CHAPTER 470

INCOME TAX ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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INCOME TAX (TRIBUNAL) RULES, 1973

ARRANGEMENT OF RULES

Rule

INCOME TAX (TRIBUNAL) RULES, 1973

[L.N. 5/1974.]

1. Citation

These Rules may be cited as the Income Tax (Tribunal) Rules, 1973.

2. Interpretation

In these Rules, unless the context otherwise requires—

"appeal" means an appeal to the Tribunal under section 86(1)(a);

"appellant" means a person entering an appeal and the advocate or duly authorized agent of that person;

"chairman" means the chairman of the Tribunal appointed under section 83(2);

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

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

"section" means a section of the Act.

3. Appointment of clerk

(1) The Commissioner shall appoint a person to be the clerk of the Tribunal, and such person may be an officer of the Income Tax Department.

(2) The clerk shall, in matters relating to appeals to the Tribunal and procedure therefor, comply with any general and special directions lawfully given by the chairman.

(3) The clerk shall by notice in the *Gazette* notify his address for the presentation or service of documents for the purposes of these Rules, and shall in the same manner notify any change in such address.

4. Form of and time for lodging an appeal

An appeal shall be entered by presentation of a memorandum of appeal, together with five copies thereof, to the clerk within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 86(1):

Provided that where the Tribunal is satisfied that, owing to absence from his normal place of residence, sickness or other reasonable cause, the appellant was prevented from presenting a memorandum within such period, and that there has been no unreasonable delay on his part, the Tribunal may extend that period notwithstanding that the period has already expired.

5. Memorandum of appeal

A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

6. Statement of facts of appellant

(1) Each copy of a memorandum shall be accompanied by—

(a) a copy of the confirming notice, or the amending notice, as the case may be;

(b) a copy of the notice of appeal; and

(c) a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed a copy of each document or extract from a document referred to upon which the appellant proposes to rely as evidence at the hearing of the appeal.

(2) In this rule—

"amending notice" means a notice setting out an amendment to an assessment served under section 85(3)(a);

"confirming notice" means a notice confirming an assessment served under section 85(3)(b).

7. Service of memorandum of appeal

Within forty-eight hours after the presentation of a memorandum to the clerk, a copy thereof and of the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Commissioner.

8. Statement of facts of Commissioner

(1) The Commissioner shall, if he does not accept any of the facts of the appellant, within twenty-one days after service thereof upon him under rule 7 of these Rules, file with the clerk a statement of facts together with five copies thereof and the provisions of rule 6(1)(c) shall *mutatis mutandis* apply to that statement of facts.

(2) At the time of filing a statement of facts pursuant to paragraph (1) of these Rules, the Commissioner shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) If the Commissioner does not desire to file a statement of facts under this rule, he shall forthwith give written notice to that effect to the clerk and to the appellant, and in that case the Commissioner shall be deemed at the hearing of the appeal to have accepted the facts set out in the statement of facts of the appellant.

9. Notice and place of hearing

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

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the clerk that he does not intend to do so, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal and the clerk shall cause notice thereof to be served on the appellate and the Commissioner.

(3) The clerk shall cause to be supplied to each member of the Tribunal a copy of the notice of hearing and of all documents received by him from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

10. Procedure

At the hearing of an appeal, the following procedure shall be observed—

(a) the Commissioner shall be entitled to be present or to be represented;

(b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence:

Provided that, save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than any grounds stated in the memorandum and may not adduce evidence of facts or documents unless those facts have been referred to in, and copies of those documents have been annexed to, the statement of facts of the appellant;

(c) at the conclusion of the statement, and evidence on behalf of the appellant, the Commissioner shall be entitled to make such submissions, supported by relevant evidence, and the provisions of subparagraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Commissioner;

(d) the appellant shall be entitled to reply but may not raise a new issue or argument;

(e) the chairman or a member of the Tribunal may at any stage of the hearing ask any questions of the appellant or the Commissioner or a witness examined at the hearing, as he considers necessary to the determination of the appeal;

(f) a witness called and examined by either party may be cross-examined by the other party to the appeal and if so cross-examined may be re-examined;

(g) a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;

(h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;

(i) before the Tribunal considers its decision the parties to the appeal shall withdraw from the meeting, and the Tribunal shall deliberate the issue according to law and reach its decision thereon;

(j) the decision of the Tribunal shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;

(k) minutes of the meeting shall be kept and the decision of the Tribunal recorded therein.

11. Tribunal to determine own procedure in certain matters

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

12. Copies of documents admissible

Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence:

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

13. Fees and costs

No fees shall be payable, and a Tribunal shall not make any order as to costs, on an appeal save where the grounds of appeal are held by the Tribunal to be frivolous, in which case the Tribunal may order the appellant to pay as costs to the Commissioner a sum not exceeding five hundred shillings.

Declaration under definition of “Permanent or Semi-Permanent Crops” under section 2(1)

DECLARATION OF CROPS

[L.N. 17/1975, L.N. 19/1985, L.N. 269/1986, L.N. 158/1989, L.N. 54/2005, L.N. 66/2006.]

Cashew nuts, citrus, cloves, coconuts, coffee, essential oils, New Zealand flax, passion fruit, pawpaws, pineapples, pyrethrum, sisal, wattle, sugar-cane, tea, rubber, vanilla, apples, pears, peaches, plums, apricots, cocoa, macadamia, cinchona and tara, are desclared to be permanent or semi-permanent crops for the purposes of the Act with effect from 1st January, 1974.

Jojoba plant and bananas.

Roses.

Grape Vines.

Eucalyptus, pine and cypress.

Avocadoes and mangoes.

Notices under sections 13(2) and 14(2)

INCOME TAX EXEMPTIONS

(*The following exemptions have been made; reference should be made to the appropriate legal notice for the text in any case*).

Industrial and Commercial Development Corporation Investment Company Limited.

[L.N. 93/1974.]

Executive Secretary of African Social Studies Programme.

[L.N. 43/1975.]

Regional and Deputy Regional Directors of Christian Children's Fund.

[L.N. 44/1975.]

Kenya Accountants and Secretaries National Examination Board.

[L.N. 116/1975.]

Non-Resident Income from licensees under the Oil Production Act.

[L.N. 118/1975.]

Morgan Grenfell and Company Limited.

[L.N. 147/1975.]

Deutsche Gesellschaft fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH.

[L.N. 148/1975.]

Deutsche Gesellschaft fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH.

[L.N. 149/1975.]

Deutsche Gesellschaft fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH.

[L.N. 186/1976.]

European Investment Bank.

[L.N. 97/1977.]

Nederlandse Financierings—Maatschappij voor Ontwikkelingslanden N.V.

[L.N. 122/1977.]

Deutsche Gesellschaft fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH.

[L.N. 123/1977.]

Commonwealth Development Corporation.

[L.N. 124/1977.]

Manufacturers Hanover Export Finance Limited.

[L.N. 125/1977.]

Morgan Grenfell and Company Limited.

[L.N. 126/1977.]

United States Agency for International Development.

[L.N. 147/1977.]

Federal Home Loan Bank of New York.

[L.N. 148/1977.]

Danish Turnkey Dairies Limited.
[L.N. 163/1977.]

European Investment Bank.
[L.N. 272/1977.]

European Investment Bank.
[L.N. 13/1978.]

European Investment Bank.
[L.N. 14/1978.]

European Investment Bank.
[L.N. 15/1978.]

European Development Fund.
[L.N. 35/1978.]

Guinness Mahon and Company Limited.
[L.N. 129/1978.]

European Investment Bank.
[L.N. 258/1978.]

European Investment Bank.
[L.N. 259/1978.]

Osterreichische Landerbank Aktiengesellschaft.
[L.N. 45/1979.]

Process Engineering Company S.A.
[L.N. 79/1979.]

Union Bank of Switzerland.
[L.N. 83/1979.]

European Development Fund.
[L.N. 127/1979.]

European Investment Bank.
[L.N. 128/1979.]

Commonwealth Development Corporation.
[L.N. 179/1979]

Industrial Development Bank of India.
[L.N. 285/1979.]

Kenya Power Company Limited.
[L.N. 167/1980.]

Institute of Certified Public Accountants of Kenya.
[L.N. 168/1980.]

Kenya Medical Association.
[L.N. 169/1980.]

East African Medical Journal.

[L.N. 169/1980.]

Guiness Mahon and Company Limited.

[L.N. 10/1981.]

Rift Valley Development Trust.

[L.N. 52/1981.]

Deloraine Estate Limited.

[L.N. 52/1981.]

Various Financial Institutions.

[L.N. 155/1981.]

Navy, Army and Air Force Institute.

[L.N. 4/1982.]

Export Development Corporation.

[L.N. 240/1983.]

Skandinaviska Enskilda Banken.

[L.N. 72/1984.]

President.

[L.N. 240/1985.]

Policyholder's Compensation Fund

[L.N. 68/2006.]

NOTICES UNDER SECTION 35(7)

Industrial Development Bank Limited.

[L.N. 286/1979.]

Development Finance Company of Kenya Limited.

[L.N. 115/1980.]

Industrial and Commercial Development Corporation Limited.

[L.N. 116/1980.]

NOTICES UNDER SECTION 41

Double Taxation Relief (Kenya/Zambia).

[E.A.C. L.N. 10/1970.]

Double Taxation Relief (Kenya/Denmark).

[E.A.C. L.N. 5/1973.]

Double Taxation Relief (Kenya/Norway).

[E.A.C. L.N. 6/1973.]

Double Taxation Relief (Kenya/Sweden).

[E.A.C. L.N. 14/1973.]

Double Taxation Relief (Kenya/United Kingdom).

[L.N. 253/1977.]

Double Taxation Relief (Kenya/Federal Republic of Germany).

[L.N. 20/1980.]

Double Taxation Relief (Kenya/Canada).

[L.N. 111/1987.]

Double Taxation Relief (Kenya/India).

[L.N. 61/1989.]

INCOME TAX (LOCAL COMMITTEES) RULES, 1974

ARRANGEMENT OF RULES

Rule

INCOME TAX (LOCAL COMMITTEES) RULES, 1974

[L.N. 7/1974, L.N. 103/1976, L.N. 95/1980, L.N. 53/2012.]

1. Citation

These Rules may be cited as the Income Tax (Local Committees) Rules, 1974.

2. Interpretation

In these Rules, unless the context otherwise requires—

"appeal" means an appeal to a local committee under section 86 or section 89;

"appellant" means a person entering an appeal and the advocate or duly authorized agent of such person;

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

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

"respondent" includes a person who under section 89(3)(c) or (d) is entitled to appear on an appeal as if he were a party thereto and the advocate or duly authorized agent of that person;

"section" means a section of the Act.

3. Appointment of clerk

(1) The Commissioner shall appoint an officer of the Income Tax Department to be the clerk to a local committee:

Provided that one officer may, in discretion of the commissioner, be appointed as clerk to two or more local committees.

(2) A clerk shall, in matter relating to appeals to the local committee and procedure therefor, comply with any general and special directions lawfully given by the chairman.

(3) A clerk shall by notice in the *Gazette* notify his address for the presentation or service of documents for the purpose of these Rules and shall in the same manner notify and change in such address.

4. Form of and time for lodging an appeal

An appeal shall be entered by presentation of a memorandum of appeal to the clerk within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 86(1):

Provided that where the local committee is satisfied that owing to absence from his normal place of residence, sickness or other reasonable cause the appellant was prevented from presenting a memorandum within such period and that there has been no unreasonable delay on his part, the local committee may extend that period within which such memorandum may be presented.

5. Memorandum of appeal

A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

6. Statement of facts of appellant

(1) A memorandum shall be accompanied by—

(a) a copy of the confirming notice, the amending notice or the notice of the decision of the Commissioner as the case may be;

(b) a copy of the notice of appeal;

(c) a statement, signed by the appellant, setting out the facts on which the appeal is based and referring to any documentary or other evidence which it is proposed to adduce at the hearing of the appeal.

(2) In this rule—

"amending notice" means a notice setting out an amendment to an assessment served under section 85(3)(a);

"confirming notice" means a notice confirming an assessment served under section 85(3)(b);

"decision of the Commissioner" means a decision or act of the Commissioner which, under section 90, may be the subject of an appeal.

[L.N. 53/2012, r. 2.]

7. Service of memorandum

Within forty-eight hours after the presentation of a memorandum to the clerk, a copy thereof and of the statement of facts of the appellant shall be served by the appellant upon the Commissioner and upon every other respondent.

7A. Response by Commissioner

(1) The Commissioner shall, within thirty days of being served with a memorandum and statement of facts in accordance rule 7 file a response, with the clerk, stating the facts upon which the response is based and specifying any documentary or other evidence that he proposes to adduce at the hearing of the appeal.

(2) The Commissioner shall, upon filing a response in accordance with paragraph (1), serve a copy of the response together with copies of any documents annexed thereto, upon the appellant.

(3) Where a local committee is satisfied that, the Commissioner was for any reasonable ground, unable to file the statement of facts with the clerk within the prescribed period, the local committee may extend the time within which the Commissioner shall file a response.

[L.N. 53/2012, r. 3.]

8. *Deleted by L.N. 103/1976, s. 2.*

9. Notice and place of hearing

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

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the clerk that he does not intend to do so, fix a time, date and place for a meeting of the local committee for the purpose of hearing the appeal and the clerk shall cause notice thereof to be served on the appellant, the Commissioner and every other respondent.

(3) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

10. Procedure

At the hearing of an appeal, the following procedure shall be observed—

(a) the Commissioner and any other respondent shall be entitled to be present or to be represented;

(b) the appellant shall state the ground of his appeal and may support it by relevant evidence:

Provided that, save with the consent of the local committee and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum and may not adduce any evidence other than evidence previously adduced to the Commissioner;

(c) at the conclusion of the statement and evidence on behalf of the appellant, the Commissioner and any other respondent shall be entitled to make submissions, supported by such relevant evidence as may be necessary to support his case;

(d) the appellant shall be entitled to reply but may not rely on any ground of appeal or on evidence other than that adduced at the hearing;

(e) the chairman or a member of the local committee may at any stage of the hearing to ask any questions of the appellant or the Commissioner, or any other respondent, or a witness examined at the hearing, which he considers necessary to the determination of the appeal;

(f) a witness called and examined by a party may be cross-examined by another party to the appeal and if so cross-examined may be re-examined;

(g) a witness called and examined by the local committee may be cross-examined by a party to the appeal;

(h) the local committee may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary and on such terms as it may determine;

(i) before the local committee considers its decision the parties to the appeal shall withdraw from the meeting, and the local committee shall deliberate the issue according to law;

(j) the decision of the local committee shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;

(k) minutes of the meeting shall be kept and the decision of the local committee recorded therein.

11. Local committee to determine own procedure in certain matters

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

12. Copies of documents admissible

Save where a local committee in a particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence, but the local committee may at any time direct that the original shall be produced notwithstanding that a copy has already been admissible in evidence:

Provided that the local committee may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

13. Fees and costs

No fees shall be payable, and a local committee shall not make any order as to costs, on an appeal save where the grounds of appeal are held by the committee to be frivolous, in which case the committee may order the appellant to pay as costs to the Commissioner and each other respondent a sum not exceeding five hundred shillings.

INCOME TAX (APPEALS TO THE HIGH COURT) RULES, 1974

ARRANGEMENT OF RULES

INCOME TAX (APPEALS TO THE HIGH COURT) RULES, 1974

[L.N. 105/1974, L.N. 41/1980.]

1. Citation

These Rules may be cited as the Income Tax (Appeals to the High Court) Rules, 1974.

2. Interpretation

In these Rules, unless the context otherwise requires—

"address for service" means a place of residence or a place of business within the jurisdiction;

"appeal" means an appeal to the Court under section 86(2);

"memorandum" means a memorandum of appeal presented under rule 3;

"Registrar" means the Registrar or a Deputy Registrar of the Court;

"respondent" includes a person who under section 89(3) is entitled to appear before a committee;

"section" means a section of the Act.

3. Form of and time for filing appeal

No appeal shall be filed unless a memorandum of appeal is presented to the Registrar during office hours, and a copy served upon the respondent, within 30 days after the date of service upon the respondent of a notice of appeal under section 86(2) of the Act:

Provided that where the Court is satisfied that, owing to absence from Kenya, sickness, or other reasonable cause, the appellant was prevented from presenting the memorandum of appeal within that period and that there has been no unreasonable delay on his part, the Court may extend that period.

[L.N. 41/1980, s. 2.]

4. Form of memorandum

Every memorandum shall contain an address for service, shall be signed by the appellant or his advocate and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

5. Statement of facts of appellant

A memorandum shall be accompanied by—

(a) a copy of the decision or the notice of the decision appealed against;

(b) a copy of the notice of appeal served on the respondent; and

(c) a statement, signed by the appellant or his advocate, setting out the facts upon which the appeal is based, and respectively specifying and referring to documentary or other evidence which it is proposed to adduce at the hearing of the appeal.

6. Registration of memorandum

(1) After the memorandum and the documents referred to in rule 5 of these Rules have been presented, and all filing and service fees due in relation thereto have been paid, the Registrar shall cause the date of presentation to be date-stamped thereon, and

the appeal shall be numbered and entered (as an Income Tax Appeal) in the register of appeals, in accordance with rule 8(1) of Order XLI of the Civil Procedure Rules (Cap. 21, Sub. Leg.)

(2) After entry of an appeal in the register of appeals as provided in paragraph (1), the Registrar shall ensure that, in respect of all documents relating to the appeal, the words "Income Tax Appeal" and the number of that appeal are included in the title of the appeal wherever the title occurs.

(3) The date on which the memorandum is presented is the date of filing of the appeal notwithstanding any dispute as to the amount of any service fee payable.

6A. Abatement of appeals

An appeal shall abate in any case where any filing and service fees due in relation to that case have not been paid in full within fourteen days of the appellant having been notified of the total amount of the fees payable by him, and where an appellant is so notified by post he shall be deemed, until the contrary is proved, to have received notification at the time at which the letter would be delivered in the ordinary course of post.

[L.N. 41/1980, s. 2.]

7. Service of memorandum of appeal

A copy of the memorandum of appeal and the documents referred to in rule 5 of these Rules shall be served by the Registrar upon the respondent upon payment of the prescribed fee for service thereof:

Provided that in a case referred to in section 89(3)(c) service shall be made by the appellant.

8. Statement of facts of respondent

The respondent shall, if he intends to contest the appeal, present to the Registrar, during office hours and within thirty days of the service upon him of the copy memorandum and the documents referred to in rule 5, a statement in duplicate each signed by him, giving an address for service, setting out the facts on which he relies, and respectively specifying and referring to documentary or other evidence which he proposes to adduce at the hearing of the appeal, and a copy of the statement shall be served by the Registrar upon the appellant upon payment of the prescribed fee for service thereof.

9. Notice and place of hearing

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

10. Right to begin

(1) On the day and at the time fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent and the appellant shall be entitled to reply.

11. Dismissal of appeal for appellant's default

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may, subject to section 87(2)(a), make an order that the appeal be dismissed.

(2) Where the appellant appears and the respondent does not appear, the Court may proceed to hear the appeal *ex parte*.

12. Readmission of appeal dismissed for default

Where an appeal is dismissed under rule 11 of these Rules the appellant may apply to the Court to which the appeal is preferred for the readmission of the appeal, and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit.

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

Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Court to which the appeal is preferred to rehear the appeal; and if he satisfies the Court that the memorandum of appeal and the documents referred to in rule 5 of these Rules were not duly served, or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall rehear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

14. Grounds of appeal

The appellant shall not, except by leave of the Court and upon such terms as the Court may determine, rely on a ground other than a ground stated in the memorandum of appeal.

15. Additional evidence

Should it appear to the Court at the hearing of the appeal that documentary or oral evidence other than that referred to in the statement of facts of the appellant or respondent should be admitted, the Court may admit that evidence.

16. Copies of documents admissible

Subject to the provisions of section 121 and save where the Court in a particular case otherwise directs or where any party to the appeal objects, copies of documents shall be admissible in evidence, but the Court may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

Provided that the Court may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

17. Proceedings in chambers

(1) Ancillary applications to a judge, if not made at the hearing, shall be made by summons entitled in the matter of the appeal, supported by affidavit.

(2) If no appeal is pending, the summons shall be entitled in the matter of the intended appeal.

18. Execution of decree where tax payable is not set out therein

Where a decree following the decision of the Court does not specify the amount of tax payable under the assessment as determined by the Court then, for the purposes of the execution of that decree, the Commissioner shall—

(a) where the decision of the Court results in an amendment to the assessment, file with the Registrar a copy, certified by him, of a notice served under section 87(2)(f) on the person assessed; or

(b) where the decision does not result in an amendment to the assessment, file with the Registrar a statement signed by him setting out the amount of tax payable under the notice of assessment served under section 78 or the amending notice, as the case may be,

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

19. Fees

A filing fee of one hundred shillings shall be payable on presentation of an appeal under these Rules, and the scale of fees for the time being in force in civil matters in the Court shall apply in respect of the service of all documents, and to all subsequent acts, applications or proceedings, in relation to such appeal.

20. Extent to which rules on civil procedure apply

The rules determining procedure in civil suits before the Court in so far as those rules relate to recognized agents and advocates, to service, to consolidation, to admissions, to the production, impounding and return of documents, to the summoning and attendance of witnesses, to adjournments, to the examination of witnesses, to affidavits, to judgment and decree, to the execution of decrees, to the attachment of debts, to the death, bankruptcy and marriage of parties, to withdrawal, discontinuance and adjustment, to security for costs, to commissions, to corporations, to trustees, executors and administrators, and to the enlargement of time shall, to the extent to which those rules are not inconsistent with the Act or these Rules, apply to an appeal as if it were a civil suit but, save as provided in these Rules, the procedure relating to civil suits before the Court shall not apply to an appeal.

INCOME TAX (P.A.Y.E.) RULES, 1973

ARRANGEMENT OF RULES

Rule

INCOME TAX (P.A.Y.E.) RULES, 1973

[L.N. 257/1973, L.N. 122/1986, L.N. 201/1986, L.N. 319/1987, L.N. 31/1994, L.N. 98/2001, L.N. 175/2001, L.N. 80/2008, L.N. 90/2009, L.N. 84/2010, L.N. 54/2011.]

1. Citation

These Rules may be cited as the Income Tax (P.A.Y.E) Rules, 1973.

2. Interpretation

(1) In these Rules, unless the context otherwise requires—

"Commissioner" includes an officer authorized in writing by the Commissioner to exercise and perform functions conferred upon the Commissioner under these Rules;

"emoluments" means—

(a) gains or profits from employment or services rendered which are payable in money; and

(b) the value of housing provided by an employer ascertained under section 5 (3) of the Act; and

(c) the value of benefit or facility provided by the employer, where the total value exceeds three thousand shillings per month; and

(d) *Deleted by L.N. 90/2009, r. 2*,

but does not include gains or profits which, in the opinion of the Commissioner, are in respect of casual employment only;

"employee" includes an individual receiving emoluments in respect of any employment, office, appointment or past employment;

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

"monthly personal relief", in relation to any month, means that amount of personal relief to which an employee is entitled in that month in accordance with the relief claim form which he has completed together with any other amount for that month notified to the employer by the Commissioner, and unused monthly personal relief, from a previous month or months in the same year of income;

"monthly personal relief notification" means a notification provided by the Commissioner to the employer with respect to monthly personal relief of the employee;

"relief claim form" means the relief claim form provided, or in a particular case authorized, by the Commissioner on which an employee claims the reliefs to which he is entitled under Part V of the Act;

"tax deduction card" means the tax deduction card in the form provided by the Commissioner, or such other document corresponding to a tax deduction card as may be authorized by the Commissioner in a particular case, and on which such information as the Commissioner may direct with respect to tax is recorded;

"tax tables" means the tables of income tax computed by the Commissioner in accordance with the rates of income tax specified in the Act for any year of income;

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

(2) Nothing in these Rules shall apply to an employer none of whose employees receive emoluments exceeding three thousand six hundred shillings per annum or such greater sum as the Commissioner may, by notice in the *Gazette*, specify.

[L.N. 122/1986, s. 2, L.N. 201/1986, s. 2, L.N. 319/1987, Sch., L.N. 98/2001, s. 2, L.N. 80/2008, s. 2, L.N. 90/2009, s. 2.]

3. Application of section 128 of Act

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

4. Deduction of tax

(1) An employer who makes a payment of, or on account of, emoluments during a month to an employee of his who is liable to payment of tax shall deduct tax from those emoluments in accordance with these Rules.

(2) An employer who fails to comply with the requirement of subrule (1) shall be guilty of an offence.

5. Calculation of monthly tax due

An employer shall in each month calculate, by reference to the tax tables, the tax due from each of his employees in that month having regard to the monthly personal relief of that employee:

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

[L.N. 54/2011, s. 2.]

6. Calculation of deduction and maintenance of records

(1) On the occasion of the last payment of emoluments in any month to an employee, the employer shall, except where these Rules otherwise provide, ascertain, in respect of that month, the monthly pay of the employee, the monthly tax chargeable thereon, and the monthly personal relief of the employee.

(2) If, in the case of an employee, the tax chargeable for a month exceeds his monthly personal relief then the employer shall deduct the amount of such excess from the last payment of emoluments in that month, but if the tax chargeable in a month is greater than the last payment of emoluments in that month:

Provided that if the tax chargeable in any month is greater than the last payment of emoluments to the employee in that month, the employer shall deduct such amount of tax as is not recoverable from such payment from the first payment of emoluments in the following month and from any subsequent such payments as may be necessary to recover that amount.

(3) The employer shall, on the tax deduction card, record for every month in which a payment of emoluments is made to an employee, such particulars as the Commissioner may direct in respect of any such payment.

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

7. Notification of emoluments and tax deducted

On the occasion of the last payment of emoluments in any month to an employee, the employer shall in writing notify the employee of the total amount of the emoluments paid by the employer to the employee during such month, the total tax deducted from such emoluments and such other particulars as the Commissioner may require.

(1) If an employee is aggrieved by a calculation with respect to the deduction of tax from his emoluments and is unable to reach agreement with his employer, then—

(a) the employer shall inform the employee of his rights under this rule and shall, at the request of the employee, furnish the employee with a written statement showing the manner in which the employer arrived at such calculation;

(b) the employee may give notice of objection in writing to the Commissioner, but any such notice shall be valid only if—

(i) it states precisely the grounds of his objection;

(ii) there is enclosed therewith the written statement furnished by his employer; and

(iii) it is received by the Commissioner within thirty days of the date on which that statement was received by the employee.

(2) On receipt of a notice of objection under this rule the Commissioner shall consider the objection and, subject to and in accordance with these Rules, may amend the calculation or reject the objection.

(3) The Commissioner shall forthwith notify the employer and the employee in writing of his decision on an objection and thereafter on the occasion of any payment to such employee in any month of, or on account of, emoluments the amount of tax deducted therefrom by the employer shall be in accordance with such decision.

(4) Notwithstanding that a valid objection has been made, on the occasion of any payment to the employee in any month of, or on account of, emoluments from which tax is to be deducted in accordance with these Rules, the amount of tax deducted by the employer shall be in accordance with the calculation by the employer until the employer is notified by the Commissioner of his decision with respect to the objection.

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

9. End of month procedure

At the end of every month, an employer shall compile, in such manner as the Commissioner may direct, a list which shall include the name of each employee in his employ from whose emoluments tax was deducted during that month together with the particulars of the amount of tax deducted and such other particulars as the Commissioner may require.

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

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

[L.N. 90/2009, s. 3, L.N. 84/2010, s. 2.]

10. Payment of tax by employer

(1) Before the tenth day following the end of every month or before any other day which may be notified to him by the Commissioner, an employer shall, subject to paragraph (2) of this Rule, pay, to such person as the Commissioner shall direct, all amounts of tax which the employer has deducted under these Rules during such month:

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

(2) Paragraph (1) of this Rule shall not apply to any employer in respect of any month in which the total amount of tax deducted by him is less than one hundred shillings, and in that case, or where in a month no tax is deductible by an employer under these Rules, the employer shall send, before the tenth day following the end of such month or before any other day which may be notified to him by the Commissioner, to the Commissioner a certificate, in the form authorized or provided by the Commissioner, showing either that the amount of tax which he deducted in that month was less than one hundred shillings or that he deducted no tax in that month:

Provided that when the amount of tax deducted by an employer in any month is less than one hundred shillings, such amount shall be added to the amount of tax deducted by him in the following month, or months, and when in a month the total of all such amounts is greater than one hundred shillings, the employer shall comply with paragraph (1) of this Rule; so however, that the employer shall comply with paragraph (1) of this Rule in the month of December in each year notwithstanding that the total amounts of such tax is less than one hundred shillings.

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

(4) Any employer who, having deducted tax under this rule fails to account therefor in the manner that the Commissioner may direct, or who fails to comply with paragraph (2) of this Rule, shall be guilty of an offence.

[L.N. 31/1994, s. 2.]

11. Employer failing to pay tax or to provide required certificate

(1) If, before the tenth day following the end of every month, or before a later day that may have been notified to him by the Commissioner, an employer has paid no amount of tax under rule 10 for that month and the Commissioner is unaware of the amount, if any, which the employer is liable to pay, or the employer has failed to provide the certificate mentioned in paragraph (2) of that rule, the Commissioner may give notice to the employer requiring him to render, within the time specified in the notice, a return showing the name of every employee to whom he made a payment of emoluments in the period stated in the notice, together with those particulars with regard to each employee that the notice may require, being particulars of—

(a) a calculation under rule 5 appropriate to the employee's case;

(b) the payments of emoluments made to the employee during that period; and

(c) any other matter affecting the calculation of the tax which the employer was liable under these Rules to deduct from the payments of emoluments to the employee during that period.

(2) The Commissioner shall ascertain and certify to the best of his knowledge and belief the amount of tax which the employer would have been liable to pay under rule 10 in respect of the month in question had he complied with the provision of these Rules.

(3) The production of the return made by the employer under paragraph (1), and of the certificate of the Commissioner under paragraph (2), shall be sufficient evidence that the amount shown in the certificate is the amount of tax which the employer would have been liable to pay under rule 10 in respect of the month in question had he complied with the provisions of these Rules and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

(4) Where a notice given by the Commissioner under paragraph (1) extends to two or more consecutive months, these Rules shall have effect as if those consecutive months were one month.

(5) If the Commissioner is not satisfied that the amount paid in respect of a month is the full amount which the employer would have been liable to pay under rule 10 had he complied with these Rules, he may notwithstanding that an amount of tax has been paid by the employer under that rule in respect of that month give a notice under paragraph (1) of this rule and thereupon this rule shall have effect monthly.

12. Recovery of tax

For purposes of the recovery of tax which an employer would have been liable to pay under rule 10 had he complied with the provisions of these Rules, that employer shall be deemed to have been appointed an agent of his employee under section 96 of the Act.

13. *Deleted by L.N. 84/2010, s. 3.*

14. Inspection of employer's records

(1) An employer, when called upon to do so by the Commissioner, shall produce, in English or any other language which the Commissioner may allow, for inspection, at the employer's premises or at any other place the Commissioner may require—

(a) all wages sheets, salary vouchers, and other books, documents and records whatever relating to the calculation or payment of the emoluments of his employees in respect of the years or months specified by the Commissioner, or to the deduction of tax by reference to those emoluments; or

(b) any of those wages sheets, salary vouchers and other books, documents and records which may be specified by the Commissioner.

(2) The Commissioner may, on the occasion of an inspection under this rule, prepare a certificate, by reference to the information obtained from the inspection, showing—

(a) the tax which it appears from the documents and records so produced that the employer would have been liable to pay under rule 10 for the years or months covered by the inspection had he complied with the provisions of these Rules;

(b) the tax which, to the best of his knowledge and belief, has not been paid as the Commissioner has directed.

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

15. Death of employer

If an employer dies, anything which he would have been liable to do under these Rules shall be done by his personal representatives, or, in the case of an employer who paid emoluments on behalf of another person, by the person succeeding him, or, if no person succeeds him, the person on whose behalf he paid those emoluments.

16. Change of employer

Where there has been a change in the employer from whom an employee receives emoluments in respect of the same employment, the employer after the change shall, in relation to a matter arising after the change, be liable to do anything which the employer

before the change would have been liable to do under these Rules if the change had not taken place, but the employer after the change shall not be liable for the payment of tax which was deductible from emoluments paid to the employee before the change took place.

17. Penalty

A person guilty of an offence under these Rules shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

[L.N. 98/2001, L.N. 175/2001, s. 2.]

INCOME TAX (DISTRAINT) RULES, 1973

[L.N. 6/1974, L.N. 73/2000, L.N. 83/2008.]

1. These Rules may be cited as the Income Tax (Distraint) Rules, 1973.

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

"distrainee" means the debtor named in an order;

"distraint agent" means a person appointed as a distraint agent under rule 3 of these Rules;

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

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

"distrainor" means an officer in the service of the Income Tax Department who is authorized to levy distress;

"goods" means movable property of a distrainee (other than growing crops and goods which are liable to perish within ten days of attachment) which is liable under the law to attachment and sale in execution of a decree of a court;

"order" means an order issued by the Commissioner under section 102 of the Act.

3. The Commissioner may appoint distraint agents to assist distrainors in the execution of orders:

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.

(1) A distraint agent shall, on appointment, furnish the Commissioner with security, by means of a deposit or in such other manner as the Commissioner may approve, in the sum of ten thousand shillings, and such security shall be refunded or cancelled on the termination of the appointment of the agent unless it is forfeited under this rule.

(2) If any distraint agent is convicted of an offence involving fraud or dishonesty in connexion with such functions performed by him as any agent, the court by which he is convicted may make an order as to the forfeiture of the security or part thereof furnished by him under paragraph (1) of this rule, or any part of such security, and the provisions of the Criminal Procedure Code (Cap. 75), in so far as they relate to forfeiture of recognizances, shall apply *mutatis mutandis* to the forfeiture of security under this rule.

(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 distrainees as, in the opinion of the distrainor, are of a value which, on sale by public auction, would realize a sum sufficient to meet the distress debt and the costs and expenses of the distress incurred by the distrainor.

(1) An order shall be issued by the Commissioner in duplicate and service thereof shall be effected by service by the distrainor of a copy of the order on the distrainee in person or, if after using all due and reasonable diligence, the distrainee cannot be found, by service of a copy on an agent of the distrainee empowered to accept service, or on an adult member of the family of the distrainee who is residing with him.

(2) A person served with a copy of an order under this rule shall endorse on the order an acknowledgement of service and if that person refuses to make endorsement the distrainor shall leave the copy of the order with that person after stating in writing thereon that the person upon whom he served the order refused to sign the acknowledgment and that he left, at the time, date and place stated therein, a copy of the order with that person and the name and address of the person (if any) by whom the person on whom the order was served was identified, and thereupon the order shall be deemed to have been duly served.

(3) *Deleted by L.N. 83/2008, s. 2*.

(1) In executing distress the outer door of a dwelling-house shall not be broken open unless that dwelling-house is in the occupancy of the distrainee and he refuses or in any way prevents access thereto, but when the distrainor or distraint agent executing distress has duly gained access to a dwelling-house he may break open the door of any room in which he has reason to believe goods of the distrainee to be.

(2) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to her religion or local custom does not appear in public, the distrainor shall give notice to that woman that she is at liberty to withdraw, and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing he may enter that room for the purpose of attaching goods therein, using at the same time every precaution consistent with these provisions to prevent their clandestine removal.

[L.N. 73/2000, s. 3.]

8. As soon as practicable after the attachment of 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.

[L.N. 73/2000, s. 4.]

9. On the sale by public auction of goods attached under these Rules the distrainor shall cause the sale to be stopped when the sale has realized a sum equal to or exceeding the distress debt and the costs and expenses incurred by the distrainor, and thereupon 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.

(1) Where a distrainee has, within ten days of attachment of his goods under these Rules, paid or given security accepted by the Commissioner for the whole of the tax due from him together with the whole of the costs and expenses incurred by the distrainor in

executing the distress, the distrainor shall at the cost of the distrainee forthwith restore the attached goods to the distrainee and return the order to the Commissioner who shall cancel it.

(2) Any sum paid by a distrainee under this rule shall be applied by the Commissioner first in settlement of the costs and expenses incurred by the distrainor and as to the balance, if any, in settlement of the distress debt or such part thereof as the Commissioner shall direct.

12. Where any goods attached under these Rules include livestock, the distrainor may make appropriate arrangements for the transport, safe custody and feeding of the livestock and any costs and expenses incurred thereby shall be recoverable from the distrainee under rule 9 or 11 of these Rules, as the case may be, as costs and expenses incurred by the distrainor.

13. In addition to a claim for other costs and expenses which may be incurred by the Commissioner or the distrainor in levying any distress under these Rules there may be claimed by the distrainor and recovered under rule 9 or 11 of these Rules, as the case may be, costs at the rate specified in the Schedule to these Rules.

14. The maximum rates of remuneration which a distraint agent shall be entitled to demand from the distrainor for his assistance in executing a distress under these Rules, and which may be recovered by the distrainor under rule 9 or 11 of these Rules, as the case may be, shall be those specified in the Schedule to these Rules.

15. The maximum rate of commission to be paid to an auctioneer by the distrainor as remuneration for his services for the sale by public auction of goods attached under these Rules, and which may be recovered by the distrainor under rule 9 of these Rules, shall be five per cent of the amount realized on the sale, and where an auctioneer has also rendered services as a distraint agent, he shall be entitled, in addition to a commission under this rule, to remuneration for those services as provided in rule 14 of these Rules.

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

SCHEDULE

[L.N. 73/2000, s. 5, L.N. 83/2008, s. 3.]

RATES OF REMUNERATION

1. Distrainor's Charges

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

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

2. Distraint Agent's Charges

(a) Where no distress is levied and the distress debt and any costs and expenses incurred by the distrainor are paid by the distrainee on demand or within thirty minutes thereafter the distraint agent shall be entitled to a remuneration of	Shs. 120

SCHEDULE—*continued*

(b) For attaching goods or attaching and keeping possession thereof for ten days or part thereof, when the estimated value of the property, or the distress debt and costs and expenses, whichever is less—

(i)	does not exceed Shs. 30,000	Four per cent thereof
(ii)	exceeds Shs. 30,000	Three per cent thereof

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

(d) For keeping possession of any attached goods after the expiration of ten days from the date of attachment for each day, or part thereof ..... ¼ 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.

INCOME TAX (PRESCRIBED DWELLING-HOUSE) RULES, 1974

[L.N. 8/1974, L.N. 266/1986.]

1. These Rules may be cited as the Income Tax (Prescribed Dwelling-House) Rules, 1974.

2. For the purposes of paragraph 5(1)(b) of the Second Schedule to the Act the conditions with which a dwelling-house shall conform in order to be a prescribed dwelling-house shall be that the dwelling-house is certified by a Labour Officer, as defined in section 2 of the Employment Act (Cap. 226), as having been provided under section 9 of that Act.

[L.N. 266/1986, s. 2.]

INCOME TAX (RETIREMENT BENEFITS) RULES, 1994

ARRANGEMENT OF RULES

Rule

INCOME TAX (RETIREMENT BENEFITS) RULES, 1994

[L.N. 318/1974, L.N. 50/1980, L.N. 232/1988, L.N. 197/1994, L.N. 211/1995, L.N. 124/1996, L.N. 74/2000, L.N. 99/2001, L.N. 106/2001, L.N. 98/2002, L.N. 55/2004, L.N. 52/2005, L.N. 79/2008.]

1. Citation

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

2. Interpretation

(1) In these Rules, unless the context otherwise requires—

"employee" means an employee participating in a registered scheme;

"employer" means a person carrying on a business wholly or partly in Kenya in connection with which a scheme is established;

"pension" includes a pension from employment and a retirement annuity;

"scheme regulations" means the regulations specifically governing the constitution and administration of a particular scheme;

"trustee" includes a person having the management or control of a fund or scheme.

(2) For the purposes of this rule and rules 8 and 9, **"scheme"** means a pension fund, a pension scheme, an individual retirement fund, a provident fund or trust fund.

3. Existing schemes

Subject to these Rules, a pension fund, pension scheme or provident fund which was established in Kenya and approved for the purposes of the Management Act or a trust scheme or annuity contract approved for the purposes of the Management Act, shall be deemed respectively to be a registered pension fund, registered pension scheme, registered provident fund, registered trust scheme and registered annuity contract for the purposes of the Act.

4. Registration of pension funds

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

(a) is registered with the Retirement Benefits Authority; and

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

(c) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and

(d) provides that, in the case of a provident fund where a surplus is identified by the audit required under paragraph (j)(i), such surplus shall be allocated to the respective accounts of the members of the fund in lieu of new contributions by the employer in the year and subsequent years until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions by the employer; and

(e) *deleted by L.N. 79/2008, s. 2*;

(f) provides that the payment of pension shall not commence—

(i) until the retirement of the employee from service with the employer on or after the employee attains the age of fifty years; or

(ii) except upon earlier retirement on account of infirmity of mind or body; and

(g) does not provide for the payment of sums on the death of an employee except a lump sum payable to the estate, or a lump sum or an annuity or both whether directly or indirectly payable to the widow or widower or dependants, of that employee; and

(h) does not provide for the payment of an annuity, to the widow or widower of an employee, other than annuity for a term certain or during the life of that widow or widower or during the minority of a dependant of that employee; and

(i) provides that, not more than one third of the pension or such other portion thereof as may be prescribed under the Retirement Benefits Act, 1997 (No. 3 of 1997), may be payable as a lump sum by way of communation of a pension:

Provided that benefits arising from additional voluntary contributions may be fully commuted;

(j) provides that—

(i) in the case of a defined contribution pension fund, an audit shall be carried out once every year during which all assets shall be valued at their current market prices and all surplus funds not allocated to the account of a member of the fund identified:

Provided that, where the fund makes provision for a reserve fund, the amount of this reserve fund that does not exceed ten per cent of the market value of the assets may be excluded from the surplus funds not allocated to the account of a member of the fund;

(ii) in the case of a defined benefit pension fund, an actuarial investigation shall be carried out by a certified actuary at least once every three years beginning from 1st January, 1995 during which any actuarial deficiency or surplus in the fund shall be determined;

(iii) the audited accounts or the actuarial report as the case may be, shall be sent to the Commissioner of Income Tax, the Commissioner of Insurance and all members of the fund shall be notified of the availability of the audited accounts or actuarial report for scrutiny at the offices of the fund manager not later than thirty days from the date of the completion of the audit, or report; and

(iv) any surplus funds identified shall appropriately be allocated to the respective accounts of the members, and upon the fund being wound up, the surplus funds shall be deemed to be the funds of the employer, unless the trust deed of such scheme specifies otherwise, and shall be required to be withdrawn and charged to tax in the hands of the employer; and

(k) provides that, in the case of a defined contribution pension fund that maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, disability or death, as the case may be, in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the fund at that time.

[L.N. 211/1995, s. 2, L.N. 124/1996, s. 2, L.N. 74/2000, s. 2, L.N. 99/2001, s. 2, L.N. 106/2001, s. 2, L.N. 98/2002, s. 2, L.N. 55/2004, s. 2, L.N. 52/2005, s. 2, L.N. 79/2008, s. 2.]

5. Registration of provident funds

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

(a) is registered with the Retirement Benefits Authority; and

(b) provides that all sums payable thereunder shall be paid in Kenya; and

(c) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and

(d) provides that in respect of any one employee, the aggregate of contributions for a year of income by the employee to registered pension and registered provident funds and by the employer on behalf of the employee under the defined contribution provisions of a registered fund shall together not exceed thirty per cent of the employee's pensionable income for that year of income or nine thousand pounds, or, where contributions are made in respect of part-year of service by the employee, seven hundred and fifty pounds per month whichever is less:

Provided that in the case of a provident fund where a surplus is identified by the audit required under paragraph (g)(i), such surplus shall be allocated to the account of members of the fund in lieu of contributions by the employer in the year and each subsequent year until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions by the employer; and

(e) provides that—

(i) the maximum amount payable to an employee in respect of the employer's contribution shall not exceed thirty-six thousand pounds plus interest and other income accrued thereon in the fund; or

(ii) where the employee participates in more than one registered provident fund established by the employer, the limit of thirty-six thousand pounds plus interest and other accrued income shall apply to the total amounts so payable from all those funds; and

(iii) the fund shall consist only of contributions by the employer in respect of his employees, and contributions by those employees, together with interest and other accrued income thereon, and securities purchased out of the fund together with the interest paid on those securities; and

(iv) in the case of an employee who was a member of a registered provident fund prior to 7th June, 1990, the lump sum under subparagraphs (i) and (ii) may be paid after the completion of the specified period of service; or

(v) if the employee became a member of a registered provident fund after 7th June, 1990, the lump sum under subparagraphs (i) and (ii) shall apply only if the period of service with that employer is not less than five years except that the lump sum may be paid on deferred basis upon the employee attaining the age of fifty years; and

(vi) notwithstanding that the conditions set in subparagraphs (iv) and (v) have not been satisfied, a contributing employee who is a member of a registered provident fund may receive the full amounts payable under subparagraphs (i) and (ii) after attaining the age of fifty-five years or such earlier age as the Commissioner may permit but not before he attains the age of forty years; and

(f) provides that all benefits derived from contributions made by an employee shall vest immediately in the employee; and

(g) provides that—

(i) an audit shall be carried out once every year during which all assets shall be valued at their market prices and all surplus funds not allocated to the account of a member of the fund identified:

(ii) the audited accounts shall be sent to the Commissioner of Income Tax, the Commissioner of Insurance, and all members of the fund notified of its availability for scrutiny at the offices of the fund manager, not later than thirty days from the date of completion of the audit; and

(h) provides that, in the case of a provident fund that maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, disability or death, as the case may be, in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the fund at that time.

[L.N.211/1995, s. 3, L.N. 124/1996, s. 3, L.N. 74/2000, s. 3, L.N. 98/2002, s. 3, L.N. 55/2004, s. 3, L.N. 52/2005, s. 3.]

6. Registration of individual retirement funds

An individual retirement fund shall, upon application being made under rule 8, be registered by the Commissioner for the purposes of this Act if he is satisfied that it—

(a) is registered with the Retirement Benefit Authority; and

(b) provides that all sums payable thereunder shall be paid in Kenya; and

(c) provides that the only contributions received shall be—

(i) funds transferred from another registered fund or registered individual retirement fund under section 22A(5) of the Act where the Commissioner has been duly informed of the transfer of funds; or

(ii) contributions by or on behalf of an individual who qualifies for a deduction under section 22B of the Act; and

(d) provides that the funds shall be invested in qualifying assets; and

(e) provides that no loan or other benefit shall be provided out of the fund to the beneficiary or any person not dealing at arm's length with that beneficiary; and

(f) provides that an individual beneficiary can direct that all funds in his individual retirement fund be transferred to another such account with the same or another qualified institution without unreasonable delay and with notification of the Commissioner; and

(g) provides that the payment of pension shall not commence until retirement after the attainment of the age of fifty years or upon earlier retirement on the grounds of ill health or infirmity of body or mind or on leaving the country permanently; and

(h) *deleted by L.N. 55/2004, s. 4*;

(i) provides that upon the death of the beneficiary the funds shall be distributed or transferred as legally required; and

(j) provides that all benefits derived from contributions by or on behalf of an individual shall vest in that individual immediately.

[L.N. 98/2002, s. 4, L.N. 55/2004, s. 4.]

7. Discretionary registration

The Commissioner may, subject to such conditions as he thinks fit, register, for the purposes of the Act, another pension fund or provident fund which does not fully comply with every requirement of rule 4, 5 or 6 but which in his opinion substantially so complies.

8. Registration procedure

(1) Application for the registration of a scheme under rule 4, 5, 6 or 7 shall be made by the trustee of the scheme to the Commissioner in writing accompanied by two copies of the trust deed or other documents constituting the scheme and the scheme regulations.

(2) The Commissioner shall, as soon as practicable after considering the application, notify the trustee in writing whether the scheme is acceptable for registration, and the same notification shall specify either—

(a) the reason therefor, if it is not acceptable; or

(b) the year of income in respect of which the registration is first to take effect, if it is so acceptable.

9. Alteration of scheme regulations to be notified

Where an alteration is made to scheme regulations, the trustee of the scheme shall immediately inform the Commissioner in writing thereof and such alteration shall not be effective unless written approval is received from the Commissioner.

10. Withdrawal of registration

(1) The Commissioner may at any time, by notice in writing to the trustee of a scheme, withdraw the registration of—

(a) a registered pension fund (whether registered under rule 3 or 4) the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 4; or

(b) a registered provident fund (whether registered under rule 3 or 5) the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 5; or

(c) a registered individual retirement fund the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 6; or

(d) a scheme registered under rule 7 which he is satisfied on reasonable grounds no longer meets the requirements of that rule or which has failed or ceased to fulfil any conditions of registration imposed under that rule; or

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

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

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

11. Revocation

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

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

ARRANGEMENT OF RULES

Rule

INCOME TAX (REGISTERED HOME OWNERSHIP SAVINGS PLAN) RULES

[L.N. 210/1995, L.N. 82/2007.]

1. Citation and commencement

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

2. Interpretation

In these Rules, unless the context otherwise requires—

"institution" means an approved institution operating a home ownership savings plan registered in accordance with these Rules;

"Plan" means a home ownership savings plan;

"qualifying deposits" means—

(i) funds transferred from another Plan under section 22C of the Act; or

(ii) any deposits which qualify for a deduction under section 22C of the Act.

3. Application for registration

(1) An approved institution offering a home ownership savings plan to depositors may apply to the Commissioner for registration of the Plan for the purposes of the Act.

(2) An application under this rule shall—

(a) be made in writing addressed to the Commissioner;

(b) be signed by two of the officials of the approved institution;

(c) be accompanied by two certified copies of either the trust deed, or any rules or other document consisting the plan.

[L.N. 82/2007, s. 2.]

4. Requirements for registration

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

(a) it is established in Kenya;

(b) the trust deed, rules or other document constituting the Plan provide that—

(i) all sums held on account of a depositor shall be used to purchase or construct a permanent house in Kenya;

(ii) no deposit made or benefit accruing or payable to the depositor shall be pledged as security for a loan or shall be capable of assignment unless the depositor dies;

(iii) upon the death of the depositor, the balance of the funds in his account shall be transferred to his spouse, any of his children who have attained the age of eighteen years or any relative of the depositor who is a qualifying individual without closing the account;

(iv) only qualifying deposits may be made by a depositor under the Plan;

(v) *deleted by L.N. 82/2007, s. 3*;

(vi) no loan or other benefit shall be provided out of the account to the depositor or to any person not dealing at arm's length with the depositor;

(vii) a depositor may, subject to the approval of the Commissioner, direct that all funds held in his account be transferred to another institution operating a similar Plan without undue delay;

(viii) the depositor may at any time on or before the ninth year after the qualifying year withdraw all the sums deposited without deduction of tax to purchase or construct a permanent house for his occupation:

Provided that any excess amount of the withdrawal not used for the purchase or construction of the house shall be subject to tax;

(ix) in every year starting with the qualifying year up to the tenth year the depositor shall make in his account an annual deposit of up to thirty thousand shillings;

(x) upon the death of the depositor, any funds held in his account shall be transferred as provided in these Rules and any sums not applied towards the purchase or construction of a permanent house shall be subject to tax;

(xi) in the case of expenditure on an existing house, no distinction shall be made between the value of the existing building and the land on which it stands;

(xii) in the case of the construction of a house, qualifying expenditure shall consist of construction services and building material supported by such evidence as the Commissioner may require;

(xiii) all funds in a depositor's account shall be withdrawn as a lump sum by the end of the ninth year following the qualifying year.

[L.N. 82/2007, s. 3.]

5. Notification of registration

The Commissioner shall, as soon as reasonably practicable after considering the application, notify the applicant in writing whether or not the Plan is acceptable for registration, and the same notification shall specify either—

(a) the reason therefor, if it is not acceptable; or

(b) the year of income in respect of which the registration is first to take effect, if it is acceptable.

6. Supply of information to the Commissioner

An institution shall, in respect of every depositor saving under a Plan, forward to the Commissioner—

(a) the personal identification number of the depositor;

(b) a certified copy of an affidavit sworn by the depositor confirming that he does not directly or indirectly own and has not previously directly or indirectly owned and has not previously directly or indirectly owned any interest in a permanent house;

(c) the amount of deposits, mode of investment and any withdrawals thereof;

(d) such other information as the Commissioner may from time to time require.

7. Alteration of trust deed, rules, etc.

Where an alteration is made to the trust deed, the rules or other document constituting the Plan, the institution shall forthwith notify the Commissioner in writing and such alteration shall not be effective unless written approval thereof is received from the Commissioner.

8. Withdrawal of registration

(1) The Commissioner may, by notice in writing to the institution, withdraw the registration of a Plan if—

(a) the provisions of the trust deed, the rules or other document constituting the Plan have either been breached or so altered that the Plan no longer meets the requirements of the Act or these Rules; or

(b) the accounts of the Plan fail or cease to be maintained to the satisfaction of the Commissioner.

(2) A withdrawal of registration under this rule shall take effect from the beginning of the year of income in which the grounds for that withdrawal arose or such later date as the Commissioner may determine, and the accumulated funds thereof shall be taxed in the year in which the registration is withdrawn.

INCOME TAX (VENTURE CAPITAL ENTERPRISE) RULES, 1997

ARRANGEMENT OF RULES

Rule

INCOME TAX (VENTURE CAPITAL ENTERPRISE) RULES, 1997

[L.N. 103/1997, L.N. 31/2008, L.N. 82/2008.]

1. Citation and commencement

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

[L.N. 82/2008, s. 3.]

2. Interpretation

In these Rules, unless the context otherwise requires—

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

"fund manager" means a person licensed by the Capital Markets Authority under the provisions of the Capital Markets Authority Act (Cap. 485A) for the purpose of managing a venture capital enterprise;

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

[L.N. 31/2008, s. 2, L.N. 82/2008, s. 4.]

3. Registration of venture capital companies

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

(a) it is incorporated in Kenya; and

(b) it is incorporated for the purpose of investing in new or expanding venture capital enterprises; and

(c) it is registered by the Capital Markets Authority; and

(d) it is managed by a fund manager; and

(e) seventy-five per cent or more of its portfolio of investable funds is invested by way of equity or quasi-equity investment in venture capital enterprises; and

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

[L.N. 31/2008, s. 3, L.N. 82/2008, s. 5.]

4. Prohibited activities

The primary activities of a venture capital enterprise shall not include—

(a) trading in real property;

(b) banking and financial services; or

(c) retail and wholesale trading services.

[L.N. 31/2008, s. 4, L.N. 82/2008, s. 6.]

5. Registration procedure

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

(a) two copies each of the company's—

(i) memorandum of articles of association;

(ii) certificate of incorporation;

(iii) certificate of registration by the Capital Markets Authority;

(iv) Personal Identification Number Card;

(b) the fund manager's licence under the Capital Markets Authority Act;

(c) any other information as may be required by the Commissioner.

(2) The Commissioner shall, as soon as practicable after considering the application, notify the fund manager in writing whether the venture capital enterprise is acceptable for registration, and the same notification shall specify either—

(a) the reason therefore, if it is not acceptable; or

(b) the year of income in respect of which the registration is first to take effect, if it is so acceptable.

[L.N. 31/2008, s. 5, L.N. 82/2008, s. 7.]

6. Withdrawal of registration

(1) The Commissioner may at any time, by notice in writing to the fund manager, withdraw the registration of a venture capital company if in the opinion of the Commissioner, that venture capital company no longer qualifies for registration under these Rules.

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

INCOME TAX (WITHHOLDING TAX) RULES, 2001

ARRANGEMENT OF RULES

Rule

INCOME TAX (WITHHOLDING TAX) RULES, 2001

[L.N. 100/2001, L.N. 96/2002, L.N. 54/2004.]

1. Citation and commencement

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

2. Interpretation

In these Rules, unless the context otherwise requires—

"Commissioner" includes an officer authorised in writing by the Commissioner to exercise the powers or to perform functions conferred upon the Commissioner under these Rules;

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

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

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

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

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

3. Application of section 128 of the Act

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

4. Deduction of withholding tax

(1) A person who makes a payment of, or on account of, any income which is subject to withholding tax shall deduct tax therefrom in the amount specified—

(a) under paragraphs 3 and 5 of Head B of the Third Schedule; and

(b) where the Government of Kenya has double taxation agreement with the Government of another country, in the terms of that agreement:

Provided that the rates of tax under this subrule shall not exceed the rates specified under paragraph (a).

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

5. Maintenance of records

(1) On the occasion of making a payment, a person shall keep a record in respect of, name of payee, Personal Identification Number (PIN), gross amount paid, nature of payment and amount of tax deducted.

(2) A person shall, on the tax deduction card or such other document as may be authorised by the Commissioner, record such particulars as the Commissioner may direct in respect of that payment.

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

6. Certificate of tax deduction

Upon making a payment and deducting withholding tax in any month, the person making the payment shall furnish the payee with a certificate showing the gross amount paid, the total tax deducted and such other particulars as the Commissioner may require.

7. Dispute in calculation of withholding tax

(1) If a person to whom payment is made under paragraph 6 is aggrieved by reason of the nature of a payment and the rate of withholding tax applied and is unable to reach an agreement with the payer—

(a) the payer may inform the payee of his rights under this rule and shall, at the request of the payee furnish him with a written statement showing the manner in which the payer calculated the tax deducted;

(b) the payee may give a notice of objection in writing to the Commissioner, but that notice shall be valid only if—

(i) it states precisely the grounds of his objection;

(ii) there is enclosed therewith the written statement furnished by the payer; and

(iii) it is received by the Commissioner within thirty days of the date on which the statement from the payer under paragraph (a) was received by the payee.

(2) On receipt of a notice of objection under this rule, the Commissioner shall consider the objection and, subject to and in accordance with these Rules, may amend the calculation or reject the objection.

(3) The Commissioner shall notify the payer and the payee in writing of his decision on the objection and thereafter, on the occasion of making payment to the payee the calculation of the tax shall be in accordance with that decision.

(4) Notwithstanding that a valid objection has been made, on the occasion of making a payment to the payee from which tax is to be deducted in accordance with these Rules, the amount of tax to be deducted shall be in accordance with the calculation made by the payer until the payor is notified by the Commissioner of his decision on the objection.

(5) Any amount of tax in excess of the amount found to be payable upon calculation by the Commissioner under subrules (3) and (4) shall be refunded to the payee.

8. Payment of withholding tax

(1) On or before the twentieth day of the month following the month in which the deduction is made or before such other day as may be notified to him by the Commissioner, a person shall, subject to subparagraph (3), pay to the Commissioner or to such other person as the Commissioner may direct, all amounts of tax deducted in accordance with the Act and these Rules.

(2) The tax remitted shall be accompanied by an appropriate return showing the name of the payee, the gross amount of payment, the amount of tax deducted and such other information as the Commissioner may specify.

(3) Where no withholding tax is deducted, a person shall furnish the Commissioner with a certificate, in such form as the Commissioner may prescribe, showing that no tax was deducted in that month.

(4) A person whom the Commissioner has, under paragraph (1), directed to receive withholding tax on his behalf shall keep a record of payment in such form as the Commissioner may direct and shall enter therein particulars of all tax paid to him.

(5) A person who, having deducted tax under these Rules, fails to remit tax within the time prescribed under this rule, account for such tax deducted or who fails to comply with subrule (2), commits an offence.

9. Person failing to pay tax or provide required certificate

(1) If, on the twentieth day following the month in which the deduction is made or before such later day as may have been notified to him by the Commissioner, a person has paid no tax under rule 8(1) for that month and the Commissioner is unaware of the amount, if any, which the person is liable to pay, or the person has failed to provide the certificate mentioned in paragraph (3) of that rule, the Commissioner may give notice to the person requiring him to render within the time specified in the notice, a return showing the name of every person to whom he made any payment which is subject to withholding tax in the period stated in the notice, together with particulars with regard to each person that notice may require, being particulars of—

(a) a calculation of tax under rule 4 appropriate to each person's case;

(b) the payment of amounts subject to withholding tax made to that other person during that period; and

(c) any other matter affecting the calculation of the tax which the person was liable under these Rules to deduct from the payments subject to withholding tax during that period.

(2) The Commissioner shall ascertain and certify to the best of his knowledge and belief the amount of tax which the person would have been liable to pay under rule 8 in respect of that period in question had he complied with the provisions of these Rules.

(3) The production of the return made by the person under paragraph (1), and of the certificate of the Commissioner under paragraph (2), shall be sufficient evidence that the amount shown in the certificate is the amount of tax which the person would have been liable to pay under rule 8 in respect of the period in question had he complied with the provisions of these Rules and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

(4) Where a notice given by the Commissioner under paragraph (1) extends to two or more consecutive months, these Rules shall have effect as if those consecutive months were one month.

(5) If the Commissioner is not satisfied that the amount of tax paid in respect of a period is the full amount which the person would have been liable to pay under rule 8 had he complied with these Rules, he may notwithstanding that an amount of tax has been paid by the person under that rule in respect of that period give a notice under paragraph (1) of this rule and thereupon this rule shall have effect in the subsequent periods.

10. Recovery of tax

For the purpose of the recovery of tax which a person would have been liable to pay under rule 8 had he complied with the provisions of these Rules, that person shall be deemed to have been appointed an agent of his payee under section 96 of the Act.

11. Withholding return at end of each year

(1) Not later than two months after the end of each year, a person shall render to the Commissioner a statement and declaration in the form that the Commissioner may provide or authorise in respect of each person to whom payment is made at any time during the year, showing such particulars as the Commissioner may require.

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

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

12. Inspection of personal records

(1) A person liable to pay withholding tax shall, when called upon to do so by the Commissioner, shall produce for inspection at his premises or at any place the Commissioner may require—

(a) all accounts, books of accounts, documents and other records relating to the calculation of, and on account of payments which are subject to withholding tax in respect of the period which may be specified by the Commissioner; and

(b) any other books, documents and records which may be specified by the Commissioner, which shall be written in English or such other language which the Commissioner may allow.

(2) The Commissioner may, on the occasion of an inspection under this rule, prepare a certificate, base on the information obtained from the inspection, showing—

(a) the tax which it appears from the documents and records produced that the person would have been liable to pay under rule 8 for the period covered by the inspection had he complied with the provisions of these Rules;

(b) the tax which, to the best of his knowledge and belief, has not been paid as the Commissioner had directed.

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

[L.N. 96/2002, s. 2.]

13. Death of an individual

If an individual dies, anything which he would have been liable to do under these Rules shall be done by his personal representatives, or, in the case of an individual who made payments on behalf of another person, by the person succeeding him, or if no person succeeds him, by the person on whose behalf he made those payments.

14. Change in circumstances of a person

Where there has been a change in the payer, the payer after the change shall in relation to a matter arising after such change, be liable to do anything which the payer before the change would have been liable to do under these Rules if the change had not taken place.

14A. Penalty for failure to deduct or remit withholding tax

For the purposes of section 35(6) of the Act, where a person, when under obligation to do so, fails—

(a) to make a deduction described in section 35(6)(a) of the Act, in accordance with rule 4; or

(b) to remit an amount of tax deducted, as described in section 35(6)(b) of the Act, in accordance with rule 8,

the Commissioner may impose a penalty equal to ten per cent of the amount of the tax involved, subject to a maximum penalty of one million shillings.

[L.N. 54/2004, s. 2.]

15. General penalty

A person convicted of an offence under these Rules shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

INCOME TAX (LEASING) RULES, 2002

ARRANGEMENT OF RULES

INCOME TAX (LEASING) RULES, 2002

[L.N. 52/2002, L.N. 69/2006, L.N. 83/2007, L.N. 81/2008, L.N. 91/2009.]

1. Citation

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

2. Interpretation

In these Rules, unless the context otherwise requires—

"asset" includes equipment, but excludes land and buildings;

"Commissioner" includes an officer authorized in writing by the Commissioner to exercise the powers or to perform functions conferred upon the Commissioner under these Rules;

"cross-border lease" means a leasing contract entered into between a person resident in Kenya and another person resident in a different tax jurisdiction;

"finance lease" means a contract which the lessor agrees to lease assets to the lessee for a specified period of time where the risks and rewards associated with ownership of the assets are substantially transferred from the lessor to the lessee, but with the title to the assets always remaining with the lessor;

"hire purchase" means a contract under which the lessor agrees to lease the assets to the lessee for a specified period of time, with the intention of transferring ownership on the expiry of the lease;

"lease" means a contract by which a person owning assets grants to a lessee the right to possess, use and enjoy such assets for a specified period of time in exchange for periodic payments:

Provided that any contract whose term is less than six months shall not be deemed to be a lease;

"lessee" means a person who leases from the owner or lessor of the assets and in return for use of such assets pays periodic payments to the lessor;

"lessor" means a person who leases an asset to a lessee;

"operating lease" means a contract under which the lessor agrees to lease the assets to the lessee for specified periodical payments where the title to the assets and the risks and rewards associated with ownership substantially remain with the lessor.

[L.N. 83/2007, s. 2, L.N. 81/2008, s. 2.]

3. Income chargeable to tax

(1) All income accruing to a lessor from payments made in respect of an operating or finance lease shall be chargeable to tax in accordance with the provisions of the Act.

(2) All income accruing under paragraph (1) shall be subject to withholding tax at the rates applicable to resident or non-resident persons under the Act.

[L.N. 69/2006, s. 2.]

4. Deduction

Notwithstanding paragraph 3—

(a) a lessor shall be entitled to claim a deduction—

(i) for the wear and tear of the leased assets in accordance with paragraph 9 of the Second Schedule to the Act; and

(ii) in respect of all other expenditure incurred wholly and exclusively in the production of the income in accordance with section 15 of the Act;

(b) a lessee shall take as a deduction the full amount of the payments made to the lessor:

Provided that a deduction under these Rules shall be granted where the Commissioner is satisfied—

(i) in the case of a lessor, that the expenditure in respect which the deduction is sought is incurred by the lessee wholly and exclusively in the production of income chargeable to tax; and

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

5. Capitalisation of assets

(1) For the purposes of these Rules, assets to which these Rules relate shall be capitalized in the books of the lessor, and where the same are sold off upon expiration of the lease, the difference between the sale price and book value shall be deemed to be a gain or loss to the lessor, as the case may be, for purposes of assessment.

(2) Assets leased under these Rules shall not be capitalized the books of the lessee.

[L.N. 83/2007, s. 3.]

6. Register

The lessor shall maintain a separate register for all lease assets.

7. *Deleted by L.N. 81/2008, s. 3.*

8. Where lease is terminated

(1) Where, upon termination of a lease in respect of which the lessee is entitled to any tax deduction, and with the express or implied consent or acquiescence of the lessor the lessee is allowed to use, enjoy or deal with the asset as the lessee may deem fit—

(a) without the payment of any consideration; or

(b) subject to the payment of any consideration which is nominal in relation to the fair market value of the asset; or

(c) if the asset is transferred to the lessee passes for an amount less than the market value,

the lessee shall be deemed to have acquired the asset and the Commissioner shall recover the deductions previously enjoyed by the lessee in respect of such assets with effect from the date of the commencement of the lease and appropriate adjustments made for each year of income when the lease payments were claimed.

(2) Where an acquisition is deemed under paragraph (1) the lessee shall be allowed to depreciate the amount recovered based on the wear and tear deduction applicable to the class of asset which shall be computed on the total lease payments recovered under paragraph (1), with effect from the year of income in which the lease commenced.

(3) Where a lessee is allowed wear and tear as computed under paragraph (2), similar adjustments shall be made in the tax computation of the lessor to bring to charge the wear and tear previously claimed by the lessor.

[L.N. 91/2009, s. 2.]

9. *Deleted by L.N. 81/2008, s. 4.*

10. Cross border lease

(1) Where a lessor in Kenya enters a cross-border lease, the gross lease payments made to the lessor shall be deemed to be income chargeable to tax.

(2) Where a lessee in Kenya enters into a cross-border lease, the gross lease payments made by such lessee shall be deemed to be income derived from Kenya and shall be subject to withholding tax in accordance with the Act.

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

ARRANGEMENT OF RULES

Rule

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

[L.N. 97/2002.]

1. Citation and commencement

These Rules may be cited as the Income Tax (National Social Security Fund) (Exemption) Rules, 2002 and shall come into operation on the 1st July, 2002.

2. Interpretation

In these Rules, unless the context otherwise requires—

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

"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);

"Commissioner" means the Commissioner of Income Tax;

"Fund" shall be construed accordingly.

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

3. Conditions for Exemption

The income of the National Social Security Fund shall be exempt from income tax subject to the following conditions being complied with by the National Social Security Fund Board of Trustees—

(a) the Board of Trustees shall cause the accounts of the Fund to be audited every year;

(b) the Board of Trustees shall ensure that the annual audit includes—

(i) the determination of the market value of the assets of the Fund;

(ii) the determination of the surplus amount of the market value, not allocated to the account of a member of the Fund, excluding the reserve fund that does not exceed ten per cent of the market value of the Fund in the year of audit.

(c) the Board of Trustees shall allocate the surplus amount to the respective accounts of individual members in proportion to the value of the amounts allocated to the accounts of all members of the Fund from time to time.

(d) the Board of Trustees shall cause the audit report to be published, in the *Gazette* and in at least two newspapers of national circulation within nine months of the end of the accounting period of the Fund and shall include a full listing of the assets of the Fund at book and market values;

(e) the Board of Trustees shall submit the annual audit report to the Commissioner within nine months of the end of the accounting period to which the audit report relates.

4. Commissioner to report to Minister

The Commissioner shall, within twelve months of the receipt of the Audit report under rule 3(e), send a report in writing to the Minister on the level of compliance with the conditions laid down in regulation 3 by the Board of Trustees.

5. Penalty

Failure by the Board of Trustees to comply with the conditions of rule 3 shall cause the Board of Trustees to be liable to a penalty not exceeding ten thousand shillings for every such failure.

INCOME TAX (REGISTERED UNIT TRUSTS/ COLLECTIVE INVESTMENT SCHEMES) RULES, 2003

[L.N. 40/2003.]

1. These Rules may be cited as the Income Tax (Registered Unit Trusts/Collective Investment Schemes) Rules, 2003.

2. A unit trust or collective investment scheme shall, upon application being made under rule 3, be registered by the commissioner for the purposes of section 20 of the Act if he is satisfied that—

(a) the unit trust or collective investment scheme shall undertake portfolio investment in accordance with the policies and guidelines under the Capital Markets Act (Cap. 485A);

(b) the sole purpose of the unit trust or collective investment scheme is to carry on investments on behalf of the unit holders or shareholders;

(c) after six months of commencement of the unit trust or collective investment scheme no unit holder or shareholder shall own or be capable of holding more than twelve and one-half per cent (12½%) of the units or shares in any one unit trust or collective investment scheme; and

(d) it will, within six months of its commencement and thereafter, maintain at least twenty-five unit holders or shareholders.

(1) Application for the registration of a unit trust or collective investment scheme shall be made by the manager or trustee of the unit trust or collective investment scheme to the Commissioner in writing and shall be accompanied by two copies of the trust deed and a copy of the licence issued under Capital Markets Act (Cap. 485A).

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

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

5. The Income Tax (Registered Unit Trusts) Rules, 1990 (L.N. 215/1990), are revoked.

DOUBLE TAXATION RELIEF (THE UNITED REPUBLIC OF TANZANIA AND THE REPUBLIC OF UGANDA) NOTICE, 1999

[L.N. 45/1999.]

IN EXERCISE of the powers conferred by section 41 of the Income tax Act, the Minister 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 agreements signed on 28th April, 1997, with a view to affording relief from double taxation in relation to income tax under the Income Tax Act and any taxes of similar character imposed by the laws of the United Republic of Tanzania and the Republic of Uganda shall notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Governments of the Republic of Kenya, the United republic of Tanzania and the Republic of Uganda, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

ARTICLE 1 – *Personal Scope*

The agreement shall apply to persons who are residents of on or any of the other Contracting States.

ARTICLE 2 – *Taxes Covered*

1. This agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wags or salaries paid by enterprises.

3. The existing taxes to which this agreement shall apply are—

(a) in Kenya the income tax chargeable in accordance with the provisions of the Income Tax Act (Cap. 470)

(b) in Tanzania the tax on income chargeable under the Income Tax Act 1973 (No. 33 of 1973); and

(c) in Uganda the tax on income chargeable under the Income Tax Decree of 1974 (Decree 1 of 1974).

4. This agreement shall apply to any other taxes of identical or substantially similar character which are imposed by any of the contracting States after the date of signature of this agreement in addition to, or in place of, the existing taxes.

5. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article, of this agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of exchange of notes.

ARTICLE 3 – *General Definitions*

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 Minister for the time being responsible for finance or his authorised representative;

(i) in Tanzania, the Minister for the time being responsible for finance or his authorized representative; and

(i) in Uganda, the Minister for the time being responsible for finance or his authorized representative.

(c) The term **"international traffic"** means any transport by sea or air, operated by an enterprise which has its place of effective management in a Contracting State, except when the transport is operated solely between places within a Contracting State.

(d) The term **"national"** means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State.

(e) The term **"person"** includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.

2. In the application of the provisions of this agreement by a contracting State, any term not otherwise defined, shall, unless the context otherwise requires, have the meaning which it has under the laws of that State in relation to the taxes which are the subject of this agreement.

ARTICLE 4 – *Resident*

1. For the purposes of this agreement, the term – **"resident of a Contracting State"** - means any person who under the laws of that state, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature. this term does not include any person who is liable to tax in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of more than one of the contracting States, then his status shall be deemed in accordance with the following rules—

(a) he shall be deemed to be a resident of the state in which he has a permanent home available to him in two or more states, he shall be deemed to be a resident of the state with which his personal and economic relations are closer (centre of vital interest);

(b) if the state in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in any of the contracting states, he shall be deemed to be a resident of the state in which he has an habitual abode;

(c) if he has an habitual abode in two or more States or none of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of two or more States or of none of them the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of two or more Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5 – *Permanent Establishment*

1. For the purpose of this agreement, the term **"permanent establishment"** means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term **"permanent establishment"** shall include—

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a warehouse, in relation to a person providing storage facilities for others;

(g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

(h) an installation or structure used for the exploration of natural resources.

3. The term **"permanent establishment"** likewise encompasses—

(a) a building suite or a construction, installation or assembly project or supervisory activities in connection therewith only if the site, project or activity lasts for more than 6 months;

(b) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating more than 6 months within any 12 months period.

4. Notwithstanding the preceding provisions of this article, the term **"permanent establishment"** - shall be deemed not to include—

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

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

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

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

(e) the maintenance of a fixed place of business solely for the purpose for carrying on, for the enterprise any other activity of a preparatory or auxiliary character; and

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraph 1 and 2 of this Article, a person acting in a Contracting state on behalf of an enterprise of any of the other Contracting States (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first mentioned State shall be deemed to have a permanent establishment in that State if—

(a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(b) he maintains in the first mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of any of the other Contracting States, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – *Income from Immovable Property*

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.

2. The term **"immovable property"** shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions for general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed; payments as consideration fro 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 movable property and to income from the alienation of such property.

6. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7 – *Business Profits*

1. The profits of an enterprise of a Contracting State shall be taxable only in that State ness 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 s 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 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 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 had 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.

7. Where profits include items of income which are dealt with separately in other articles of this agreement, then the provisions of those articles shall not be affected by the provisions of this Article.

ARTICLE 8 – *Shipping and Air Transport*

1. Profits of an enterprise from the operation or rental of ships or aircraft in international traffic and the rental of container and related equipment which is incidental to the operations of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

3. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 – *Associated Enterprises*

(1) Where—

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income which would, but for those conditions have accrued to one of the enterprises, but, by reason of those conditions, not so accrued, may be included in the income of that enterprise and taxed accordingly.

(2) Where a contracting State includes in the income of an enterprise of that State and taxes accordingly - profits on which an enterprise of any of the other Contracting States has been charged to tax in that State and the profits so included are income which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those income. In determining such adjustment, due regard shall be had to the other provisions of this agreement and the competent authorities of the Contracting State shall if necessary consult each other.

(3) A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.

(4) The provisions of paragraph 3 of this Article shall not apply in the case of fraud, wilful default or neglect.

ARTICLE 10 – *Dividends*

1. Dividends paid by a company which is a resident of a Contracting State to a resident of any of the other Contracting States may be taxed in that other State.

2. However such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged to the beneficial owner shall not exceed 15 per cent of the gross amounts of the dividends. The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term **"dividends"** as used in this Article means income from shares or other rights, not being debt claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from the shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraph 1 and 11 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in any of the other Contracting States of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in any of the other states independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid in 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 n 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 inters the tax so charged shall not exceed 20 per cent of the gross amount of the interest.

(3) Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by—

(i) the Government, a political subdivision or a local authority of the other Contracting State; or

(ii) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.

(4) The term "**interest"** as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor - s profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. The term - interest - shall not include any item which is treated as a dividend under the provisions of Article 10 of this agreement.

(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 bas situated therein, and debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 of Article 15, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether a permanent establishment or a fixed base in connection with which the indebtness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed bas, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base, is situated.

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of the m and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this agreement.

ARTICLE 12 – *Royalties*

1. Royalties arising in Contracting State and paid to a resident of any of the other Contracting States may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting Sate in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 20 per cent of the gross amount of the royalties.

3. The term – **"royalties"** – as used in this Article means payments of any fund received as a consideration of the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph - and films, tapes or discs for radio or television broadcasting), any content, trade mark, design or model, computer programme, plan, secret formula or process or for the use of, or the right to use industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State carries on business in the Contracting State in which the royalties arise through a permanent establishment situated therein or performs in that other state independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to rise in a Contracting State when the payer is that state itself, a political subdivision, a local authority or a resident of that State. Where, however, the person playing 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 in the last mentioned amount. In such a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provision of this agreement.

ARTICLE 13 – *Management or Professional Fees*

1. Management or professional fees arising in a Contracting State which are derived by a resident of any of the other Contracting States may be taxed in that other State.

2. However, such management or professional fees may also be taxed in the Contracting State in which they arise, and according to the law of that state, but where the beneficial owner of such management or professional fees is a resident of the other Contracting State, the tax so charged shall not exceed 20 per cent of the gross amount of the management or professional fees.

3. The term **"management or professional fees"** as used in this article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration of any services of a technical, managerial, professional or consultancy nature not covered under any other Article of the agreement.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the management or professional fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management or professional fees arise through permanent establishment situated therein, or performs in that other State Independent personal services from a fixed base situated therein, and the management and professional fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions or 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 Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 – *Independent Personal Services*

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in any of the other Contracting States for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State says in any of the other Contracting States for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for periods exceeding in aggregate e more than 122 days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.

2. The term **"professional services"** includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants and economists.

ARTICLE 16 – *Dependent Personal Services*

(1) Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in any of the other contracting States. If the employment is exercised, such remuneration as derived therefrom may be taxed in the State in which the employment is exercised.

(2) Notwithstanding the; provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in any of the other Contracting States shall be taxable only in the first-mentioned State if –

(a) the recipient is present in the other for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and

(b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised abroad a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 17 – *Directors - Fees*

Directors fees and other similar payment derived by a resident of Contracting State in his capacity as a member of the board of directors of a company which is a resident of any of the other Contracting States may be taxed in the State in which the company is resident.

ARTICLE 18 – *Entertainers and Sportsmen*

1. Notwithstanding the provisions of Article 7, 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television article, or a musician, or as a sportsman, from his personal activities as such, may be taxed in the contracting State in which these activities are exercised.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16 be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer nor the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the contracting states shall be exempt from tax in the Contracting state in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of any of the Contracting States or local authority.

ARTICLE 19 – *Pensions, Annuities and Social Security Payments*

1. Subject to the provision of paragraph 2 of Article 20, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of any of the other Contracting States, shall be taxable only in the Contracting State in which the payments arise.

2. However, such pensions and other remuneration may also be taxed in any of the other contracting States, or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

ARTICLE 20 – *Remuneration and Pension in Respect of Government Service*

1. Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a political subdivision, local authority or statutory body thereof in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in any of the other Contracting States creating the funds if the services are rendered in that other State and the individual is a resident of that State and;

(a) is a national of that State; or

(b) did not become a resident solely for the purpose of rendering the services.

4. Any person paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body in the discharge of governmental functions shall be taxable only in that State.

5. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political subdivision, local authority or statutory body thereof.

ARTICLE 21 – *Professors and Teachers*

1. Notwithstanding the provisions of Article 16, a professor or teacher who makes a temporary visit to any one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

ARTICLE 22 – *Student's and Business Apprentices*

1. A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training or who is, or immediately before being so present was, a resident of any of the other Contracting States shall be exempt from tax in the (first-mentioned State) on payments received from outside that first, mentioned State for purpose of his maintenance, education and training.

ARTICLE 23 – *Other Income*

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this agreement in respect of which he is subject to tax in that State, shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting States, carries on business in any of the other Contracting States through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed based situated therein, and the right or property in respect of which the income paid in effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

ARTICLE 24 – *Elimination of Double Taxation*

1. Where a resident of any of the Contracting States derives income which in accordance with the provisions of this agreement may be taxed in the other Contracting States the first mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Provided that such deduction shall not exceed that part of the income tax as computed before deduction is given, which is attributable as the case may be to the income which may be taxed in that other State.

2. Where in accordance with any provision of this agreement income derived by a resident of a Contracting State is exempt from tax in that State such State may nevertheless, in calculating the amount of tax on the remaining income of such resident take into account the exempted.

ARTICLE 25 – *Non-Discrimination*

1. The nationals of a Contracting State shall not be subjected in any other Contracting States to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the other States in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in any of the other Contracting States shall not be less favourably levied in that other State than the taxation levied on enterprises of any of the other States carrying on the activities.

3. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of any of the other Contracting States, shall not be subjected in the first mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of any of the contracting States any personal allowances, reliefs and deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. In this article the term **"taxation"** means taxes which are the subject of this agreement.

ARTICLE 26 – *Mutual Agreement Procedure*

1. Where a person considers that the actions of one or more of the Contracting States results or will result for him in taxation not in accordance with this agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of any of the other Contracting States, with a view to the avoidance of taxation which is not in accordance with the agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this agreement.

4. The competent authorities of the Contracting States may through consultations develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may device 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.

PRESCRIBED LIMIT OF MEDICAL BENEFIT

[L.N. 53/2005.]

In Exercise of the powers conferred by section 5(4)(b) of the Income Tax Act, the Minister for Finance prescribes the sum of one million shillings to be the maximum limit for the purposes of that paragraph.

This Notice shall come into effect on the 1st January, 2006.

INCOME TAX (TURNOVER TAX) RULES, 2007

ARRANGEMENT OF RULES

Rule

INCOME TAX (TURNOVER TAX) RULES, 2007

[L.N. 5/2008.]

1. Citation and commencement

These Rules may be cited as the Income Tax (Turnover Tax) Rules, 2007 and shall come into operation on the first of January, 2008.

2. Interpretation

In these Rules, unless the context otherwise requires—

"income from business" includes gross receipts, gross earnings, revenue, takings, yield, proceeds or other income chargeable to tax under section 12C;

"person" includes partnership;

"return of income" means a return of income furnished by a person under rule 9;

"tax period" means every three calendar months commencing 1st January every year;

"turnover tax" means tax payable under section 12C of the Act.

3. Persons liable to turnover tax

(1) Any person whose income from business exceeds five hundred thousands shillings and does not exceed five million shillings in a year of income shall be liable to pay turnover tax.

(2) Paragraph (1) of this rule shall not apply to—

(a) any person whose annual income from business does not exceed five hundred thousand shillings per year;

(b) any person whose income is exempt from tax under the First Schedule to the Act;

(c) any person whose income is subject to withholding tax as a final tax.

4. Election to be excluded from turnover tax

(1) A person may elect to be exempt from the provisions of section 12C of this Act.

(2) A person who elects to be exempted shall make an application for exemption in writing to the Commissioner.

(3) Where the Commissioner approves the application for exemption under subrule (2), a person who has been exempted shall be subject to section 3 of the Act.

(4) The exemption approved by the Commissioner shall take effect in the subsequent year of income.

5. Turnover tax as a final tax

Any income from a business that is subject to turnover tax shall not be liable to any other tax under this Act.

6. Registration

(1) A person whose income from business does not exceed or is not expected to exceed five million shillings per annum shall be required to apply for turnover tax registration in the prescribed form.

(2) Notwithstanding paragraph (1), a person whose income from business does not exceed five hundred thousand shillings per annum shall not apply for registration.

(3) Where the Commissioner is satisfied that a person is required to be registered, the Commissioner shall issue a certificate of registration in the prescribed form.

(4) A person whose income from business falls below five hundred thousand shillings in any year of income shall apply to the Commissioner for deregistration.

(5) Where the Commissioner is satisfied that the income of an applicant has fallen below five hundred thousand shillings, the Commissioner shall deregister that person.

7. Change of status

(1) Where the income from the business of a person registered under rule 6 exceeds five million shillings during a year of income, that person shall notify the Commissioner of the change of status.

(2) Where the Commissioner is satisfied by the notification under paragraph (1), the Commissioner shall grant approval for the change.

(3) The approval granted by the Commissioner under paragraph (2) shall be effected in the subsequent year of income.

8. Keeping of records

(1) A person registered under rule 6 shall be required to keep records necessary for the determination and ascertainment of tax, including a daily sales summary in a prescribed form and any other document or record that the Commissioner may from time to time direct to be maintained having regard to the type and nature of the business being undertaken.

(2) Notwithstanding paragraph (1), where a business is in possession of an electronic tax register records as provided under the Value Added Tax Act (Cap. 476) (Electronic Tax Register) Regulations, 2004, the records shall be sufficient.

9. Submission of returns and payment of tax

(1) A person subject to turnover shall calculate the tax due, remit the tax due to the Commissioner by cash or bank guaranteed cheques or electronic fund transfers and submit a return in the prescribed form, in each tax period, to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(2) A person may remit the tax due on a monthly basis and offset the tax paid in the tax return.

(3) Where a business does not have income chargeable to turnover tax in any tax period, the business shall submit a nil return.

10. Penalties and interest

(1) Any person who fails to submit a tax return under regulation (9) is liable to a default penalty of two thousand shillings.

(2) Any person who submits a return within the required period, but fails to pay the tax due is liable to a default penalty of two thousand shillings.

(3) Any person who fails to pay tax due, or part thereof, under rule 9 is liable to pay interest at the rate of two per centum per month, on the unpaid tax.

(4) The Commissioner—

(a) may remit whole or part of any penalty or late payment interest in accordance with the provisions of section 94 of this Act;

(b) shall have the powers conferred under section 123 of the Act, to refrain from assessing to tax or recovering tax from any person liable to turnover tax.

11. Inspection of records

For purposes of obtaining full information in respect of accounting for turnover tax, the Commissioner may by notice require any person to—

(a) produce books and records relating to the calculation of turnover tax;

(b) appear at such time and place as may be specified in the notice.

12. Appointment of agents

For purposes of collection, recovery and enforcement of tax, the Commissioner may appoint any person under section 96 of the Act to be an agent.

13. Capital allowances

No expenditure or capital allowances shall be granted against the turnover tax.

14. Dispute Resolution

Any dispute arising from the administration of these Rules as regards any assessment to tax shall be dealt with in accordance with the provision of section 84 of the Act.

DECLARATION OF SPECIAL ARRANGEMENTS FOR RELIEF FROM DOUBLE TAXATION

[L.N. 139/2009.]

IN EXERCISE of the powers conferred by section 41 of the Income Tax Act, the Deputy Prime Minister and Minister for Finance declares that the arrangements specified in the agreement set out in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the French Republic for the Avoidance of Double Taxation with respect to air transport in international traffic, entered into on the 12th January, 1996, shall, notwithstanding anything to the contrary in the Income Tax Act or in any other written law, have effect in relation to income tax.

SCHEDULE

The Government of the French Republic and the Government of the Republic of Kenya, desiring to conclude an Agreement for the avoidance of double taxation with respect to air transport in international traffic,

Have agreed as follows:

ARTICLE 1

1. For the purpose of this Agreement, unless the context otherwise requires—

(a) The term **"person"** includes an individual, a company and any other body of persons;

(b) The term **"company"** means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) The term **"enterprise of a Contracting State"** and **"enterprise of the other Contracting State"** means respectively an enterprise carried on by a resident of a contracting State and an enterprise carried on by a resident of the other Contracting State";

(d) The term **"competent authority"** means—

(i) in the case of the Republic of Kenya, the Minister responsible for Finance or his authorized representative;

(ii) in the case of the French Republic, the Minister in charge of the Budget or his authorized representative.

2. As regards the application of this Agreement by a contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 2

This Agreement shall apply to enterprises operating aircraft in international traffic and to employees of such enterprises, where such enterprises or employees are residents of one or both of the Contracting States.

ARTICLE 3

1. This Agreement shall apply to taxes on income imposed on behalf of the Contracting State or of its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of property, as well as taxes on capital appreciation.

ARTICLE 4

1. For the purpose of this Agreement, the term **"resident of a Contracting State"** means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows—

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are close (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 4 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be resident of the State in which its place of effective management is situated.

ARTICLE 5

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic, including income from activities which are incidental of such operation, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. The provisions of paragraph 1 of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

3. For the purpose of paragraph 1, interest on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft.

4. Gains from the alienation of aircraft operated in international traffic or movable property pertaining to the operation of such aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 6

Remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard an aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 7

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or for preventing fiscal fraud or

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 ease to have effect for income (including profits and gains) relating to taxable periods beginning on or after the first day of January in the calendar year next following that in which notice of termination is given.

3. This Agreement may be amended by mutual consent of both parties.

4. Any dispute which might arise in connection with the implementation or interpretation of this Agreement shall be settled through diplomatic channels, or by mutual agreement of the competent authorities who may communicate with each other directly for that purpose.

DECLARATION OF SPECIAL ARRANGEMENTS FOR RELIEF FROM DOUBLE TAXATION

[L.N. 140/2009.]

IN EXERCISE of the powers conferred by section 41 of the Income Tax Act, the Deputy Prime Minister and Minister for Finance declares that the arrangements specified in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal evasion with Respect to Taxes on Income, entered into on the 4th December, 2007, shall, notwithstanding anything to the contrary in the Income Tax Act or in any other written law, have effect in relation to income tax.

SCHEDULE

The Government of the French Republic and the Government of the Republic of Kenya, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income:

Have agreed as follows:

ARTICLE 1 – *Personal Scope*

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 – *Taxes Covered*

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular—

(a) in the case of France—

(i) the income tax (“l’impôt sur le revenu”);

(ii) the widespread security contributions (CSG);

(iii) the reimbursement of the debt of social security contributions (CRDS);

(iv) the corporation tax (“l’impôt sur les sociétés”);

(v) the tax on salaries (“la taxe sur les salaires”);

including any withholding tax, prepayment (précompte) or advance payment with respect to the aforesaid taxes;

(hereinafter referred to as “French tax”);

(b) in the case of Kenya, taxes on income chargeable under the Income Tax Act (Cap. 470);

(hereinafter referred to as “Kenyan tax”).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the

existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

ARTICLE 3 – *General Definitions*

1. For the purposes of this Convention, unless the context otherwise requires

(a) the terms **"Contracting State"** and **"other Contracting State"** mean France or Kenya, as the context requires;

(b) the term **"France"** means the European and overseas departments ("departements d'Outre-mer") of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;

(c) the term **"Kenya"** means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;

(d) the term **"person"** includes an individual, a company and any other body of persons;

(e) the term **"company"** means any body corporate, or any entity which is treated, for tax purposes, as a body corporate;

(f) the terms **"enterprise of a Contracting State"** and **"enterprise of the other Contracting State"** mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) the term **"international traffic"** means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(h) the term **"competent authority"** means—

(i) in the case of France, the Minister in charge of the budget or his authorised representative;

(ii) in the case of Kenya, the Minister for Finance or his authorised representative;

(i) the term **"national"** means—

(ii) any individual possessing the nationality of a Contracting State;

(iii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies. The meaning of a term under the applicable tax laws of that State shall have priority over a meaning given to the term under other laws of that State.

ARTICLE 4 – *Resident*

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and

also includes that State and any local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows—

(a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

4. The term "resident of a Contracting State" shall include any partnership or group of persons which has its place of effective management in a Contracting State and all the shareholders, associates or other members of which are personally liable to tax therein in respect of their part of the profits according to the laws of that State.

ARTICLE 5 – *Permanent Establishment*

1. For the purposes of this Convention, the term **"permanent establishment"** means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially—

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or assembly project constitutes a permanent establishment only if it lasts more than six months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include—

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

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

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

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

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – *Income from Immovable Property*

1. Income from immovable property (including income from agriculture or forestry) may be taxed in the Contracting State in which such immovable property is situated.

2. For the purposes of this Convention, the term **"immovable property"** shall have the meaning which it has under the law of the Contracting State in which the property in question is situated; the term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

5. Where shares or other rights in a company, trust or comparable institution entitled to the enjoyment of immovable property situated in a Contracting State and held by that company, trust or comparable institution, income derived from the direct use, letting or use in any other form of that right of enjoyment may be taxed in that State notwithstanding the provisions of Articles 7 and 14.

ARTICLE 7 – *Business Profits*

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. (a) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(b) Unless it can be demonstrated that another method is more appropriate, the executive and general administrative expenses shall be determined by applying a ratio of turnover or gross profits of a permanent establishment as related to that of the enterprise as a whole.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

6. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 – *Shipping and Air Transport*

1. Profits of an enterprise of a Contracting State from the operation of aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Provided that where such an enterprise derives profits from such operation in the other Contracting State—

(a) Such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and

(b) The tax chargeable in that other state shall be reduced by an amount equal to fifty per cent thereof.

1. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or the boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or the boat is a resident.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. The provisions of the agreement between the Government of the French Republic and the Government of the Republic of Kenya for the avoidance of double taxation with respect to air transport in international traffic, signed on January, 12th, 1996 shall remain in force but its provisions shall apply only to cases not covered by nor subject to the provisions of this Convention.

ARTICLE 9 – *Associated Enterprises*

1. Where—

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 – *Dividends*

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. (a) Dividends mentioned in paragraph 1 may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

(b) This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. A resident of Kenya who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (précompte) to the extent that it was effectively paid by the company in respect of such dividends. The gross amount of the prepayment (précompte) refunded shall be deemed to be a dividend for the purposes of the Convention. It shall be taxable in France according to the provisions of paragraph 2. The provisions of paragraph 2 shall apply to such gross amount.

4. The term **"dividend"** means income from shares, **"jouissance"** shares or **"jouissance"** rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income treated as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident. It is understood that the term "dividend" does not include income mentioned in Article 16.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 11 – *Interest*

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 12 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the recipient of the interest is a resident, if such recipient is the beneficial owner of such interest and if one of the following conditions is met—

(a) such recipient is a Contracting State, a local authority or a statutory body thereof, including the Central Bank of that State; or such interest is paid by one of those States, local authorities or statutory bodies;

(b) such interest is paid in respect of a debt-claim or of a loan directly or indirectly guaranteed or insured or subsidised by a Contracting State or by any other person sponsored or directly or indirectly controlled by a Contracting State.

4. The term **"interest"** means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12 – *Royalties*

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, if such resident is the beneficial owner of the royalties.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.

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*

(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*

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*

(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.

(a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof or by one of their statutory bodies of either to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.

3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and other similar remuneration, and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof, or by one of their statutory bodies.

ARTICLE 20 – *Students*

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxable in that State, provided that such payments arise from sources outside that State.

ARTICLE 21 – *Other Income*

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Where, by reason of a special relationship between the person referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in paragraph 1 exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

4. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

5. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 22 – *Elimination of Double Taxation*

1. In the case of France, double taxation shall be avoided in the following manner—

(a) Notwithstanding any other provision of this Convention, income which may be taxed or shall be taxable only in Kenya in accordance with the provisions of the Convention shall be taken into account for the computation of the French tax where such income is not exempted from corporation tax according to French domestic law. In that case, the Kenyan tax shall not be deductible from such income, but the resident of France shall, subject to the conditions and limits provided for in sub-paragraphs (i) and (ii), be entitled to a tax credit against French tax. Such tax credit shall be equal—

(i) in the case of income other than that mentioned in sub-paragraph (ii), to the amount of French tax attributable to such income provided that the resident of France is subject to Kenyan tax in respect of such income;

(ii) in the case of income subject to the corporation tax referred to in Article 7, paragraph 2 of article 13 and in article 21, and in the case of income referred to in Article 10, Article 11, Article 12, paragraph 1 of Article 13, Article 16, paragraphs 1 and 2 of Article 17 and article 21, the amount of tax paid in Kenya in accordance with the provisions of those Articles; however, such tax credit shall not exceed the amount of French tax attributable to such income.

(i) It is understood that the term **"amount of French tax attributable to such income"** as used in sub-paragraph (a) means—

— where the tax on such income is computed by applying a proportional rate, the amount of the net income concerned multiplied by the rate which actually applies to that income;

— where the tax on such income is computed by applying a progressive scale, the amount of the net income concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income taxable in accordance with French law to the amount of that total net income.

(ii) It is understood that the term **"amount of tax paid in Kenya"** as used in sub-paragraph (a) means the amount of Kenyan tax effectively and definitively borne in respect of the items of income concerned, in accordance with the provisions of the Convention, by a resident of France who is taxed on those items of income according to the French law.

2. In the case of Kenya, double taxation shall be avoided in the following manner—

(a) where a resident of Kenya receives income derived from sources within France, which, in accordance with the provisions of this Convention, shall be taxable only in France and is exempt from Kenyan tax, then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from the sources within France had been not exempted;

(b) where a resident of Kenya receives income derived from sources within France, which, in accordance with the provisions of this Convention may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in France. Such a deduction, however, shall not exceed that part of the Kenyan tax as computed before the deduction is given, which is appropriate to the income derived from France.

3. Each of the Contracting States shall keep the right of taxing in accordance with its domestic law any income of its residents, the taxation of which is attributed to the other Contracting State, but which is not taken into account in the tax base in that State, in cases where such double exemption results from a divergent qualification of the income concerned.

ARTICLE 23 – *Non-Discrimination*

(a) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

(b) For the purposes of sub-paragraph (a), it is understood that an individual, legal person, partnership or association who or which is a resident of a Contracting State is not placed in the same circumstances as an individual, legal person, partnership or association who or which is not a resident of that State; this shall apply whatever the definition of nationality, even if legal persons, partnerships or associations are deemed to be nationals of the Contracting State of which they are residents.

2. The taxation of a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or of a fixed base that a resident of one Contracting

State has available in the other Contracting State for the purpose of performing independent personal services, shall not be less favorably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 5 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall be deductible, for the purpose of determining the taxable profits of that enterprise, under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of that enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The exemptions and other advantages provided by the tax laws of a Contracting State for the benefit of that State or local authorities or of their statutory bodies of either which carry on a non-business activity shall apply under the same conditions respectively to the other Contracting State or local authorities or to their statutory bodies which carry on the same or similar activity. Notwithstanding the provisions of paragraph 7, the provisions of this paragraph shall not apply to taxes or duties payable in consideration for services rendered.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

7. If any bilateral treaty or agreement between the Contracting States, other than this Convention, includes a non-discrimination clause or a most-favoured nation clause, it is understood that such clauses shall not apply in tax matters.

ARTICLE 24 – *Mutual Agreement Procedure*

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or the application of the Convention. In particular, they may consult together to endeavour to agree to the same allocation of income between associated enterprises mentioned in Article 9. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

5. Notwithstanding any other bilateral treaty, agreement or Convention to which the Contracting States are parties, the tax issues between the Contracting States (including a dispute on whether this Convention applies) shall be settled only under this Article unless the competent authorities agree otherwise.

ARTICLE 25 – *Exchange of Information*

1. The competent authorities of the Contracting States shall exchange such information as is forseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use information only for such purposes. They may disclose the information in public court proceeding or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation—

(a) to carry out administrative measures at variance with the laws and administrative practice of that or the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (order public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contacting 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 Contacting 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 Contracting State to the same obligations in relation to tax on their total income and capital as are residents of that State.

ARTICLE 27 – *Mode of Application*

1. The competent authorities of the Contracting States may settle jointly or separately the mode of application of the Convention.

2. In particular, in order to obtain, in a Contracting State, the benefits provided for in Articles 10, 11 and 12, the residents of the other Contracting State shall, unless otherwise settled by the competent authorities, present a form of certification of residence providing in particular the nature and the amount or value of the income concerned, and including the certification of the tax administration of that other State.

ARTICLE 28 – *Miscellaneous*

If any Agreement or Convention between Kenya and a member State of the Organization for Economic Co-operation and Development entering into force after the date of entry into force of this Convention provides that Kenya shall exempt from tax dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) arising in Kenya, or limit the tax charged in Kenya on such dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) to a rate lower than that provided for in paragraph 2 of Article 10, paragraph 2 of Article 11 or paragraph 2 of Article 12 of this Convention, such exemption or lower rate shall automatically apply to dividends, interest or royalties (either generally or in respect of those specific categories of dividends, interest or royalties) arising in Kenya and beneficially owned by a resident of France dividends, interest or royalties arising in France and beneficially owned by a resident of Kenya under the same conditions as if such exemptions or lower rate had been specified in those paragraphs. The competent authority of Kenya shall inform the competent authority of France without delay that conditions for application of this paragraph have been met.

ARTICLE 29 – *Entry Into Force*

1. Each of the Contracting States shall notify to the other the completion of the procedures required as far as it is concerned for the bringing into force of this Convention. The Convention shall enter into force on the first day of the second month following the day when the latter of these notifications has been received.

2. The provisions of the Convention shall have effect—

(a) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the Convention enters into force;

(b) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the Convention enters into force;

(c) in respect of the other taxes, for taxation the taxable event of which will occur after the calendar year in which the Convention enters into force.

ARTICLE 30 – *Termination*

This Convention shall continue in effect indefinitely but either of the Contracting States may on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, the Convention shall cease to have effect—

(a) In Kenya—

(i) in respect of taxes withheld at source, on amounts paid or credited to non–residents on or after the 1st day of January, in the calender year next following that in which the notice is given;

(ii) in respect of other taxes on income arising for the year of income next following that in which the notice of termination is given, and subsequent years.

(b) In France—

(i) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the notice of termination is given;

(ii) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the notice of termination is given;

(iii) in respect of the other taxes, for taxation the taxable event of which will occur after the calendar year in which the notice of termination is given.

PROTOCOL

The Government of the French Republic and the Government of the Republic of Kenya on signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have agreed on the following provisions which shall form an integral part of the Convention.

1. In respect of subparagraph (a) of paragraph 3 of Article 2, the tax on salaries is regulated by the provisions of the Convention applicable, as the case may be, to business profits or income from independent personal services.

2. In respect of subparagraph (b) of paragraph 1 of Article 3, it is understood that the French overseas departments (“departements d’Outre-mer”) are: Guadeloupe, Martinique, Guyane and La Reunion.

3. In relation to article 7(1), it is agreed that, if an enterprise of a Contracting State sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or carries out business activities of the same or similar kind as those carried out by the permanent establishment, the profits of such sales or activities may be attributed to the permanent establishment if it is demonstrated that these profits are related to the activities of the permanent establishment.

4. In respect of paragraph 3 of Article 7, it is considered that the amount of expenses to be taken into account as incurred for the purposes of the permanent establishment should be the actual one so incurred and supported by documents. Subject to this, it is agreed

that, in the case of general administrative expenses incurred at the head office of the enterprise, it is appropriate to take into account a proportionate part based on the ratio that the permanent establishment's turnover bears to that of the enterprise as a whole.

5. The provisions of the Convention shall not prevent the Contracting States from applying the provisions relating to thin capitalisation in accordance with their domestic laws.

6. Each of the Contracting States shall keep the right of taxing in accordance with its domestic law any income of its residents, the taxation of which is attributed to the other Contracting State, but which is not taken into account in the tax base in that State, in cases where such double exemption results from a divergent qualification of the income concerned.

INCOME TAX (TRANSFER PRICING) RULES, 2006

ARRANGEMENT OF RULES

Rule

INCOME TAX (TRANSFER PRICING) RULES, 2006

[L.N. 67/2006, L.N. 52/2011, L.N. 54/2012.]

1. Citation and commencement

These Rules may be cited as the Income Tax (Transfer Pricing) Rules, and shall come into operation on the 1st July, 2006.

2. Interpretation

In these Rules, unless the context otherwise requires—

"arm's length price" means the price payable in a transaction between independent enterprises;

"comparable transactions" means transactions between which there are no material differences, or in which reasonably accurate adjustments can be made to eliminate material differences;

"controlled transaction" means a transaction which is monitored to ensure payment of an arm's length price for goods or services;

"related enterprises" means one or more enterprises whereby—

(a) one of the enterprises participates directly or indirectly in the management, control or capital of the other; or

(b) a third person participates directly or indirectly in the management, control or, capital or both.

3. Purpose of Rules

The purposes of these Rules are—

(a) to provide guidelines to be applied by related enterprises, in determining the arm's length prices of goods and services in transactions involving them; and

(b) to provide administrative regulations, including the types of records and documentation to be submitted to the Commissioner by a person involved in transfer pricing arrangements.

4. Person to choose method

The taxpayer may choose a method to employ in determining the arm's length price from among the methods set out in rule 7.

5. Scope of guidelines

The guidelines referred to in rule 3 shall apply to—

(a) transactions between related enterprises within a multinational company, where one enterprise is located in, and is subject to tax in, Kenya, and the other is located outside Kenya;

(b) transactions between a permanent establishment and its head office or other related branches, in which case the permanent establishment shall be treated as a distinct and separate enterprise from its head office and related branches.

[L.N. 52/2011, s. 2.]

6. Transactions subject to Rules

The transactions subject to adjustment of prices under these Rules shall include—

(a) the sale or purchase of goods;

(b) the sale, purchase or lease of tangible assets;

(c) the transfer, purchase or use of intangible assets;

(d) the provision of services;

(e) the lending or borrowing of money; and

(f) any other transactions which may affect the profit or loss of the enterprise involved.

7. Methods

The methods referred to in rule 4 are the following—

(a) the comparable uncontrolled price (CUP) method, in which the transfer price in a controlled transaction is compared with the prices in an uncontrolled transaction and accurate adjustments made to eliminate material price differences;

(b) the resale price method, in which the transfer price of the produce is compared with the resale price at which the product is sold to an independent enterprise:

Provided that in the application of this method the resale price shall be reduced by the resale price margin (the profit margin indicated by the reseller);

(c) the cost plus method, in which costs are assessed using the costs incurred by the supplier of a product in a controlled transaction, with a mark-up added to make an appropriate profit in light of the functions performed, and the assets used and risks assumed by the supplier;

(d) the profit split method, in which the profits earned in very closely interrelated controlled transactions are split among the related enterprises depending on the functions performed by each enterprise in relation to the transaction, and compared with a profit split among independent enterprises in a joint venture;

(e) the transactional net margin method, in which the net profit margin attained by a multinational enterprise in a controlled transaction is compared to the net profit margin that would have been earned in comparable transactions by an independent enterprise; and

(f) such other method as may be prescribed by the Commissioner from time to time, where in his opinion and in view of the nature of the transactions, the arm's length price cannot be determined using any of the methods contained in these guidelines.

8. Application of methods

(1) The methods set out in rule 7 shall be applied in determining the price payable for goods and services in transactions between related enterprises for the purposes of section 18(3) of the Act.

(2) A person shall apply the method most appropriate for his enterprise, having regard to the nature of the transaction, or class of transaction, or class of related persons or function performed by such persons in relation to the transaction.

(3) The Commissioner may issue guidelines specifying conditions and procedures to guide the application of the methods set out in rule 7.

[L.N. 54/2012, s. 2.]

9. Power of Commissioner to request for information

(1) The Commissioner may, where necessary, request a person to whom these Rules apply for information, including books of accounts and other documents relating to transactions where the transfer pricing is applied.

(2) The documents referred to in paragraph (1) shall include documents relating to—

(a) the selection of the transfer pricing method and the reasons for the selection;

(b) the application of the method, including the calculations made and price adjustment factors considered;

(c) the global organization structure of the enterprise;

(d) the details of the transaction under consideration;

(e) the assumptions, strategies, and policies applied in selecting the method; and

(f) such other background information as may be necessary regarding the transaction.

(3) The books of accounts and other documents shall be prepared in, or be translated into, the English language, at the time the transfer price is arrived at.

10. Application of arm's length pricing

Where a person avers the application of arm's length pricing, such person shall—

(a) develop an appropriate transfer pricing policy;

(b) determine the arm's length price as prescribed under the guidelines provided under these Rules; and

(c) avail documentation to evidence their analysis upon request by the Commissioner.

11. Certain provisions of Act to apply

The provisions of the Act relating to fraud, failure to furnish returns and underpayment of tax shall apply with respect to transfer pricing.

12. Unpaid tax to be deemed additional tax

Any tax due and unpaid in a transfer pricing arrangement shall be deemed to be additional tax for purposes of sections 94 and 95 of the Act.

INCOME TAX (CHARITABLE DONATIONS) REGULATIONS, 2007

ARRANGEMENT OF REGULATIONS

Regulation

INCOME TAX (CHARITABLE DONATIONS) REGULATIONS, 2007

[L.N. 100A/2007, Corr. No. 37/2007.]

1. Citation

These Regulations may be cited as the Income Tax (Charitable Donations) Regulations, 2007, and shall be deemed to have come into force on 1st January, 2007.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"approved project" means a project approved by the Minister;

"cash donation" includes a donation given in the form of a cheque; and

"charitable organization" means a non-profit making organisation established in Kenya and which—

(a) is of a public character; and

(b) has been established for purposes of the relief of poverty or distress of the public, or advancement of education.

3. Proof of donation

(1) A person who makes a claim for a donation to be allowed under section 15(2)(w) of the Act shall provide proof of the donation to the Commissioner.

(2) The proof of the donation required in accordance with paragraph (1) shall be in the form of a receipt issued and certified by the recipient of the donation and shall be accompanied by—

(a) a copy of the exemption certificate issued by the Commissioner to the charitable organization, or the Minister's approval of the project to which the donation is made;

(b) a declaration from the donee that the donation shall be used exclusively for the objects of charity.

4. Donations generally

For purposes of these Regulations, donations made shall—

(a) be in cash and shall not be repayable or refundable to the donor under any circumstance;

(b) not confer any direct or indirect benefit to the donor or any person associated to the donor;

(c) under no circumstances be revoked once conferred upon a charitable organization, unless there is approval by the Commissioner in which case the tax arising shall be due and payable.

5. Contents of receipt of proof

The receipt produced as proof of a donation shall have the following details—

(a) the full names and address of the donee;

(b) the Personal Identification Number (PIN) of the donee;

(c) date of donation;

(d) purpose for which the donation was made;

(e) amount of donation.

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

[L.N. 92/2009.]

1. These Rules may be referred to as the Income Tax (Investment Duty Set-off) (Revocation) Rules, 2009.

2. The Income Tax (Investment Duty Set-Off) Rules, 1996 (L.N. 72/1996), are revoked.

GUIDELINES ON ALLOWABILITY OF BAD DEBTS

[L.N. 37/2011.]

PURSUANT to section 15(2)(a) of the Income Tax Act, the Commissioner-General issues the guidelines set out in the Schedule hereto on allowability of bad debts for tax purposes.

SCHEDULE

1. A debt shall be considered to have become bad if it is proved to the satisfaction of the Commissioner to have become uncollectable after all reasonable steps have been taken to collect it.

2. A debt shall be deemed to have become uncollectable under paragraph 1 where—

(a) the creditor loses the contractual right that comprises the debt through a court order;

(b) no form of security or collateral is realisable whether partially or in full;

(c) the securities or collateral have been realized but the proceeds fail to cover the entire debt;

(d) the debtor is adjudged insolvent or bankrupt by a court of law;

(e) the costs of recovering the debt exceeds the debt itself; or

(f) efforts to collect the debt are abandoned for another reasonable cause.

3. A bad debt shall be a deductible expense only if it is wholly and exclusively incurred in the normal course of business.

4. For the purposes of these guidelines, a bad debt which is of a capital nature shall not be an allowable expense.

INCOME TAX (ADVANCE TAX) (CONDITIONS AND PROCEDURES) RULES, 2012

ARRANGEMENT OF RULES

Rule

INCOME TAX (ADVANCE TAX) (CONDITIONS AND PROCEDURES) RULES, 2012

[L.N. 52/2012.]

1. Citation

The Rules may be cited as Income Tax (Advance Tax) (Conditions and Procedures) Rules, 2012.

2. Interpretation

In these Rules, unless the context otherwise requires—

"advance tax" means tax payable under section 12A of this Act;

"owner of a commercial vehicle" means the registered owner as indicated in the registration certificate issued by the Registrar of motor vehicles.

3. Payment of advance tax

(1) Any person who owns a commercial vehicle shall be liable to pay advance tax.

(2) Advance tax shall be payable for each year of income at the rates specified under paragraph 8 of the Third Schedule to the Act.

(3) Advance tax shall be due and payable to the Commissioner on or before the twentieth day of the first month of the year of income, or in cases of transfer of ownership of the commercial vehicle, before the new owner is registered as such.

(4) The Commissioner shall assess the amount of advance tax payable under these Rules in accordance with paragraph 8 of the Third Schedule to the Act.

(5) A person liable to pay advance tax shall submit to the Commissioner the payment accompanied by the prescribed form.

(6) The Commissioner shall issue, to every person who pays advance tax under these Rules, a receipt which shall be the proof of payment of advance tax.

4. Maintenance of records

Any person who is liable to pay advance tax shall keep records necessary for the determining and ascertaining advance tax, including registration certificates, vehicle inspection reports, previous advance tax receipts and such other document or record as the Commissioner may from time to time direct.

5. Filing of returns

(1) A person who pays advance tax shall submit to the Commissioner a return of income in accordance with section 52B of the Act.

(2) A person who fails to file a return of income in accordance with paragraph (1) shall be liable to pay additional tax as provided under section 72 of the Act.

6. Licensing and inspection

A Government agency shall for the purposes of the registration or transfer of ownership, licensing or inspection of a commercial vehicle, require the owner of the commercial vehicle to furnish such agency with evidence of payment of advance tax or income tax exemption certificate, where applicable.

7. Dispute in calculation of advance

Any dispute arising from the administration of these Rules relating to the assessment to tax shall be dealt with in accordance with section 84 of the Act.

8. Inspection of records

(1) For purposes of obtaining information necessary for the verification of advance tax paid, the Commissioner may by notice require a person liable to pay advance tax to—

(a) produce all accounts, books of accounts, documents and other records relating to the payment of advance tax in respect of such period as may be specified by the Commissioner;

(b) produce the commercial vehicle or a Vehicle Inspection Report prepared by a recognized Government agency or agent; or

(c) avail themselves for interview at such time and place as may be specified in the notice.

(2) The Commissioner may, upon undertaking an inspection under this rule, demand from the person, based on the information obtained from the inspection—

(a) the tax which appears from the documents and records produced by that person, would have been payable under rule 3 for the period covered by the inspection had that person complied with these Rules; or

(b) the outstanding tax and penalties.

9. Penalties and interest

(1) Any person who fails to pay the advance tax due shall, in addition to the payment of the unpaid tax, be liable to pay a penalty and interest on the unpaid tax in accordance with section 72D and section 94 of this Act respectively.

(2) The provisions of the Act that relate to collection and recovery of tax shall apply for the purposes of collection and recovery of unpaid advance tax.