompanied by—

(a) a copy of the confirming notice, the amending notice or the notice of the decision of the Commissioner as the case may be;

(b) a copy of the notice of appeal;

- (c) a statement, signed by the appellant, setting out the facts on which the appeal is based and referring to any documentary or other evidence which it is proposed to adduce at the hearing of the appeal;

- (d) *deleted by L.N. 53/2012, r. 2.*

(2) In this rule—

"amending notice" means a notice setting out an amendment to an assessment served under section 85 (3)(a);

"confirming notice" means a notice confirming an assessment served under section 85 (3) (b);

"decision of the Commissioner" means a decision or act of the Commissioner which, under section 90, may be the subject of an appeal.

[L.N. 53 of 2012, r. 2.]

Service memorandum.

7. Within forty-eight hours after the presentation of a memorandum to the clerk, a copy thereof and of the statement of facts of the appellant shall be served by the appellant upon the Commissioner and upon every other respondent.

Response by Commissioner.

7A. (1) The Commissioner shall, within thirty days of being served with a memorandum and statement of facts in accordance rule 7 file a response, with the clerk, stating the facts upon which the response is based and specifying any documentary or other evidence that he proposes to adduce at the hearing of the appeal.

(2) The Commissioner shall, upon filing a response in accordance with paragraph (1), serve a copy of the response together with copies of any documents annexed thereto, upon the appellant.

(3) Where a local committee is satisfied that, the Commissioner was for any reasonable ground, unable to file the statement of facts with the clerk within the prescribed period, the local committee may extend the time within which the Commissioner shall file a response.

[L.N. 53 of 2012, r. 3.]

Revoked.

8. *Revoked by L.N. 103/1976, r. 2.*

Notice and place of hearing.

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

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the clerk that he does not intend to do so, fix a time, date and place for a meeting of the local committee for the purpose of hearing the appeal and the clerk shall cause notice thereof to be served on the appellant, the Commissioner and every other respondent.

(3) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

Procedure.

10. At the hearing of an appeal, the following procedure shall be observed—

- (a) the Commissioner and any other respondent shall be entitled to be present or to be represented;

[Subsidiary]

- (b) the appellant shall state the ground of his appeal and may support it by any relevant evidence:

Provided that, save with the consent of the local committee and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum and may not adduce any evidence other than evidence previously adduced to the Commissioner;

- (c) at the conclusion of the statement and evidence on behalf of the appellant, the Commissioner and any other respondent shall be entitled to make such submissions, supported by such relevant evidence as may be necessary to support his case;
- (d) the appellant shall be entitled to reply but may not rely on any ground of appeal or on evidence other than that adduced at the hearing;
- (e) the chairman or a member of the local committee may at any stage of the hearing to ask any questions of the appellant or the Commissioner, or any other respondent, or a witness examined at the hearing, which he considers necessary to the determination of the appeal;
- (f) a witness called and examined by a party may be cross-examined by another party to the appeal and if so cross-examined may be re-examined;
- (g) a witness called and examined by the local committee may be cross-examined by a party to the appeal;
- (h) the local committee may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary and on such terms as it may determine;
- (i) before the local committee considers its decision the parties to the appeal shall withdraw from the meeting, and the local committee shall deliberate the issue according to law;
- (j) the decision of the local committee shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;
- (k) minutes of the meeting shall be kept and the decision of the local committee recorded therein.

Local committee to determine own procedure in certain matters.

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

Copies of documents admissible.

12. Save where a local committee in a particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence, but the local committee may at any time direct that the original shall be produced notwithstanding that a copy has already been admissible in evidence:

Provided that the local committee may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

Fees and costs.

13. No fees shall be payable, and a local committee shall not make any order as to costs, on an appeal save where the grounds of appeal are held by the committee to be frivolous, in

which case the committee may order the appellant to pay as costs to the Commissioner and each other respondent a sum not exceeding five hundred shillings.

Rules under section 83

THE INCOME TAX (TRIBUNAL) RULES

ARRANGEMENT OF RULES

1. Citation
 2. Interpretation
 3. Appointment of clerk
 4. Form of and time for lodging an appeal
 5. Memorandum of appeal
 6. Statement of facts of appellant
 7. Service of memorandum of appeal
 8. Statement of facts of Commissioner
 9. Notice and place of hearing
 10. Procedure
 11. Tribunal to determine own procedure in certain matters
 12. Copies of documents admissible
 13. Fees and costs
-

THE INCOME TAX (TRIBUNAL) RULES

[L.N. 5/1974]

Citation.

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

Interpretation.

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

"appeal" means an appeal to the Tribunal under section 86(1)(a);

"appellant" means a person entering an appeal and the advocate or duly authorized agent of that person;

"chairman" means the chairman of the Tribunal appointed under section 83(2);

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

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

"section" means a section of the Act.

Appointment of clerk.

3. (1) The Commissioner shall appoint a person to be the clerk of the Tribunal, and such person may be an officer of the Income Tax Department.

(2) The clerk shall, in matters relating to appeals to the Tribunal and procedure therefor, comply with any general and special directions lawfully given by the chairman.

(3) The clerk shall by notice in the *Gazette* notify his address for the presentation or service of documents for the purposes of these Rules, and shall in the same manner notify any change in such address.

Form of and time for lodging an appeal.

4. An appeal shall be entered by presentation of a memorandum of appeal, together with five copies thereof, to the clerk within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 86(1):

Provided that where the Tribunal is satisfied that, owing to absence from his normal place of residence, sickness or other reasonable cause, the appellant was prevented from presenting a memorandum within such period, and that there has been no unreasonable delay on his part, the Tribunal may extend that period notwithstanding that the period has already expired.

Memorandum of appeal.

5. A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

Statement of facts of appellant.

6. (1) Each copy of a memorandum shall be accompanied by—

- (a) a copy of the confirming notice, or the amending notice, as the case may be;
- (b) a copy of the notice of appeal; and
- (c) a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed a copy of each document or extract from a document referred to upon which the appellant proposes to rely as evidence at the hearing of the appeal.

[Subsidiary]

(2) In this rule—

"amending notice" means a notice setting out an amendment to an assessment served under section 85(3)(a);

"confirming notice" means a notice confirming an assessment served under section 85(3)(b).

Service of memorandum of appeal.

7. Within forty-eight hours after the presentation of a memorandum to the clerk, a copy thereof and of the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Commissioner.

Statement of facts of Commissioner.

8. (1) The Commissioner shall, if he does not accept any of the facts of the appellant, within twenty-one days after service thereof upon him under rule 7 of these Rules, file with the clerk a statement of facts together with five copies thereof and the provisions of rule 6(1)(c) shall *mutatis mutandis* apply to that statement of facts.

(2) At the time of filing a statement of facts pursuant to paragraph (1) of these Rules, the Commissioner shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) If the Commissioner does not desire to file a statement of facts under this rule, he shall forthwith give written notice to that effect to the clerk and to the appellant, and in that case the Commissioner shall be deemed at the hearing of the appeal to have accepted the facts set out in the statement of facts of the appellant.

Notice and place of hearing.

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

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the clerk that he does not intend to do so, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal and the clerk shall cause notice thereof to be served on the appellant and the Commissioner.

(3) The clerk shall cause to be supplied to each member of the Tribunal a copy of the notice of hearing and of all documents received by him from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

Procedure.

10. At the hearing of an appeal, the following procedure shall be observed—

- (a) the Commissioner shall be entitled to be present or to be represented;
- (b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence:

Provided that, save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than any grounds stated in the memorandum and may not adduce evidence of facts or documents unless those facts have been referred to in, and copies of those documents have been annexed to, the statement of facts of the appellant;

- (c) at the conclusion of the statement, and evidence on behalf of the appellant, the Commissioner shall be entitled to make such submissions, supported by relevant

evidence and the provisions of subparagraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Commissioner;

- (d) the appellant shall be entitled to reply but may not raise any new issue or argument;
- (e) the chairman or a member of the Tribunal may at any stage of the hearing ask any questions of the appellant or the Commissioner or a witness examined at the hearing, as he considers necessary to the determination of the appeal;
- (f) a witness called and examined by either party may be cross-examined by the other party to the appeal and if so cross-examined may be re-examined;
- (g) a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;
- (h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;
- (i) before the Tribunal considers its decision the parties to the appeal shall withdraw from the meeting, and the Tribunal shall deliberate the issue according to law and reach its decision thereon;
- (j) the decision of the Tribunal shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;
- (k) minutes of the meeting shall be kept and the decision of the Tribunal recorded therein.

Tribunal to determine own procedure in certain matters.

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

Copies of documents admissible.

12. Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence:

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

Fees and costs.

13. No fees shall be payable, and a Tribunal shall not make any order as to costs, on an appeal save where the grounds of appeal are held by the Tribunal to be frivolous, in which case the Tribunal may order the appellant to pay as costs to the Commissioner a sum not exceeding five hundred shillings.

Rules under section 91

THE INCOME TAX (APPEALS TO THE HIGH COURT) RULES

ARRANGEMENT OF RULES

1. Citation
 2. In these Rules, unless the context otherwise requires—
 3. Form of and time for filing appeal
 4. Form of memorandum
 5. Statement of facts of appellant
 6. Registration of memorandum
 - 6A. Abatement of appeals
 7. Service of memorandum of appeal
 8. Statement of facts of respondent
 9. Notice and place of hearing
 10. Right to begin
 11. Dismissal of appeal for appellant's default
 12. Readmission of appeal dismissed for default
 13. Rehearing on application of respondent against whom ex parte decree made
 14. Grounds of appeal
 15. Additional evidence
 16. Copies of documents admissible
 17. Proceedings in Chambers
 18. Execution of decree where tax payable not set out therein
 19. Fees
 20. Extent to which rules on civil procedure apply
-

THE INCOME TAX (APPEALS TO THE HIGH COURT) RULES

[L.N. 105/1974, L.N. 41/1980]

Citation.

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

In these Rules, unless the context otherwise requires—

2. "address for service" means a place of residence or a place of business within the jurisdiction;

"appeal" means an appeal to the Court under subsection (2) of section 86 of the Act;

"memorandum" means a memorandum of appeal presented under rule 3 of these Rules;

"Registrar" means the Registrar or a Deputy Registrar of the Court;

"respondent" includes any person who under subsection (3) of section 89 of the Act is entitled to appear before a committee.

Form of and time for filing appeal.

3. No appeal shall be filed unless a memorandum of appeal is presented to the Registrar during office hours, and a copy served upon the respondent, within 30 days after the date of service upon the respondent of a notice of appeal under section 86(2) of the Act:

Provided that, where the Court is satisfied that, owing to absence from Kenya, sickness, or other reasonable cause, the appellant was prevented from presenting such memorandum of appeal within such period and that there has been no unreasonable delay on his part, the Court may extend the period within which such memorandum of appeal shall be presented.

[L.N. 41 of 1980.]

Form of memorandum.

4. Every memorandum shall contain an address for service, shall be signed by the appellant or his advocate and shall set forth concisely under distinct heads, numbered consecutively, the grounds of appeal without any argument or narrative.

Statement of facts of appellant.

5. Every memorandum shall be accompanied by—

- (a) a copy of the decision or the notice of the decision appealed against;
- (b) a copy of the notice of appeal served on the respondent; and
- (c) a statement, signed by the appellant or his advocate, setting out the facts upon which the appeal is based, and respectively specifying and referring to any documentary or other evidence which it is proposed to adduce at the hearing of the appeal.

Registration of memorandum.

6. (1) After the memorandum and the documents referred to in rule 5 of these Rules have been presented, and all filing and service fees due in relation thereto have been paid, the Registrar shall cause the date of presentation to be date-stamped thereon, and the appeal shall be numbered and entered (as an Income Tax Appeal) in the register of appeals, in accordance with rule 8 (1) of Order XL1 of the Civil Procedure (Revised) Rules, 1948.

(2) After entry of an appeal in the register of appeals as provided in sub-rule (1) of this rule, the Registrar shall ensure that, in respect of all documents relating to the appeal, the

[Subsidiary]

words "Income Tax Appeal" and the number of such appeal are included in the title of the appeal wherever the title occurs.

(3) The date on which the memorandum is presented is the date of filing of the appeal notwithstanding any dispute as to the amount of any service fee payable.

Abatement of appeals.

6A. An appeal shall abate in any case where any filing and service fees due in relation to that case have not been paid in full within fourteen days of the appellant having been notified of the total amount of the fees payable by him; and where an appellant is so notified by post then he shall be deemed, until the contrary is proved, to have received notification at the time at which the letter would be delivered in the ordinary course of post.

[L.N. 41 of 1980.]

Service of memorandum of appeal.

7. A copy of the memorandum of appeal and the documents referred to in rule 5 of these Rules shall be served by the Registrar upon the respondent upon payment of the prescribed fee for service thereof:

Provided that in any case referred to in paragraph(c) of subsection (3) of section 89 of the Act such service shall be made by the appellant.

Statement of facts of respondent.

8. The respondent shall, if he intends to contest the appeal, present to the Registrar, during office hours and within thirty days of the service upon him of the copy memorandum and the documents referred to in rule 5 of these Rules, a statement in duplicate each signed by him, giving an address for service, setting out the facts on which he relies, and respectively specifying and referring to any documentary or other evidence which he proposes to adduce at the hearing of the appeal; and a copy of such statement shall be served by the Registrar upon the appellant upon payment of the prescribed fee for service thereof.

Notice and place of hearing.

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

Right to begin.

10. (1) On the day and at the time fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent and the appellant shall be entitled to reply.

Dismissal of appeal for appellant's default.

11. (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may, subject to paragraph (a) of subsection (2) of section 87 of the Act, make an order that the appeal be dismissed.

(2) Where the appellant appears and the respondent does not appear, the Court may proceed to hear the appeal *ex parte*.

Readmission of appeal dismissed for default.

12. Where an appeal is dismissed under rule 11 of these Rules the appellant may apply to the Court to which such appeal is preferred for the readmission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal

was called on for hearing, the Court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit.

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

13. Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Court to which the appeal is preferred to rehear the appeal; and if he satisfies the Court that the memorandum of appeal and the documents referred to in rule 5 of these Rules were not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall rehear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Grounds of appeal.

14. The appellant shall not, except by leave of the Court and upon such terms as the Court may determine, rely on any ground other than a ground stated in the memorandum of appeal.

Additional evidence.

15. Should it appear to the Court at the hearing of the appeal that any documentary or oral evidence other than that referred to in the statement of facts of the appellant or respondent should be admitted, the Court may admit such evidence.

Copies of documents admissible.

16. Subject to the provisions of section 121 of the Act and save where the Court in any particular case otherwise directs or where any party to the appeal objects, copies of documents shall be admissible in evidence:

Provided that the Court may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

Proceedings in Chambers.

17. (1) Ancillary applications to a judge, if not made at the hearing, shall be made by summons intituled in the matter of the appeal, supported by affidavit.

(2) If no appeal is pending, the summons shall be intituled in the matter of the intended appeal.

Execution of decree where tax payable not set out therein.

18. Where any decree following the decision of the Court does not specify the amount of tax payable under the assessment as determined by the Court then, for the purposes of the execution of any such decree, the Commissioner shall—

- (a) where the decision of the Court results in any amendment to the assessment, file with the Registrar a copy, certified by him, of a notice served under paragraph (f) of subsection (2) of section 87 of the Act on the person assessed; or
- (b) where the decision does not result in any amendment to the assessment, file with the Registrar a statement signed by him setting out the amount of tax payable under the notice of assessment served under section 78 of the Act or the amending notice, as the case may be,

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

Fees.

19. A filing fee of one hundred shillings shall be payable on presentation of an appeal under these Rules, and the scale of fees for the time being in force in civil matters in the Court shall apply in respect of the service of all documents, and to all subsequent acts, applications or proceedings, in relation to such appeal.

[Subsidiary]

Extent to which rules on civil procedure apply.

20. The rules determining procedure in civil suits before the Court in so far as such rules relate to recognized agents and advocates, to service, to consolidation, to admissions, to the production, impounding and return of documents, to the summoning and attendance of witnesses, to adjournments, to the examination of witnesses, to affidavits, to judgment and decree, to the execution of decrees, to the attachment of debts, to the death, bankruptcy and marriage of parties, to withdrawal, discontinuance and adjustment, to security for costs, to commissions, to corporations, to trustees, executors and administrators, and to the enlargement of time shall, to the extent to which such rules are not inconsistent with the Act or these Rules, apply to an appeal as if it were a civil suit but, save as provided in these Rules, the procedure relating to civil suits before the Court shall not apply to an appeal.

Exemption under section 106(1)

THE INCOME TAX ACT - EXEMPTION

[L.N. 60/2016]

The Cabinet Secretary for the National Treasury, on the recommendation of the Cabinet Secretary for Land, Housing and Urban Development, directs that the initial nominal share capital of a company registered or to be registered with limited liability shall be exempt from the ad valorem stamp duty charged under section 39 of the Act.

Directions under section 123**THE INCOME TAX ACT - DIRECTION**

[L.N. 24/1993]

The Cabinet Secretary responsible for Finance directs the Commissioner of Income Tax to refrain from assessing and recovering tax from individuals for income chargeable under section 3 of the Act in respect of years of income prior to 1st January, 1992 and not disclosed to the Commissioner in any income tax return made prior to 5th February, 1993:

Provided that-

- (i) the individual shall make a full disclosure of all income chargeable to tax for the year of income 1992 to the Commissioner of Income Tax;
 - (ii) the individual shall provide a statement of total assets and liabilities in his name or in the name of his wife and minor children as at the end of the year of income 1991; and
 - (iii) the disclosure under paragraph (i) and the statement under paragraph (ii) are supplied to the department not later than the 31st July, 1993.
-

Regulations under section 130

THE INCOME TAX (NATIONAL SOCIAL SECURITY FUND) (EXEMPTION) RULES

ARRANGEMENT OF RULES

1. Citation and commencement
 2. Interpretation.
 3. Conditions for exemption
 4. Commissioner to report to Minister
 5. Penalty
-

THE INCOME TAX (NATIONAL SOCIAL SECURITY FUND) (EXEMPTION) RULES

[L.N. 97/2002]

Citation and commencement.

1. These Rules may be cited as the Income Tax (National Social Security Fund) (Exemption) Rules and shall come into operation on the 1st July, 2002.

Interpretation.

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

"Board of Trustees" means the National Social Security Fund Board of Trustees constituted under section 4 of the National Social Security Fund Act, (Cap 258);

"accounting period" has the meaning assigned to in section 2 of the Act;

"Commissioner" means the Commissioner 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
 - (i) the determination of the market value of the assets of the Fund;
 - (ii) the determination of the surplus amount of the market value, not allocated to the account of a member of the Fund, excluding the reserve fund that does not exceed ten percent of the market value of the Fund in the year of audit;
- (b) the Board of Trustees shall allocate the surplus amount to the respective accounts of individual members in proportion to the value of the amounts allocated to the accounts of all members of the Fund from time to time;
- (c) the Board of Trustees shall cause the audit report to be published, in the *Gazette* and in at least two newspapers of national circulation within nine months of the end of the accounting period of the Fund and shall include a full listing of the assets of the Fund at book and market values;
- (d) the Board of Trustees shall submit the annual audit report to the Commissioner within nine months of the end of the accounting period to which the audit report relates.

Commissioner to report to Minister.

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.

Penalty.

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 shilling for every such failure.

THE INCOME TAX (CHARITABLE DONATIONS) REGULATIONS

ARRANGEMENT OF REGULATIONS

1. Citation
 2. Interpretation
 3. Proof of donation
 4. Donations generally
 5. Contents of receipt as proof
-

THE INCOME TAX (CHARITABLE DONATIONS) REGULATIONS

[L.N. 100a/2007]

Citation.

1. These Regulations may be cited as the Income Tax (Charitable Donations) Regulations 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 Cabinet Secretary;

"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 issued and certified by the 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 Cabinet Secretary's approval of the project to which the donation is made;
- (b) a declaration from the donee that the donation shall be used exclusively for the objects of charity.

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 the tax arising shall be due and payable.

Contents of receipt as 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 was made;

[Rev. 2022]

Income Tax

CAP. 470 591

[Subsidiary]

(e) amount of donation.

Rules under section 130

THE INCOME TAX (P.A.Y.E) RULES

ARRANGEMENT OF RULES

1. Citation and commencement
 2. Interpretation
 3. Application of section 128 of Act
 4. Deduction of tax
 5. Calculation of monthly tax due
 6. Calculation of deduction and maintenance of records
 7. Notification of emoluments and tax deducted
 8. Objection to deduction of tax
 9. End of month procedure
 - 9A. Returns of emoluments
 10. Payment of tax by employer
 11. Employer failing to pay tax or to provide required certificate
 12. Recovery of tax
 13. [Deleted by L.N. 84 of 2010, r. 3.]
 14. Inspection of employer's records
 15. Death of employer
 16. Change of employer
 17. Penalty
-

THE INCOME TAX (P.A.Y.E) RULES

[L.N. 257/1973, L.N. 122/1986, L.N. 201/1986, L.N. 319/1987, L.N. 31/1994, L.N. 98/2001, L.N. 80/2008, L.N. 175/2001, L.N. 90/2009, L.N. 84/2010, L.N. 54/2011, L.N. 107/2015]

Citation and commencement.

1. These Rules may be cited as the Income Tax (P.A.Y.E.) Rules and shall come into operation on 1st January, 1974.

Interpretation.

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

"Commissioner" includes an officer authorized in writing by the Commissioner to exercise and perform functions conferred upon the Commissioner under these Rules;

"emoluments" means—

- (a) gains or profits from employment or services rendered which are payable in money; and
- (b) the value of housing provided by an employer ascertained under section 5(3) of the Act; and
- (c) the value of benefit or facility provided by the employer, where the total value exceeds three thousand shillings per month;
- (d) *deleted by L.N. 90 of 2009, s. 2,*

but does not include gains or profits which, in the opinion of the Commissioner, are in respect of casual employment only;

"employee" includes an individual receiving emoluments in respect of any employment, office, appointment or past employment;

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

"monthly personal relief" in relation to any month, means that amount of personal relief to which an employee is entitled in that month in accordance with the relief claim form which he has completed together with any other amount for that month notified to the employer by the Commissioner, and any unused monthly personal relief, from a previous month or months in the same year of income;

"monthly personal relief notification" means a notification provided by the Commissioner to the employer with respect to monthly personal relief of the employee;

"relief claim form" means the relief claim form provided, or in a particular case authorized, by the Commissioner on which an employee claims the reliefs to which he is entitled under Part V of the Act;

"tax deduction card" means the tax deduction card in the form provided by the Commissioner, or such other document corresponding to a tax deduction card as may be authorized by the Commissioner in a particular case, and on which such information as the Commissioner may direct with respect to tax is recorded;

"tax tables" means the tables of income tax computed by the Commissioner in accordance with the rates of income tax specified in the Act for any year of income;

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

[Subsidiary]

(2) Nothing in these Rules shall apply to an employer none of whose employees receive emoluments exceeding three thousand six hundred shillings per annum or such greater sum as the Commissioner may, by notice in the *Gazette*, specify.

[LN 122 of 1986, s. 2, LN 201 of 1986, s. 2, L.N. 319 of 1987, Sch.,
L.N. 98 of 2001, s. 2, L.N. 80 of 2008, s. 2, LN 90 of 2009, s. 2.]

Application of section 128 of Act.

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

Deduction of tax.

4. (1) An employer who makes a payment of, or on account of, emoluments during a month to an employee of his who is liable to payment of tax shall deduct tax from those emoluments in accordance with these Rules.

(2) An employer who fails to comply with the requirement of subrule (1) shall be guilty of an offence.

Calculation of monthly tax due.

5. An employer shall in each month calculate, by reference to the tax tables, the tax due from each of his employees in that month having regard to the monthly personal relief of that employee:

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

[L.N. 54 of 2011, s. 2.]

Calculation of deduction and maintenance of records.

6. (1) On the occasion of the last payment of emoluments in any month to an employee, the employer shall, except where these Rules otherwise provide, ascertain, in respect of that month, the monthly pay of the employee, the monthly tax chargeable thereon, and the monthly personal relief of the employee.

(2) If, in the case of an employee, the tax chargeable for a month exceeds his monthly personal relief then the employer shall deduct the amount of such excess from the last payment of emoluments in that month, but if the tax chargeable in a month is greater than the last payment of emoluments in that month:

Provided that if the tax chargeable in any month is greater than the last payment of emoluments to the employee in that month, the employer shall deduct such amount of tax as is not recoverable from such payment from the first payment of emoluments in the following month and from any subsequent such payments as may be necessary to recover that amount.

(3) The employer shall, on the tax deduction card, record for every month in which a payment of emoluments is made to an employee, such particulars as the Commissioner may direct in respect of any such payment.

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

Notification of emoluments and tax deducted.

7. On the occasion of the last payment of emoluments in any month to an employee, the employer shall in writing notify the employee of the total amount of the emoluments paid by the employer to the employee during such month, the total tax deducted from such emoluments and such other particulars as the Commissioner may require.

Objection to deduction of tax.

8. (1) If an employee is aggrieved by a calculation with respect to the deduction of tax from his emoluments and is unable to reach agreement with his employer, then—

- (a) the employer shall inform the employee of his rights under this rule and shall, at the request of the employee, furnish the employee with a written statement showing the manner in which the employer arrived at such calculation;
- (b) the employee may give notice of objection in writing to the Commissioner, but any such notice shall be valid only if—
 - (i) it states precisely the grounds of his objection;
 - (ii) there is enclosed therewith the written statement furnished by his employer; and
 - (iii) it is received by the Commissioner within thirty days of the date on which that statement was received by the employee.

(2) On receipt of a notice of objection under this rule the Commissioner shall consider the objection and, subject to and in accordance with these Rules, may amend the calculation or reject the objection.

(3) The Commissioner shall forthwith notify the employer and the employee in writing of his decision on an objection and thereafter on the occasion of any payment to such employee in any month of, or on account of, emoluments the amount of tax deducted therefrom by the employer shall be in accordance with such decision.

(4) Notwithstanding that a valid objection has been made, on the occasion of any payment to the employee in any month of, or on account of, emoluments from which tax is to be deducted in accordance with these Rules, the amount of tax deducted by the employer shall be in accordance with the calculation by the employer until the employer is notified by the Commissioner of his decision with respect to the objection.

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

End of month procedure.

9. At the end of every month, an employer shall compile, in such manner as the Commissioner may direct, a list which shall include the name of each employee in his employ from whose emoluments tax was deducted during that month together with the particulars of the amount of tax deducted and such other particulars as the Commissioner may require.

Returns of emoluments.

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

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

[L.N. 90 of 2009, s. 3, L.N. 84 of 2010, s. 2.]

Payment of tax by employer.

10. (1) Before the tenth day following the end of every month or before any other day which may be notified to him by the Commissioner, an employer shall, subject to paragraph (2) of this rule, pay, to such person as the Commissioner shall direct, all amounts of tax which the employer has deducted under these Rules during such month:

[Subsidiary]

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

(2) Paragraph (1) of this rule shall not apply to any employer in respect of any month in which the total amount of tax deducted by him is less than one hundred shillings, and in that case, or where in a month no tax is deductible by an employer under these Rules, the employer shall send, before the tenth day following the end of such month or before any other day which may be notified to him by the Commissioner, to the Commissioner a certificate, in the form authorized or provided by the Commissioner, showing either that the amount of tax which he deducted in that month was less than one hundred shillings or that he deducted no tax in that month:

Provided that when the amount of tax deducted by an employer in any month is less than one hundred shillings, such amount shall be added to the amount of tax deducted by him in the following month, or months, and when in a month the total of all such amounts is greater than one hundred shillings, the employer shall comply with paragraph (1) of this rule; so however, that the employer shall comply with paragraph (1) of this rule in the month of December in each year notwithstanding that the total amounts of such tax is less than one hundred shillings.

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

(4) Any employer who, having deducted tax under this rule fails to account therefor in the manner that the Commissioner may direct, or who fails to comply with paragraph (2) of this rule, shall be guilty of an offence.

[L.N. 31 of 1994, s. 2., L.N. 90 of 2009, s. 4., L.N. 107 of 2015, s. 2.]

Employer failing to pay tax or to provide required certificate.

11. (1) If, before the tenth day following the end of every month, or before a later day that may have been notified to him by the Commissioner, an employer has paid no amount of tax under rule 10 for that month and the Commissioner is unaware of the amount, if any, which the employer is liable to pay, or the employer has failed to provide the certificate mentioned in paragraph (2) of that rule, the Commissioner may give notice to the employer requiring him to render, within the time specified in the notice, a return showing the name of every employee to whom he made a payment of emoluments in the period stated in the notice, together with those particulars with regard to each employee that the notice may require, being particulars of—

- (a) a calculation under rule 5 appropriate to the employee's case;
- (b) the payments of emoluments made to the employee during that period; and
- (c) any other matter affecting the calculation of the tax which the employer was liable under these Rules to deduct from the payments of emoluments to the employee during that period.

(2) The Commissioner shall ascertain and certify to the best of his knowledge and belief the amount of tax which the employer would have been liable to pay under rule 10 in respect of the month in question had he complied with the 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.

13. *Deleted by L.N. 84 of 2010, r. 3.*

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 as 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) 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) 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 such 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

[Subsidiary]

before the change would have been liable to do under these rules if the change had not taken place, but the employer after the change shall not be liable for the payment of tax which was deductible from emoluments paid to the employee before the change took place.

Penalty.

17. A person guilty of an offence under these Rules shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

[L.N. 98 of 2001, s. 2., L.N. 175 of 2001, s. 2.]

THE INCOME TAX (DISTRAINT) RULES

[L.N. 6/1974, L.N. 73/2000, L.N. 83/2008]

1. These Rules may be cited as the Income Tax (Distraint) Rules, 1973.
2. In these Rules, unless the context otherwise requires—
 - "distrainee" means the debtor named in an order;
 - "distraint agent" means any person appointed as a distraint agent under rule 3 of these Rules;
 - "distress" means a distress levied pursuant to an order,
 - "distress debt" means the amount of any tax, and any interest charged thereon, specified in an order;
 - "distrainor" means an officer in the service of the Income Tax Department who is authorized to levy distress;
 - "goods" means all movable property of a distrainee (other than growing crops and goods which are liable to perish within ten days of attachment) which is liable under the law to attachment and sale in execution of a decree of a court;
 - "order" means an order issued by the Commissioner under section 102 of the Act.
3. The Commissioner may appoint distraint agents to assist distrainers in the execution of orders:
Provided that no person shall be appointed a distraint agent unless he satisfies the Commissioner—
 - (a) that he is of good repute and financial standing;
 - (b) that he is qualified under the law relating thereto to levy distress by way of attachment of movable property in execution of a decree of a court; and
 - (c) that he has contracted a policy of insurance in an adequate sum against theft, damage or destruction by fire of any goods which may be placed in his custody by reason of the performance by him of his duties as a distraint agent.
4.
 - (1) Every distraint agent shall, on appointment, furnish the Commissioner with security, by means of a deposit or in such other manner as the Commissioner may approve, in the sum of ten thousand shillings, and such security shall be refunded or cancelled on the termination of the appointment of the agent unless it is forfeited under this rule.
 - (2) If any distraint agent is convicted of an offence involving fraud or dishonesty in connexion with any functions performed by him as such agent, the court by which he is convicted may make an order as to the forfeiture of the security furnished by him under paragraph (1) of this rule, or any part of such security, and the provisions of the Criminal Procedure Code, (Cap. 75) in so far as they relate to forfeiture of recognizances, shall apply mutatis mutandis to the forfeiture of any security under this rule.
5.
 - (1) An order may be executed at any time after it has been duly served on the distrainee in the manner provided by rule 6 of these Rules.
 - (2) An order shall be executed by attachment of such goods of the distraintees as, in the opinion of the distrainer, are of a value which, on sale by public auction, would realize a sum sufficient to meet the distress debt and the costs and expenses of the distress incurred by the distrainer.

[Subsidiary]

6. (1) Every 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 any agent of the distrainee empowered to accept service, or on any adult member of the family of the distrainee who is residing with him.

(2) Any person served with a copy of an order under this rule shall endorse on the order an acknowledgment of service and if such 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 acknowledgment and that he left, at the time, date and place stated therein, a copy of the order with such person and the name and address of the person (if any) by whom the person on whom the order was served was identified, and thereupon the order shall be deemed to have been duly served.

(3) (3) *Deleted by L.N 83 of 2008*

[LN 73 of 2000, r. 2., LN 83 of 2008](/akn/ke/act/lm/2008/83), r. 2.]

7. (1) In executing any distress no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the distrainee and he refuses or in any way prevents access thereto, but when the distrainor or distraint agent executing any such distress has duly gained access to any dwelling-house he may break open the door of any room in which he has reason to believe any 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 such 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 such room for the purpose of attaching any goods therein, using at the same time every precaution consistent with these provisions to prevent their clandestine removal.

[LN 73 of 2000, r. 3.]

8. As soon as practicable after the attachment of any goods under these Rules, the distrainor or distraint agent shall—
- (a) issue a receipt in respect thereof to the distrainee;
 - (b) forward to the Commissioner a report containing an inventory of all items attached, the value of each item as estimated by the distrainor or distraint agent, the address of the premises at which the goods are kept pending sale, the name and address of the distraint agent in whose custody the goods have been placed and the arrangements, if any, made or to be made for the sale by public auction of the goods on the expiration of ten days from the date of attachment.

[LN 73 of 2000, r. 4.]

9. On the sale by public auction of any goods attached under these Rules the distrainor shall cause the sale to be stopped when the sale has realized a sum equal to or exceeding the distress debt and the costs and expenses incurred by the distrainor, and thereupon any of the goods remaining unsold shall at the cost of the distrainee be restored to the distrainee.
10. Immediately after the completion of a sale by public auction of goods attached under these Rules, the distrainor shall make a return to the Commissioner specifying the items which have been sold, the amounts realized by the sale and the manner in which the proceeds of the sale were applied.

11. (1) Where any 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 the same.
- (2) Any sum paid by a distrainee under this rule shall be applied by the Commissioner first in settlement of the costs and expenses incurred by the distrainor and as to the balance, if any, in settlement of the distress debt or such part thereof as the Commissioner shall direct.
12. Where any goods attached under these Rules comprise or include livestock, the distrainor may make appropriate arrangements for the transport, safe custody and feeding of such livestock and any costs and expenses incurred thereby shall be recoverable from the distrainee under rule 9 or 11 of these Rules, as the case may be, as costs and expenses incurred by the distrainor.
13. In addition to a claim for any other costs and expenses which may be incurred by the Commissioner or the distrainor in levying any distress under these Rules there may be claimed by the distrainor and recovered under rule 9 or 11 of these Rules, as the case may be, costs at the rate specified in the Schedule to these Rules.
14. The maximum rates of remuneration which a distraint agent shall be entitled to demand from the distrainor for his assistance in executing a distress under these Rules, and which may be recovered by the distrainor under rule 9 or 11 of these Rules, as the case may be, shall be those specified in the Schedule to these Rules.
15. The maximum rate of commission to be paid to an auctioneer by the distrainor as remuneration for his services for the sale by public auction of any goods attached under these Rules, and which may be recovered by the distrainor under rule 9 of these Rules, shall be five per cent of the amount realized on the sale, and where an auctioneer has also rendered services as a distraint agent, he shall be entitled, in addition to any commission under this rule, to remuneration for such services as provided in rule 14 of these Rules. 16. The rates of remuneration specified in the Schedule to these Rules shall be deemed to include all expenses of advertisements, inventories, catalogues, insurance and necessary charges for safeguarding any goods attached under these Rules.

SCHEDULE

[LN 73 of 2000, r. 5, LN 83 of 2008, r. 3.]

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.

Where the distress debt does not exceed Shs. 3,000 300

Where the distress debt exceed Shs. 3,000 120

2. Distraint Agent's Charges

[Subsidiary]

- (a) Where no distress is levied and the distress debt and any costs and Shs. 120 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
- (b) For attaching goods or attaching and keeping possession thereof for ten days or part thereof, when the estimated value of the property, or the distress debt and costs and expenses, whichever is less-
- | | |
|---------------------------------|------------------------|
| (i) does not exceed Shs. 30,000 | Four per cent thereof |
| (ii) exceed Shs. 30,000 | Three per cent thereof |
- (c) Where the goods or any part thereof are sold by public auction, the distraint agent's charges shall instead be calculated in the manner directed in paragraph (b) above by reference to the total amount realized on sale after deduction of the auctioneer's commission under regulation 15
- (d) For keeping possession of any attached goods after the expiration of ten days from the date of attachment for each day, or part thereof $\frac{1}{4}$ per cent of the value of the goods with a maximum of Shs. 60
- (e) Reasonable expenses incurred by the distraint agent in transporting goods attached, and such travelling expenses by car, or a rateable proportion thereof, as the Commissioner may approve.
-

THE INCOME TAX (PRESCRIBED DWELLING HOUSE) RULES

[L.N. 8/1974, L.N. 266/1986]

1. These Rules may be cited as the Income Tax (Prescribed Dwelling-house) Rules.
2. For the purposes of item (b) of paragraph 5 (1) of the Second Schedule to the Act the conditions with which a dwelling-house shall conform in order to be a prescribed dwelling-house shall be—

That the dwelling-house is certified by a Labour Officer, as defined in section 2 of the Employment Act (Cap. 226) as having been provided under section 9 of that Act.

[L.N. 266 of 1986, s. 2.]

THE INCOME TAX (RETIREMENT BENEFIT) RULES

ARRANGEMENT OF RULES

1. Citation
 2. Interpretation
 3. Existing schemes
 4. Registration of pension funds
 5. Registration of provident funds
 6. Registration of individual retirement funds
 7. Discretionary registration
 8. Registration procedure
 9. Alteration of scheme regulations to be notified
 10. Withdrawal of registration
 11. Revocation. Sub. Leg.
-

THE INCOME TAX (RETIREMENT BENEFIT) RULES

[L.N. 197/1994, L.N. 211/1995, L.N. 124/1996, L.N. 99/2001, L.N. 106/2001, L.N. 98/2002, L.N. 55/2004, L.N. 52/2005, L.N. 79/2008]

Citation.

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

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, a 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 funds.

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

- (a) is registered with the Retirement Benefits Authority; and
- (b) provides that all moneys payable thereunder shall be paid in Kenya; and
- (c) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and
- (d) provides that in the case of a 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 by L.N. 79 of 2008*
- (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

[Subsidiary]

- (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;

Provided that, where the fund makes provision for a reserve fund, the amount of this reserve fund that does not exceed ten per cent of the market value of the assets may be excluded from the surplus funds not allocated to the account of a member of the fund.
 - (ii) in the case of a defined benefit pension fund, an actuarial investigation shall be carried out by 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.

[LN 211 of 1995, s. 2., LN 124 of 1996, s. 2, LN 99 of 2001, s. 2, LN 106 of 2001, s. 2., L.N. 98 of 2002, s. 2., L.N. 55 of 2004, s. 2., L.N. 52 of 2005, s. 2.]

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 benefit or contribution accruing or payable thereunder shall be capable of assignment; and
- (d) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and
- (e) 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.
- (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.

[LN 211 of 1995, s. 3., LN 124 of 1996, s. 3., L.N. 98 of 2002, s. 3., L.N. 52 of 2005, s. 3.]

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

[Subsidiary]

- (g) provides that the payment of pension shall not commence until retirement after the attainment of the age of fifty years or upon earlier retirement on the grounds of ill health or infirmity of body or mind or on leaving the country permanently;
- (h) *deleted by L.N.55 of 2004, s. 4.*
- (i) provides that upon the death of the beneficiary the funds shall be distributed or transferred as legally required; and
- (j) provides that all benefits derived from contributions by or on behalf of an individual shall vest in that individual immediately.

[L.N. 98 of 2002, s. 4.]

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, 6 or 7 shall be made by the trustee of the scheme to the Commissioner in writing accompanied by two copies of the trust deed or other documents constituting the scheme and the scheme regulations.

(2) The Commissioner shall, as soon as practicable after considering the application, notify the trustee in writing whether the scheme is acceptable for registration, and the same notification shall specify either—

- (a) the reason therefor, if it is not acceptable; or
- (b) the year of income in respect of which the registration is first to take effect, if it is so acceptable.

Alteration of scheme regulations to be notified.

9. Where an alteration is made to scheme regulations, the trustee of the scheme shall immediately inform the Commissioner in writing thereof and such alteration shall not be effective unless written approval is received from the Commissioner.

Withdrawal of registration.

10. (1) The Commissioner may at any time, by notice in writing to the trustee of a scheme, withdraw the registration of—

- (a) a registered pension fund (whether registered under rule 3 or 4) the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 4; or
- (b) a registered provident fund (whether registered under rule 3 or 5) the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 5; or
- (c) a registered individual retirement fund the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 6; or
- (d) a scheme registered under rule 7 which he is satisfied on reasonable grounds no longer meets the requirements of that rule or which has failed or ceased to fulfil any conditions of registration imposed under that rule; or
- (e) a registered pension scheme or registered trust scheme, the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds

that the scheme no longer fulfills the conditions under which it was approved under the Management Act except where those conditions have been varied by these Rules; or

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

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

Revocation. Sub. Leg.

11. The Income Tax (Retirement Benefit) Rules, 1993 are revoked.
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THE INCOME TAX (HOME OWNERSHIP SAVINGS PLAN) RULES

ARRANGEMENT OF RULES

1. Citation and commencement
 2. Interpretation
 3. Application for registration
 4. Requirements for registration
 5. Notification registration
 6. Supply of information to the Commissioner
 7. Alteration of trust deed, rules, etc.
 8. Withdrawal of registration
-

THE INCOME TAX (HOME OWNERSHIP SAVINGS PLAN) RULES

[L.N. 210/1995, L.N. 82/2007]

Citation and commencement.

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

Interpretation.

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

"institution" means an approved institution operating a home ownership savings plan registered in accordance with these Rules;

"Plan" means a home ownership savings plan;

"qualifying deposits" means—

- (i) funds transferred from another Plan under section 22C of the Act; or,
- (ii) any deposits which qualify for a deduction under section 22C of the Act.

Application for registration.

3. (1) An approved institution offering a home ownership savings plan to depositors may apply to the Commissioner for registration of the Plan for the purposes of the Act.

(2) An application under this rule shall—

- (a) be made in writing addressed to the Commissioner;
- (b) be signed by two of the officials of the approved institution;
- (c) be accompanied by two certified copies of either the trust deed, or any rules or other document consisting the plan;

[LN 82 of 2007, r. 2.]

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 provide that—
 - (i) all sums held on account of a depositor shall be used to purchase or construct a permanent house in Kenya;
 - (ii) no deposit made or benefit accruing or payable to the depositor shall be pledged as security for a loan or shall be capable of assignment unless the depositor dies;
 - (iii) upon the death of the depositor, the balance of the funds in his account shall be transferred to his spouse, any of his children who have attained the

[Subsidiary]

age of eighteen years or any relative of the depositor who is a qualifying individual without closing the account;

- (iv) only qualifying deposits may be made by a depositor under the Plan;
- (v) *deleted by L.N. 82 of 2007, r. 3(b).*
- (vi) no loan or other benefit shall be provided out of the account to the depositor or to any person not dealing at arm's length with the depositor;
- (vii) a depositor may, subject to the approval of the Commissioner, direct that all funds held in his account be transferred to another institution operating a similar Plan without undue delay;
- (viii) the depositor may at any time on or before the ninth year after the qualifying year withdraw all the sums deposited without deduction of tax to purchase or construct a permanent house for his occupation:

Provided that any excess amount of the withdrawal not used for the purchase or construction of the house shall be subject to tax;

- (ix) in every year starting with the qualifying year upto the tenth year the depositor shall make in his account an annual deposit of up to thirty thousand shillings;
- (x) upon the death of the depositor, any funds held in his account shall be transferred as provided in these Rules and any sums not applied towards the purchase or construction of a permanent house shall be subject to tax;
- (xi) in the case of expenditure on an existing house, no distinction shall be made between the value of the existing building and the land on which it stands;
- (xii) in the case of the construction of a house, qualifying expenditure shall consist of construction services and building material supported by such evidence as the Commissioner may require;
- (xiii) all funds in a depositor's account shall be withdrawn a lump sum by the end of the ninth year following the qualifying year.

[LN 82 of 2007, s. 3.]

Notification registration.

5. The Commissioner shall, as soon as reasonably practicable after considering the application, notify the applicant in writing whether or not the Plan is acceptable for registration, and the same notification shall specify either—

- (a) the reason therefor, if it is not acceptable; or
- (b) the year of income in respect of which the registration is first to take effect, if it is acceptable.

Supply of information to the Commissioner.

6. An institution shall, in respect of every depositor saving under a Plan, forward to the Commissioner—

- (a) the personal identification number of the depositor;
- (b) a certified copy of an affidavit sworn by the depositor confirming that he does not directly or indirectly own and has not previously directly or indirectly owned any interest in a permanent house;
- (c) the amount of deposits, mode of investment and any withdrawals 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 document constituting the Plan have either been breached or so altered that the Plan no longer meets the requirements of the Act or these Rules; or
- (b) the accounts of the Plan fail or cease to be maintained to the satisfaction of the Commissioner.

(2) A withdrawal of registration under this rule shall take effect from the beginning of the year of income in which the grounds for that withdrawal arose or such later date as the Commissioner may determine, and the accumulated funds thereof shall be taxed in the year in which the registration is withdrawn.

THE INCOME TAX (VENTURE CAPITAL ENTERPRISE) RULES

ARRANGEMENT OF RULES

1. Citation and commencement
 2. Interpretation
 3. Registration of venture capital companies
 4. Prohibited activities
 5. Registration procedure
 6. Withdrawal of registration
-

THE INCOME TAX (VENTURE CAPITAL ENTERPRISE) RULES

[L.N. 103/1997, L.N. 31/2008, L.N. 82/2008]

Citation and commencement.

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

[L.N 82 of 2008, r. 3.]

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 Act (Cap. 485A) under the provisions of the Capital Markets 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 new or expanding venture capital enterprise.

[L.N. 31 of 2008, r. 2., L.N. 82 of 2008, r. 4.]

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 purpose of investing in new or expanding venture capital enterprises; and
- (c) it is registered by the Capital Markets Authority; and
- (d) it is managed by a fund manager; and
- (e) seventy-five 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.

[L.N. 31 of 2008, r. 3., L.N. 82 of 2008, r. 5.]

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.

[L.N. 31 of 2008, r. 4., L.N. 82 of 2008, r. 6.]

[Subsidiary]

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 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 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.

[L.N. 31 of 2008, r. 5., L.N. 82 of 2008, r. 7.]

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 (WITHOLDING TAX) RULES

ARRANGEMENT OF RULES

1. Citation and commencement
 2. Interpretation
 3. Application of section 128 of the Act
 4. Deduction of withholding Tax
 5. Maintenance of records
 6. Certificate of tax deduction
 7. Dispute in calculation of withholding tax
 8. Payment of withholding tax
 9. Person failing to pay tax or provide required certificate
 10. Recovery of tax
 11. Withholding tax return at end of each year
 12. Inspection of person's records
 13. Death of an individual
 14. Change in circumstances of a person
 - 14A. Penalty for failure to deduct or remit withholding tax
 15. General Penalty
-

THE INCOME TAX (WITHHOLDING TAX) RULES

[L.N. 100/2001, L.N. 96/2002, L.N. 54/2004]

Citation and commencement.

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

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 tax subject to deduction as determined in accordance with the provisions of the Act and these Rules;

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

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

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 rates specified under paragraph (a).

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

Maintenance of records.

5. (1) On the occasion of making a payment, a person shall keep a record in respect of, name of payee, Personal Identification Number (PIN), gross amount paid, nature of payment and amount of tax deducted.

(2) A person shall, on the tax deduction card or such other document as may be 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.

[Subsidiary]

(5) A person who, having deducted tax under these rules, fails to remit tax within the time prescribed under this rule, account for such tax deducted or who fails to comply with paragraph (2), commits an offence.

Person failing to pay tax or provide required certificate.

9. (1) If, on the twentieth day following the month in which the deduction is made or before such later day as may have been notified to him by the Commissioner, a person has paid no tax under rule 8(1) for that month and the Commissioner is unaware of the amount, if any, which the person is liable to pay, or the person has failed to provide the certificate mentioned in paragraph (3) of that rule, the Commissioner may give notice to the person requiring him to render within the time specified in the notice, a return showing the name of every person to whom he made any payment which is subject to withholding tax in the period stated in the notice, together with particulars with regard to each person that notice may require, being particulars of—

- (a) a calculation of tax under rule 4 appropriate to each person's case;
- (b) the payment of amounts subject to withholding tax made to that other person during that period; and
- (c) any other matter affecting the calculation of the tax which the person was liable under these rules to deduct from the payments subject to withholding tax during that period.

(2) The Commissioner shall ascertain and certify to the best of his knowledge and belief the amount of tax which the person would have been liable to pay under rule 8 in respect of that period in question had he complied with the provisions of these rules.

(3) The production of the return made by the person under paragraph (1), and of the certificate of the Commissioner under paragraph (2), shall be sufficient evidence that the amount shown in the certificate is the amount of tax which the person would have been liable to pay under rule 8 in respect of the period in question had he complied with the provisions of these rules and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

(4) Where a notice given by the Commissioner under paragraph(1) extends to two or more consecutive months, these rules shall have effect as if those consecutive months were one month.

(5) If the Commissioner is not satisfied that the amount of tax paid in respect of a period is the full amount which the person would have been liable to pay under rule 8 had he complied with these rules, he may notwithstanding that an amount of tax has been paid by the person under that rule in respect of that period give a notice under paragraph (1) of this rule and thereupon this rule shall have effect in the subsequent periods.

Recovery of tax.

10. For the purpose of the recovery of tax which a person would have been liable to pay under rule 8 had he complied with the provisions of these rules, that person shall be deemed to have been appointed an agent of his payee under section 96 of the Act.

Withholding tax return at end of each year.

11. (1) Not later than two months after the end of each year, a person shall render to the Commissioner a statement and declaration in the form that the Commissioner may provide or 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 person's records.

12. (1) A person liable to pay withholding tax shall, when called upon to do so by the Commissioner, shall produce for inspection, at his premises or at any place the Commissioner may require—

- (a) all accounts, books of accounts, documents and other records relating to the calculation of, and on account of payments which are subject to withholding tax in respect of the period which may be specified by the Commissioner; and
- (b) any other books, documents and records which may be specified by the Commissioner, which shall be written in English or such other language which the Commissioner may allow.

(2) The Commissioner may, on the occasion of an inspection under this rule, prepare a certificate, 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.

[L.N. 96 of 2002, s. 2.]

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.

Penalty for failure to deduct or remit withholding tax.

14A. For the purposes of section 35(6) of the Act, where a person, when under obligation to do so, fails —

- (a) to make a deduction described in section 35(6)(a) of the Act, in accordance with rule 4; or
- (b) to remit an amount of tax deducted, as described in section 35(6)(b) of the Act, in accordance with rule 8,

the Commissioner may impose a penalty equal to ten percent of the amount of the tax involved, subject to a maximum penalty of one million shillings.

[Subsidiary]

General Penalty.

15. A person convicted of an offence under these rules shall, be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

THE INCOME TAX (LEASING) RULES

ARRANGEMENT OF RULES

1. Citation
 2. Interpretation
 3. Income chargeable to tax
 4. Deduction
 5. Capitalization of assets
 6. Register
 7. Deleted by LN 81 of 2008, s. 3.
 8. Where lease is terminated
 9. Deleted by LN 81 of 2008, s. 4.
 10. Cross border lease
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THE INCOME TAX (LEASING) RULES

[L.N. 52/2002, L.N. 69/2006, L.N. 83/2007, L.N. 81/2008, L.N. 91/2009, L.N. 108/2015]

Citation.

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

Interpretation.

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

"asset" includes equipment, but excludes land and buildings;

"Commissioner" includes an officer authorized in writing by the Commissioner to exercise the powers or to perform functions conferred upon the Commissioner under these Rules;

"cross-border lease" means a leasing contract entered into between a person resident in Kenya and another person resident in a different tax jurisdiction;

"finance lease" means a contract which the lessor agrees to lease assets to the lessee for a specified period of time where the risks and rewards associated with ownership of the assets are substantially transferred from the lessor to the lessee, but with the title to the assets always remaining with the lessor;

"hire purchase" means a contract under which the lessor agrees to lease the assets to the lessee for a specified period of time, with the intention of transferring ownership on the expiry of the lease;

"lease" means a contract by which a person owning assets grants to a lessee the right to possess, use and enjoy such assets for a specified period of time in exchange for periodic payments:

Provided that any contract whose term is less than six months or a hire purchase shall not be deemed to be a lease.

"lessee" means a person who leases from the owner or lessor of the assets and in return for use of such assets pays periodic payments to the lessor;

"lessor" means a person who leases an asset to a lessee;

"operating lease" means a contract under which the lessor agrees to lease the assets to the lessee for specified periodical payments where the title to the assets and the risks and rewards associated with ownership substantially remain with the lessor.

[L.N. 83 of 2007, s. 2., L.N.81 of 2008, s. 2., LN 105 of 2015, s. 2.]

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 or non-resident persons under the Act.

[L.N. 62 of 2006, s. 2.]

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 exclusively in the production of the income in accordance with section 15 of the Act.
- (b) a lessee shall take as a deduction the full amount of the payments made to the lessor:

Provided that a deduction under these Rules shall be granted where the Commissioner is satisfied—

- (i) in the case of a lessor, that the expenditure in respect of which the deduction is sought is incurred by the lessor wholly and exclusively in the production of income chargeable to tax; and
- (ii) in the case of a lessee, that the sole consideration for the payment in respect of which the deduction is sought is the use of, or the right to use, an asset.

Capitalization of assets.

5. (1) 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.

[L.N. 62 of 2006, s. 3.]

Register.

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

7. Deleted by LN 81 of 2008, s. 3..

Where lease is terminated.

8. (1) Where, upon termination of a lease in respect of which the lessee is entitled to any tax deduction, and with the express or implied consent or acquiescence of the lessor the lessee is allowed to use, enjoy or deal with the asset as the lessee may deem fit—

- (a) without the payment of any consideration; or
- (b) subject to the payment of any consideration which is nominal in relation to the fair market value of the asset; or
- (c) if the asset is transferred to the lessee 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.

[Subsidiary]

(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.

[LN 81 of 2008](/akn/ke/act/ln/2008/81), s. 3.]

9. *Deleted by LN 81 of 2008, s. 4..*

Cross border lease.

10. (1) Where a lessor in Kenya enters a cross-border lease, the gross lease payments made to the lessor shall be deemed to be income chargeable to tax.

(2) Where a lessee in Kenya enters 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.

**THE INCOME TAX (REGISTERED UNIT TRUST/
COLLECTIVE INVESTMENT SCHEMES) RULES**

[L.N. 40/2003]

1. These Rules may be cited as the Income Tax (Registered Unit Trusts/Collective Investment Schemes) Rules, 2003.
 2. A unit trust or collective investment scheme shall, upon application being made under rule 3, be registered by the commissioner for the purposes of section 20 of the Act if he is satisfied that—
 - (a) the unit trust or collective investment scheme shall undertake portfolio investment in accordance with the policies and guidelines under the Capital Markets Act, (Cap. 485A);
 - (b) the sole purpose of the unit trust or collective investment scheme is to carry on investments on behalf of the unit holders or shareholders;
 - (c) after six months of commencement of the unit trust or collective investment scheme no unit holder or shareholder shall own or be capable of holding more than twelve and one half per cent ($12\frac{1}{2}\%$) 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 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, a revoked.
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INCOME TAX (INVESTMENT DUTY SET OFF) (REVOCATION) RULES

[L.N. 92/2009]

1. These Rules may be referred to as the Income Tax (Investment Duty Set-off) (Revocation) Rules, 2009.
 2. The Income Tax (Investment Duty Set Off) Rules, 1996 (L.N 72/1996) are revoked.
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THE INCOME TAX (TURNOVER TAX) RULES

ARRANGEMENT OF PROVISIONS

1. Citation.
 2. Interpretation.
 3. Election to be excluded from turnover tax.
 4. Turnover tax as final tax.
 5. Change of status.
 6. Registration and deregistration.
 7. Accounting and payment.
 8. Records.
 9. Penalties and interest.
 10. Revocation. L.N. 5/2008
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THE INCOME TAX (TURNOVER TAX) RULES

[L.N. 224/2023]

Citation.

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

Interpretation.

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

"income from business" includes gross receipt, gross earnings, revenue, takings, yield, proceeds or other income chargeable to tax under section 12C of the Act; and

"return of income" means a return of income furnished by a person under regulation 8.

Election to be excluded from turnover tax.

3. (1) A person who elects not to be subject to section 12C of the Act shall notify the Commissioner, in writing, at least three months before the end of the year of income.

- (2) The Commissioner shall, within sixty days from the date of receipt of the notice under sub-rule (1), acknowledge, in writing, the notification but if the Commissioner fails to acknowledge the notification, the person shall be deemed not to be subject to the provisions of section 12C.

- (3) A person who has elected not to be the provisions of section 12C shall be subject to the other provisions of the Act.

Turnover tax as final tax.

4. The income from a business that is subject to turnover tax shall not be liable to any other tax under the Act.

Change of status.

5. (1) Where the income from business of a person registered under rule 7 exceeds twenty 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 sub-rule (1), the Commissioner shall approve the change of status.

- (3) The approval granted by the Commissioner under sub-rule (2) shall be take effect in the subsequent year of income.

Registration and deregistration.

6. (1) A person whose income from business is more than one million but does not exceed or is not expected to exceed twenty five million shillings per annum shall be required to apply for registration for Turnover Tax in the prescribed form.

- (2) Where the Commissioner is satisfied that a person is eligible to be registered, the Commissioner shall issue a certificate of registration in the prescribed form.

- (3) A registered person—

- (a) whose income from business falls below one million shillings in any year of income;
- (b) whose income from business exceeds twenty five million shillings in any year of income;
- (c) who ceases to carry on business;

- (d) who may require deregistration for any other reason acceptable to the Commissioner,

may apply to the Commissioner for deregistration in accordance with section 10 of the Tax Procedures Act (Cap. 469B).

(4) Where the Commissioner is satisfied that the conditions of sub-rule (3) have been met, the Commissioner shall deregister the person.

Accounting and payment.

7. (1) A person subject to Turnover Tax shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(2) Where a business does not have income chargeable to turnover tax in any tax period, the business shall submit a nil return.

Records.

8. A person subject to Turnover Tax shall be required to keep records necessary for determining and ascertaining the tax in accordance with the Tax Procedure Act (Cap. 469B).

Penalties and interest.

9. A person who fails to comply with the provisions of these Rules shall be liable to the relevant penalties and interests prescribed under the Tax Procedures Act (Cap. 469B).

Revocation. L.N. 5/2008.

10. The Income Tax (Turnover Tax) Rules (Sub.Leg) are revoked.
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