

Kenya

No. 38054/1 (Part I)

SUBJECT

C0533/478

Income Tax

Legislation

Previous

4012/1/33 E.A.

38173/36 v SFs.

See M.F. (1936)

Subsequent

Part II

3 So B/Trade (no. 2) — 16 FEB 1937

DESTROYED UNDER STATUTE

3 To Inland Rev. (no. 2) (1+3) — 23 FEB 1937

4. JOINT EAST AFRICAN BOARD..... 12.2.37
States that they have req'd a letter from the
Asn. of Chambers of Commerce of E.Africa expressing
alarm at introduction of Income Tax legislation
and would be grateful if S. of S. could give an
assurance that all sections of the community in
Kenya will be given time to study the Ordinance
before its enactment.

5. Extract from The Times. — 28/2/37

No 4 vs.

One latest info regarding the
Kenya Income Tax Bill is contained
in the Ken Courier of the 20th Feb.
from which it will be seen that
the Bill was published last week
& will be introduced in Leg. Chm
on 24 March. To all committees
will have had nearly a fortnight
in which to study the Bill & to
make representations, before the
Bill is even introduced in Chm.

? Inform the J.E.A.B. accordingly
in reply to No 4.

C. Hoffmann
23/2/37

4. is no doubt a move of Mr. Guinness.

W.O. Hall
23.1.

6 To Joint E.A. Board. & Asst. 23 FEB 1937

DESTROYED UNDER STATUTE
7. BOARD OF TRADE..... 26.2.37
Fws. copy of letter, dated 26.2.37, which they have sent
to the Chairman, The Life Offices Assn., informing them
that a copy of their letter (encl. to No. 1 on file) is
being sent to the Acting Gov. of Kenya.

at by
with reference
2/3/37
at

8. ACTING GOV'S DEPUTY..... 41 CONF..... 20.2.37.
Fws. copies of Income Tax Bill & Report of redrafting
Committee, which Capt. Schwartz and Major Cavenish
have signed on the understanding that it will not be
made public, stating that it will be introduced in the
Leg. Co. during the next Session starting on 2.3.37.
Copies sent to Uganda, T.T., Zanzibar & Sec., E.A.
Governors' Conference.

The Bill published in October last was
designed to produce a revenue of £33,500 a year.
That Bill was based on a model which had been drafted
in the Colonial Office and had received a considerable
amount of revision by the Attorney-General in 1933
and Mr. Surfleet. The new Bill which is the subject
of a special local committee, provides for a yield of
£43,500 a year. It amends the earlier Bill in a
number of instances, the more important of which are
noted below.

First Proposal.		Present PROPOSAL.	
For every £ of the first	£300 - 5s. 1/-	For every £ of the first	£300 - 5s. 1/-
" " " " " next	£350 - 5s. 1/6	" " " " " next	£300 - 5s. 1/6
" " " " " next	£400 - 5s. 1/6	" " " " " next	£350 - 5s. 1/6
" " " " " next	£450 - 5s. 1/6	" " " " " next	£400 - 5s. 1/6
" " " " " next	£500 - 5s. 1/6	" " " " " next	£450 - 5s. 1/6
" " " " " next	£550 - 5s. 1/6	" " " " " next	£500 - 5s. 1/6
" " " " " next	£600 - 5s. 1/6	" " " " " next	£550 - 5s. 1/6
" " " " " next	£650 - 5s. 1/6	" " " " " next	£600 - 5s. 1/6
" " " " " next	£700 - 5s. 1/6	" " " " " next	£650 - 5s. 1/6
" " " " " next	£750 - 5s. 1/6	" " " " " next	£700 - 5s. 1/6
" " " " " next	£800 - 5s. 1/6	" " " " " next	£750 - 5s. 1/6
" " " " " next	£850 - 5s. 1/6	" " " " " next	£800 - 5s. 1/6
" " " " " next	£900 - 5s. 1/6	" " " " " next	£850 - 5s. 1/6
" " " " " next	£950 - 5s. 1/6	" " " " " next	£900 - 5s. 1/6
" " " " " next	£1,000 - 5s. 1/6	" " " " " next	£950 - 5s. 1/6
" " " " " next	£1,050 - 5s. 1/6	" " " " " next	£1,000 - 5s. 1/6
" " " " " next	£1,100 - 5s. 1/6	" " " " " next	£1,050 - 5s. 1/6
" " " " " next	£1,150 - 5s. 1/6	" " " " " next	£1,100 - 5s. 1/6
" " " " " next	£1,200 - 5s. 1/6	" " " " " next	£1,150 - 5s. 1/6
" " " " " next	£1,250 - 5s. 1/6	" " " " " next	£1,200 - 5s. 1/6
" " " " " next	£1,300 - 5s. 1/6	" " " " " next	£1,250 - 5s. 1/6
" " " " " next	£1,350 - 5s. 1/6	" " " " " next	£1,300 - 5s. 1/6
" " " " " next	£1,400 - 5s. 1/6	" " " " " next	£1,350 - 5s. 1/6
" " " " " next	£1,450 - 5s. 1/6	" " " " " next	£1,400 - 5s. 1/6
" " " " " next	£1,500 - 5s. 1/6	" " " " " next	£1,450 - 5s. 1/6
" " " " " next	£1,550 - 5s. 1/6	" " " " " next	£1,500 - 5s. 1/6
" " " " " next	£1,600 - 5s. 1/6	" " " " " next	£1,550 - 5s. 1/6
" " " " " next	£1,650 - 5s. 1/6	" " " " " next	£1,600 - 5s. 1/6
" " " " " next	£1,700 - 5s. 1/6	" " " " " next	£1,650 - 5s. 1/6
" " " " " next	£1,750 - 5s. 1/6	" " " " " next	£1,700 - 5s. 1/6
" " " " " next	£1,800 - 5s. 1/6	" " " " " next	£1,750 - 5s. 1/6
" " " " " next	£1,850 - 5s. 1/6	" " " " " next	£1,800 - 5s. 1/6
" " " " " next	£1,900 - 5s. 1/6	" " " " " next	£1,850 - 5s. 1/6
" " " " " next	£1,950 - 5s. 1/6	" " " " " next	£1,900 - 5s. 1/6
" " " " " next	£2,000 - 5s. 1/6	" " " " " next	£1,950 - 5s. 1/6
" " " " " next	£2,050 - 5s. 1/6	" " " " " next	£2,000 - 5s. 1/6
" " " " " next	£2,100 - 5s. 1/6	" " " " " next	£2,050 - 5s. 1/6
" " " " " next	£2,150 - 5s. 1/6	" " " " " next	£2,100 - 5s. 1/6
" " " " " next	£2,200 - 5s. 1/6	" " " " " next	£2,150 - 5s. 1/6
" " " " " next	£2,250 - 5s. 1/6	" " " " " next	£2,200 - 5s. 1/6
" " " " " next	£2,300 - 5s. 1/6	" " " " " next	£2,250 - 5s. 1/6
" " " " " next	£2,350 - 5s. 1/6	" " " " " next	£2,300 - 5s. 1/6
" " " " " next	£2,400 - 5s. 1/6	" " " " " next	£2,350 - 5s. 1/6
" " " " " next	£2,450 - 5s. 1/6	" " " " " next	£2,400 - 5s. 1/6
" " " " " next	£2,500 - 5s. 1/6	" " " " " next	£2,450 - 5s. 1/6
" " " " " next	£2,550 - 5s. 1/6	" " " " " next	£2,500 - 5s. 1/6
" " " " " next	£2,600 - 5s. 1/6	" " " " " next	£2,550 - 5s. 1/6
" " " " " next	£2,650 - 5s. 1/6	" " " " " next	£2,600 - 5s. 1/6
" " " " " next	£2,700 - 5s. 1/6	" " " " " next	£2,650 - 5s. 1/6
" " " " " next	£2,750 - 5s. 1/6	" " " " " next	£2,700 - 5s. 1/6
" " " " " next	£2,800 - 5s. 1/6	" " " " " next	£2,750 - 5s. 1/6
" " " " " next	£2,850 - 5s. 1/6	" " " " " next	£2,800 - 5s. 1/6
" " " " " next	£2,900 - 5s. 1/6	" " " " " next	£2,850 - 5s. 1/6
" " " " " next	£2,950 - 5s. 1/6	" " " " " next	£2,900 - 5s. 1/6
" " " " " next	£3,000 - 5s. 1/6	" " " " " next	£2,950 - 5s. 1/6
" " " " " next	£3,050 - 5s. 1/6	" " " " " next	£3,000 - 5s. 1/6
" " " " " next	£3,100 - 5s. 1/6	" " " " " next	£3,050 - 5s. 1/6
" " " " " next	£3,150 - 5s. 1/6	" " " " " next	£3,100 - 5s. 1/6
" " " " " next	£3,200 - 5s. 1/6	" " " " " next	£3,150 - 5s. 1/6
" " " " " next	£3,250 - 5s. 1/6	" " " " " next	£3,200 - 5s. 1/6
" " " " " next	£3,300 - 5s. 1/6	" " " " " next	£3,250 - 5s. 1/6
" " " " " next	£3,350 - 5s. 1/6	" " " " " next	£3,300 - 5s. 1/6
" " " " " next	£3,400 - 5s. 1/6	" " " " " next	£3,350 - 5s. 1/6
" " " " " next	£3,450 - 5s. 1/6	" " " " " next	£3,400 - 5s. 1/6
" " " " " next	£3,500 - 5s. 1/6	" " " " " next	£3,450 - 5s. 1/6
" " " " " next	£3,550 - 5s. 1/6	" " " " " next	£3,500 - 5s. 1/6
" " " " " next	£3,600 - 5s. 1/6	" " " " " next	£3,550 - 5s. 1/6
" " " " " next	£3,650 - 5s. 1/6	" " " " " next	£3,600 - 5s. 1/6
" " " " " next	£3,700 - 5s. 1/6	" " " " " next	£3,650 - 5s. 1/6
" " " " " next	£3,750 - 5s. 1/6	" " " " " next	£3,700 - 5s. 1/6
" " " " " next	£3,800 - 5s. 1/6	" " " " " next	£3,750 - 5s. 1/6
" " " " " next	£3,850 - 5s. 1/6	" " " " " next	£3,800 - 5s. 1/6
" " " " " next	£3,900 - 5s. 1/6	" " " " " next	£3,850 - 5s. 1/6
" " " " " next	£3,950 - 5s. 1/6	" " " " " next	£3,900 - 5s. 1/6
" " " " " next	£4,000 - 5s. 1/6	" " " " " next	£3,950 - 5s. 1/6
" " " " " next	£4,050 - 5s. 1/6	" " " " " next	£4,000 - 5s. 1/6
" " " " " next	£4,100 - 5s. 1/6	" " " " " next	£4,050 - 5s. 1/6
" " " " " next	£4,150 - 5s. 1/6	" " " " " next	£4,100 - 5s. 1/6
" " " " " next	£4,200 - 5s. 1/6	" " " " " next	£4,150 - 5s. 1/6
" " " " " next	£4,250 - 5s. 1/6	" " " " " next	£4,200 - 5s. 1/6
" " " " " next	£4,300 - 5s. 1/6	" " " " " next	£4,250 - 5s. 1/6
" " " " " next	£4,350 - 5s. 1/6	" " " " " next	£4,300 - 5s. 1/6
" " " " " next	£4,400 - 5s. 1/6	" " " " " next	£4,350 - 5s. 1/6
" " " " " next	£4,450 - 5s. 1/6	" " " " " next	£4,400 - 5s. 1/6
" " " " " next	£4,500 - 5s. 1/6	" " " " " next	£4,450 - 5s. 1/6
" " " " " next	£4,550 - 5s. 1/6	" " " " " next	£4,500 - 5s. 1/6
" " " " " next	£4,600 - 5s. 1/6	" " " " " next	£4,550 - 5s. 1/6
" " " " " next	£4,650 - 5s. 1/6	" " " " " next	£4,600 - 5s. 1/6
" " " " " next	£4,700 - 5s. 1/6	" " " " " next	£4,650 - 5s. 1/6
" " " " " next	£4,750 - 5s. 1/6	" " " " " next	£4,700 - 5s. 1/6
" " " " " next	£4,800 - 5s. 1/6	" " " " " next	£4,750 - 5s. 1/6
" " " " " next	£4,850 - 5s. 1/6	" " " " " next	£4,800 - 5s. 1/6
" " " " " next	£4,900 - 5s. 1/6	" " " " " next	£4,850 - 5s. 1/6
" " " " " next	£4,950 - 5s. 1/6	" " " " " next	£4,900 - 5s. 1/6
" " " " " next	£5,000 - 5s. 1/6	" " " " " next	£4,950 - 5s. 1/6
" " " " " next	£5,050 - 5s. 1/6	" " " " " next	£5,000 - 5s. 1/6
" " " " " next	£5,100 - 5s. 1/6	" " " " " next	£5,050 - 5s. 1/6
" " " " " next	£5,150 - 5s. 1/6	" " " " " next	£5,100 - 5s. 1/6
" " " " " next	£5,200 - 5s. 1/6	" " " " " next	£5,150 - 5s. 1/6
" " " " " next	£5,250 - 5s. 1/6	" " " " " next	£5,200 - 5s. 1/6
" " " " " next	£5,300 - 5s. 1/6	" " " " " next	£5,250 - 5s. 1/6
" " " " " next	£5,350 - 5s. 1/6	" " " " " next	£5,300 - 5s. 1/6
" " " " " next	£5,400 - 5s. 1/6	" " " " " next	£5,350 - 5s. 1/6
" " " " " next	£5,450 - 5s. 1/6	" " " " " next	£5,400 - 5s. 1/6
" " " " " next	£5,500 - 5s. 1/6	" " " " " next	£5,450 - 5s. 1/6
" " " " " next	£5,550 - 5s. 1/6	" " " " " next	£5,500 - 5s. 1/6
" " " " " next	£5,600 - 5s. 1/6	" " " " " next	£5,550 - 5s. 1/6
" " " " " next	£5,650 - 5s. 1/6	" " " " " next	£5,600 - 5s. 1/6
" " " " " next	£5,700 - 5s. 1/6	" " " " " next	£5,650 - 5s. 1/6
" " " " " next	£5,750 - 5s. 1/6	" " " " " next	£5,700 - 5s. 1/6
" " " " " next	£5,800 - 5s. 1/6	" " " " " next	£5,750 - 5s. 1/6
" " " " " next	£5,850 - 5s. 1/6	" " " " " next	£5,800 - 5s. 1/6
" " " " " next	£5,900 - 5s. 1/6	" " " " " next	£5,850 - 5s. 1/6
" " " " " next	£5,950 - 5s. 1/6	" " " " " next	£5,900 - 5s. 1/6
" " " " " next	£6,000 - 5s. 1/6	" " " " " next	£5,950 - 5s. 1/6
" " " " " next	£6,050 - 5s. 1/6	" " " " " next	£6,000 - 5s. 1/6
" " " " " next	£6,100 - 5s. 1/6	" " " " " next	£6,050 - 5s. 1/6
" " " " " next	£6,150 - 5s. 1/6	" " " " " next	£6,100 - 5s. 1/6
" " " " " next	£6,200 - 5s. 1/6	" " " " " next	£6,150 - 5s. 1/6
" " " " " next	£6,250 - 5s. 1/6	" " " " " next	£6,200 - 5s. 1/6
" " " " " next	£6,300 - 5s. 1/6	" " " " " next	£6,250 - 5s. 1/6
" " " " " next	£6,350 - 5s. 1/6	" " " " " next	£6,300 - 5s. 1/6
" " " " " next	£6,400 - 5s. 1/6	" " " " " next	£6,350 - 5s. 1/6
" " " " " next	£6,450 - 5s. 1/6	" " " " " next	£6,400 - 5s. 1/6
" " " " " next	£6,500 - 5s. 1/6	" " " " " next	£6,450 - 5s. 1/6
" " " " " next	£6,550 - 5s. 1/6	" " " " " next	£6,500 - 5s. 1/6
" " " " " next	£6,600 - 5s. 1/6	" " " " " next	£6,550 - 5s. 1/6
" " " " " next	£6,650 - 5s. 1/6	" " " " " next	£6,600 - 5s. 1/6
" " " " " next	£6,700 - 5s. 1/6	" " " " " next	£6,650 - 5s. 1/6
" " " " " next	£6,750 - 5s. 1/6	" " " " " next	£6,700 - 5s. 1/6
" " " " " next	£6,800 - 5s. 1/6	" " " " " next	£6,750 - 5s. 1/6
" " " " " next	£6,850 - 5s. 1/6	" " " " " next	£6,800 - 5s. 1/6
" " " " " next	£6,900 - 5s. 1/6	" " " " " next	£6,850 - 5s. 1/6
" " " " " next	£6,950 - 5s. 1/6	" " " " " next	£6,900 - 5s. 1/6
" " " " " next	£7,000 - 5s. 1/6	" " " " " next	£6,950 - 5s. 1/6
" " " " " next	£7,050 - 5s. 1/6	" " " " " next	£7,000 - 5s. 1/6
" " " " " next	£7,100 - 5s. 1/6	" " " " " next	£7,050 - 5s. 1/6
" " " " " next	£7,150 - 5s. 1/6	" " " " " next	£7,100 - 5s. 1/6
" " " " " next	£7,200 - 5s. 1/6	" " " " " next	£7,150 - 5s. 1/6
" " " " " next	£7,250 - 5s. 1/6	" " " " " next	£7,200 - 5s. 1/6
" " " " " next	£7,300 - 5s. 1/6	" " " " " next	£7,250 - 5s. 1/6
" " " " " next	£7,350 - 5s. 1/6	" " " " " next	£7,300 - 5s. 1/6
" " " " " next	£7,400 - 5s. 1/6	" " " " " next	£7,350 - 5s. 1/6
" " " " " next	£7,450 - 5s. 1/6	" " " " " next	£7,400 - 5s. 1/6
" " " " " next	£7,500 - 5s. 1/6	" " " " " next	£7,450 - 5s. 1/6
" " " " " next	£7,550 - 5s. 1/6	" " " " " next	£7,500 - 5s. 1/6
" " " " " next	£7,600 - 5s. 1/6	" " " " " next	£7,550 - 5s. 1/6
" " " " " next	£7,650 - 5s. 1/6	" " " " " next	£7,600 - 5s. 1/6
" " " " " next	£7,700 - 5s. 1/6	" " " " " next	£7,650 - 5s. 1/6
" " " " " next	£7,750 - 5s. 1/6	" " " " " next	£7,700 - 5s. 1/6
" " " " " next	£7,800 - 5s. 1/6	" " " " " next	£7,750 - 5s. 1/6
" " " " " next	£7,850 - 5s. 1/6	" " " " " next	£7,800 - 5s. 1/6
" " " " " next	£7,900 - 5s. 1/6	" " " " " next	£7,850 - 5s. 1/6
" " " " " next	£7,950 - 5s. 1/6	" " " " " next	£7,900 - 5s. 1/6
" " " " " next	£8,000 - 5s. 1/6	" " " " " next	£7,950 - 5s. 1/6
" " " " " next	£8,050 - 5s. 1/6	" " " " " next	£8,000 - 5s. 1/6
" " " " " next	£8,100 - 5s. 1/6	"	

First Proposals.

(c) An allowance of £50 for a wife living with or wholly maintained by the person chargeable to tax.

(d) An allowance for children who are either under the age of 16 or who, if over that age, are receiving full time instruction, of £40 for the first child and £30 for each other child, with a maximum allowance of £100.

(e) An allowance in respect of life insurance to the extent of 1/6th of chargeable income, with a maximum of £200.

Present Proposals.

(c) An allowance of £150 for a wife living with or wholly maintained by the person chargeable to tax.

(d) An allowance for children who are either under the age of 16 or who, if over that age, are receiving full time instruction, of £75 for the first child and £60 for each other child with a maximum allowance of £255.

(e) An allowance in respect of life insurance to the extent of 1/6th of assessable income, with a maximum of £200.

(f) An allowance for dependent relatives with a maximum of £100.

COMPANIES.

Tax on companies fixed at Sh.2/50.

Companies charged at the same rate as individuals except that the tax will be Sh.2/- in the £.

In the new Bill passage allowances are to be subject to income tax (see Clause 5(b)), and special provision has been made for farmers, who will be allowed to deduct expenditure incurred on fencing and soil erosion measures, the provision of dipping tanks and, in the case of sisal growers, rotation re-planting (see Clause 37).

In the original Bill a farmer was allowed to deduct 15% of his profits for expenditure on immature areas where the income from such areas was less than the expenditure. Under the new Bill a farmer can expend the

whole

whole of his profits on the maintenance and development of immature areas. The initial costs of planting and clearing are not, however, deductible (see Clause 36).

Where mortgage interest is payable to a person who is not resident in the Colony the person paying such interest shall deduct income tax from such interest at the rate of Sh.2/- in the £ (see Clause 24). The rate in the earlier Bill was Sh.2/50 in the £.

As regards action ? it would be as well to send confidentially to the Board of Inland Revenue a copy of the O.A.G.'s despatch and enclosures together with a copy of the earlier Bill explaining that a copy of the Ordinance as passed will be sent to the Board for their observations in due course. (It would be too late to attempt any big amendments at this stage as the Bill is now being debated.) Send the copy of the new Bill to the Joint East African Board for information.

9.3.37.

It hardly seems worth asking O.A.R. for views at this stage.

*J. P. ...
10/3*

Sir G. Bushe.

I think you will be interested in seeing this Bill. Part of the trouble in Kenya ^{and} Income Tax has been due to the fact that it never occurred to the ~~opponents~~ ^{opponents} of the measure to try to get the rates of Tax, allowances, etc., altered. They simply confined themselves to unreasoning opposition and assumed without justification that the rates proposed in the published draft were the unalterable decision of Government. The rates now proposed are ~~as~~ ^{must cover} follows. A married man with one child and a 5% Insurance Policy won't pay anything at all unless he has at least £647 a year. In addition he may set off against his Income any losses incurred since the year 1933. Further, in regard to depreciation of machinery as from the introduction of Income Tax he ~~is to~~ ^{may} reckon the depreciation ^{only} since the 1st January, 1937. The effect of this, is, of course, that any worn out plant can be replaced and ^{about} the whole cost of it charged up against Income ~~since however after it is~~ ^{only one year's wear (or less) need be allowed for}. However, I do not think that it would be politic to make any comment indicating that the allowances and so forth are too ^{generous} ~~unreasonable~~. We all know that the farming community in Kenya has gone through a pretty stiff time of it and if the revenue which is expected is raised by Income Tax then I think we need not trouble. It will, however, be necessary to say that the rates of Tax and the scales of exemption may, of course, have to be reviewed in the light of further experience, which can only be gained by working with them.

I

I would draw attention to the remark in the report of the Committee to the effect that most of the Companies in Kenya are private ones. This of course, knocks completely on the head most of the howling about tax dodging, since it is much more difficult for a private Company registered locally to go in for evasion than for a large concern with branches all over the place.

It will be noted from Clause 37 that farmers are entitled to deduct any sums expended on dipping tanks, fencing, re-planting sisal, and anti-erosion measures. To this I see no objection. Dipping tanks are very necessary and so are fencing and anti-erosion measures. It might be argued that the dipping tanks and the fencing are so much things which ought to be done anyhow, and which are necessary for the purpose of acquiring income and that they ought not to be exempted, but we need not trouble about that. I have more doubts in regard to the sisal planting which, of course, only affects Companies but it must be remembered that the sisal plant takes about five years to come to a condition when it is fit for harvesting and here too I should ~~accept~~

There is one particularly vicious, mean and underhand provision in it, and that is the provision that people are to pay Income Tax on passage allowances. That, of course, is part of the unofficials' campaign against what they call the hidden emoluments of Government Service. It is curiously mean, it cannot produce anything much in the way of revenue, ~~and~~ ^{but} if the Secretary of State were to ^{use} ~~approve~~ its deletion, there ^{would} ~~would~~ be the usual "first-class constitutional crisis" in Kenya. It

does

does not seem worth while from the point of view of tactics to risk a row on such a point, but it should certainly be mentioned eventually.

The report of the Committee is worth reading but it will be observed that Captain Schwartze and Major Cavendish Bentinck have put in a note to the effect that it must not be published. This throws a rather new light on (a) their political ~~knowledge~~ ^{courage}, and (b) their claim to represent anybody or anything. I cannot see anything in the report which might not have been signed ~~seen~~ ^{seen} by anyone, once the compromise had been agreed upon, but then I am not a Kenya politician.

(They should send a copy of the Bill to the J.E.A. Board for information. They should have it of course but I'd bet they have not.)

15.3.37.

There is one risk over it which will remain for all time. It is designed to produce about £43,000 a year. If it produces more there may be demands for reduction on the ground that the whites are paying for the blacks and there will be much reference to the "Hoynes formula". If it produces less, then the whites will have got off their just liabilities, but attempts to reduce exemptions or increase rates will be met again by the cry that the Tax isn't wanted and is only used to make the white pay for the black and there will be more "Hoynes formula". That seems inevitable. We must be careful to say that the rates are experimental but at the same time not give colour to the idea that we contemplate a high rate and few allowances in the near future. One of the "silly" crises is - when they get a tax on the Statute Book they just double or triple the rates.

See to ans.
I cannot see the justification for a graduated rate on Companies.
See CWD 1788 p. 11. HLB/s/s

Sir C. Rottmeyer

See the report here. The reason is no doubt that there are lots of small private companies, really just groups of individuals vide para 9-11 of the Committee. The argument does not impress me. Persons who form companies to get the protection of the Companies Ordinance ought not to have it both ways. But that is it.

S. C. Rottmeyer
163.

Sir J. Moffey.

The bill was to have been introduced on March 2nd and we must sensibly await events; but I need not go to see Mr. Flood's minutes. As to A, I agree that the arrangements now made cannot stand for all time, but I am afraid that if the S. of S. says that they are experimental there will be nothing however the statement is worded. That that can best be considered later.

Copy of Bill to J. E. A. Board as proposed.

Wed. 17.3.37.

My of course is an X in Mr Flood's minute. He is implicitly imposing income tax on the official pension allowances! Even if the S. of S. can do so now (to be may be said to do so). I think we should shake up for a second protest. "The Bill will be the law" is not a good point.

J. H. B.
7/12

I think we might point out
the inaccuracy of describing
the passage "allowances" of
officials proceeding on leave
and say we cannot understand
on what grounds this can
be justified, even if we
give way in the end.
At least we can ask for
reconsideration and agree
in case I agree with
Sir G. Robertson.

WJ 18. 3. 37

AIR MAIL
283

9 To Kenya - Conf. - (8 Amd) - 25/3/37

10. E.A. GOV'S CONFERENCE 24.2.37

The copy of letter addressed to Govts of Uganda, Tanganyika & Zanzibar, dated 24.2.37, regarding Kenya Income Tax Bill.

11. LONDON CHAMBER OF COMMERCE 24.3.37

Requests extension of time, in which observations may be submitted, from 31st March to 31st May, 1937.

No 10 is interesting. Kenya still hold that they can go on their own without much risk. I rather agree. No action appears necessary.

No 11. is very annoying. We have the "Joint E.A. Board" on the job and now we have the London Chamber of Commerce with whom are we to deal? Not that either body deserves any attention at all but we must go through the motions. All!

7
Some suggestion is to tell Kenya by tele - that the Chamber want to comment and reply as per draft herewith.

J.E.O. Hunt
27.3.37

This may be a rump of Mr. Crozier's. He can get at the Chamber and the J.E.A. Board would discontinue his antics. The Bill can't be held up indefinitely. It was published in October & there have been no changes in principle - only in rates, allowances etc. So they have had all the time they want and more. To delay too long would upset Kenya's "Budget".

8/6. passed. If the letter had come from the E.A. Section of the Board, I should have doubted if they were leading them in the matter. Sir H. Leggat is Chairman of the Section. In any case I think that they do not see probably being commercial, but it is a business case anyhow.

W.E.S.
25.3.37
agree

12 To Govs Nairobi - rec. 72
DESTROYED UNDER STATUTE

13 To London Chamber of Commerce
H. Amd. 30 MAR 1937

14. O.A.G. Kenya 30.3.37
Report of Select Committee will be laid before Council on 8th April but will not be debated before 19th April. Resumes matter will be discussed with Harragan who arrives in U.K. on 31.3.37

Pais has been communicated to the Lords Chamber of Commerce in a letter No 13.
Patsy Ch. Harwith
3/1937 at once

AIR MAIL

15 Jarkoma - 283 - (4c 11 + 13) a/1 - 5/4/37

16. To J.E.A.B. (w/c Bill encls. 2) 2/12 - 6/4/37

17. LONDON CHAMBER OF COMMERCE.....31.3.37.
The views of the E.A. Section of the Chamber will be communicated by air mail with Kenya as soon as possible and a copy forwarded to the C.O.

18. ACTING GOV. KENYA.....CONF.No.60.....20.3.37.
Fwd. set of forms and comments thereon requesting that the Income Tax Commr. be supplied with a copy of the Bill and that Mr. Harragin be consulted when he arrives.

19. To J.C. Mundy (s/o) w/c 18 w/orig. encls...1.4.37.

20. To W. Harragin (s/o).....1.4.37.

21. J.C. MUNDY (S/O TO MR. PASKIN).....2.4.37.
Asks (19) and states that he could arrange to be in London on Thursday and Friday, the 8th & 9th, to meet the Attorney-General.

22. W. HARRAGIN (S/O TO MR. PASKIN).....2.4.37.
Will keep 8th & 9th free to meet Mr. Mundy.

23. To J.C. Mundy (s/o).....3.4.37.

24. To W. Harragin (s/o).....3.4.37.

25. O.A.G. KENYA.....TEL.No.77 CONF.....5.4.37.
States that Select Committee's Report is unanimous recommending retention of provision to levy Income Tax on passage allowance. Proposes to take no action pending instructions.

No. 18.

Necessary action has been taken in the conn. with Mr. Harragin & Mr. Mundy. At Mr. Harragin's request, his meeting with Mr. Mundy has now been postponed till Friday at 11 a.m.

No. 25.

In reading this tel. it is necessary to bear in mind that the report of the Select Committee was completed

Typical of Kenya - Agree with the attitude shape the S. of. will be the fighting! Not a little effort to it! Fight for your own pocket. GWS

and signed before Mr. Harragin left Kenya; i.e. before the S. of. s. Dep. (No. 9), protesting against the taxation of ~~the~~ passage allowance was received here.

As regards the statement that Mr. Harragin is strongly in favour of the provision I can only say that when I gave him the Dep. to read when he called here last week, he said that he was very glad to find that the S. of. was opposed

Nevertheless this v. of "hidden emoluments" is a sore point with the Select Committee & it is probably true that they would be strongly opposed to the deletion of this provision. On the other hand it will affect a certain number of unofficials as well as officials, & as stated in para 3 of No. 9, the v. was raised at a meeting of the Executive Committee of the J.E.A.B.

a copy printed. pl. be sent to Mr. Harragin so that he can see it before the meeting on Friday.

J. G. Cassin
6/4

The "hidden emoluments" was one of the great horrors of the unofficials in the "economy campaign" of 1930-33. They also added 'free medical attendance' & 'non-contributory pensions' and I have no doubt would like to tax those. The general attitude of mind was shown in a local cartoon depicting two houses, official saying to cattle "you're a very bad roger on your house" to which the answer was "I haven't finished paying for yours yet". The obvious retort is that the official

has got to be in Kenya otherwise a settler has not.
 But it is no use thinking we have made a
 protest and must suppose give in even though it
 looks like being governed by Lord F. Scott & his friends
 Against that is the fact that the Kenya Govt. has accepted
 it so we are only overruling them from here if we
 insist. I still think it a piece of petty meanness.

But as I say it is no good, nor would I advise
 further remonstrance in the face of this telegram. It would
 spoil the surface of the political ice-cream which we
 have been at so much pains to smooth.

Draft here with

J. I. O. 762

6.4.37

W.C.S.

6.4.37

Plm

7/4

at once

The S. of S. has seen the
 telegram & says it's no use
 sitting.

26 To Gov. Tel No. 75. Conf. 25 April - 7/4/37

J.C. Mundy (To to Mr. Parker) 5.4.37

DESTROYED UNDER STATUTE

He had some difficulty in attending C.O. by 11 a.m. on 5th

M. Harragin (To to Mr. Parker) 5.4.37

DESTROYED UNDER STATUTE

for message ~~sent~~ Thursday at 11 a.m. but would prefer Friday,
 10th April, at 11 a.m.

To J.C. Mundy Tel. 6.4.37

DESTROYED UNDER STATUTE

To Mundy } 5/6
 To Harragin } 6.4.37

Mr. Harragin spent the day going
 through the Bill with Mr. Mundy

as a result asked that we

sent. Tel. to Kenya as in copy herewith.
 The Tel. is not intelligible in relation
 to the ~~the~~ text of the Bill in No 8
 on this file, as a considerable
 number of amendments were
 made in Select Committee, & we
 have not got any record.

J.J. Passon
 9/4

32 To Gov. Tel No. 78. Conf - 9/4/37
 18 April

33. F.M.T. FIRTH (INLAND REV.) (S/O) 10.4.37.
 Trg. dupl. of Kenya Treasurer's letter about the double
 taxation relief provisions in the Income Tax Bill and
 promises obtained as quickly as possible & will phone next
 week to report progress.

This was rather a blow to the
 Inland Revenue Dept, at least
 that notice. However, Mr. Firth
 is doing his best to provide
 the answer to Kenya's question.
 To be in time for the debate
 on the 19th April, the reply should
 go by the Air Mail of the 13th April.
 I am afraid that there is no hope
 of this, but there is a chance
 that it will be ready for the
 Air Mail of the 15th April.

Wait

C.A. Gornall
 12/4

It would be Firth might say when they
 will be in a post to send them reply. We must
 then telegraph.
 J.J. Passon
 10/4 at once.

34 Gov. — Tel. No 81 — 12/4/37

(Does not consider amendment of clause to be desirable — giving reasons)

35 To Haragin (S.O. n/o. 32+34) — 12/4/37

36 To Haragin

Ref. 33. The Dutch telephoned to say that they wish to their utmost to get the reply ready by Thursday night. The Dutch also asked that the word "appropriate" should be circled in the line 13 of the text of Section 44 (1) of the Bill.

Draft has been written —
A. Foranville —
13/4

37 Tel. to Gov. Kenya, No 83. 13/4/37

38. E. M. T. FIRTH (46) — 15.4.37
Check in dept, official letter (No. 37 - file)

39. INLAND REVENUE — 15.4.37
To check on Treasurer's letter (and 6 33) & suggest certain amendments — examples enclosed therein.

40. To Kenya (4/c 39) — Conf. (and 55) — 15.4.37

41. To Haragin (S.O. n/o. 32+34) (Orig - No. 25338 & A) — 12.4.37

42. To Haragin (40n and) 3/c (Draft - 25338 & A) — 22.4.37

To S/I. Rev. (39 and) (Mche) 20 APR 1937

AIR MAIL
2714
DEPT

43. To Kenya - Conf. (4/c 3 on 6/10/37) (6/10/37) (6/10/37) — 20/4/37

43 Gov. Tel. No. 88 — 20. 4. 37

States that the Bill passed through the Leg. Co. with little opposition.

? Kelly
A. Foranville
21/4/37

Satisfactory — as far as it goes.
S.O. n/o. 32+34

W.S. 20.4.37
Stone

44. LONDON CHAMBER OF COMMERCE..... 16.4.37.
(Ref. 13) Encls. copy of letter and memo. addressed to the Col. Sec., Kenya.

45. EXTRACT FROM THE "TIMES" OF 22.4.37;

There is very little in 44 really. Note the pathetic idea that a "pound" in E. Africa may mean something different from 20 shillings or a £ sterling. It can't so long as the present currency system goes on. [I understand this is S. H. Leggett's point here]

Obviously the points made are such as can be dealt with easily if so thought fit.

? Ask. rest of my thank. and ask Kenya to let us have in due course a copy of their reply.

The currency notes are for 20 shillings, "Twenty shillings or one pound" - £500, and the shilling is linked with sterling. This gives a practical if more legal valuation of the pound for E.A. purposes.

W.S. 26.4.37
Stone

DESTROYED UNDER STATUTE

Mr. 6066.
To ~~the Com~~ (H. and) AM 29.4.37

AIR MAIL
DESTROYED UNDER STATUTE

47 To Kenya - 347 - Com - 29/4/37

LR. P.P. BY MR. RANFIELD FOR ORAL REPLY ON 5.5.37

(No. 1 on P.P. FILE)

49. CHAMBER OF SHIPPING OF U.K. 4.5.37.
With regard to Clause 8(a) enquires whether it is necessary for the French Govt., or others interested, to take steps with a view to securing exemption of taxation in Kenya, and if so, what steps.

General Dept.
We have not yet received the Kenya Income Tax Ordinance which was passed by the C.A. on the 20th of April, but a copy of the Bill is to be found below No. 8.
May we have the same on No. 49.

C. H. Ranfield
8/5/37

C.I.
NOMINAL
Transport
do 6102/37
Sent

50 Gov. Gold Coast No 264 23/4/37

(Transmits letter from Association of European Civil Servants in respect of taxation of pensions).

Mr. Dundy called here yesterday, by arrangement, to discuss with Mr. Walsh the arrangements for the inauguration of the collection of this Tax.

In the course of the discussion Mr. Walsh mentioned that Kenya was very anxious to get on with the

Reverts to Mr. Ranfield for action on 49.
Mr. Dept. to take action on 50

... of certain of the forms. Mr. ...
said that he had been engaged on a fairly extensive revision of the forms of the ... forms which had been sent to him. But he had been so fully occupied that he had been unable to complete this work. He was however of the importance of issuing these forms in a form appropriate to the ... which Mr. ... had been ...
of the possibility that Kenya ...
going ahead on the basis of the ... forms; it was agreed that Mr. ... should make an effort to complete the revision of some of these ...
required, before he leaves on Friday, ...
that ...
that it is hoped to send him ...
by air mail next week.

Set of Tel. h.w.

... sent to Mr. Bourne for ...
(No. 50 can be dealt with when Mr. ... E.A. Dept. ...)

J. P. ...
11/5

51 To Kenya tel. 115

11 May, 1937

No 49.

cess of the Bill (now enacted & father) in 8 is not well drafted. The word "belong" like phrase "British and Colonial mercantile ship-owners" are particularly loose.

The model for this clause which was recommended to other income tax clauses is enclosed in 1724 in 71455/34 Gen? but amendment of this suggested by the B/T (12 in 6102/3) Gen? is at present under con sideration here. We are, just at the moment therefore, not in a good position for giving Kenya guidance in the matter.

I would therefore simply send a copy of 49 to the Gen? asking what reply would be made for his terms.

And reply to 49 that the matter is being referred to the Gen? of Kenya & that a further communication will be sent in receipt of his reply.

And send copy of 49, the reply & the despatch to Kenya, together with copies of 8(5) 61, 42 of the Bill that B/Ts.

Copies to Gen?

to the B/T & the B/T. of 12 in 6102/3 Gen? explaining that the Bill was passed in the 20th April (see 43)

And put copies of X with all enc. in 6102/3 Gen?.

J.P. Parry
14/5/37

12 Dec 1937

52 mundy

(Encls., with desps., etc. forms for transmission to Kenya).

Send copy of 52, with encls. original, to Kenya by today's airmail (N.B. keep the encls. in the right order)

No reply to the mundy req? as he is sailing today.
& Reunite to 29) to please further item on file.

J.P. Parry
14/5

at once.

AIR MAIL 53 So. Kenya 399 (encls. 5, 2) 14.5.37

55. GOV. KENYA THE GOV. 7-5-37

The, with comments, Ordinance N° 12 of 1937 "Income Tax Order, 1937" and, ref. (20), encls. copy of Committee Report; request his approval be conveyed to the Board of Inland Revenue.

No. 49.

The provision in question now appears as Section 8(t) in the ~~Interpretation~~ of the Ordinance as passed (No. 55). Frankly, I do not know what this provision is intended to mean, nor did Mr. Mundy to whom I showed this letter when he last called just before his departure.

The word "Colonial" is not defined in the Interpretation Ordinance of Kenya, but the word "Colony" is defined as meaning the Colony of Kenya and as including the Protectorate unless the contrary intention is stated.

"Colonial waters" is defined as meaning any inland or territorial waters of the Colony.

The question is whether, in the light of these definitions, the word "Colonial" in the Kenya Ordinance is intended to relate only to Kenya, and only Kenya can say.

It is a pity that we are not in a position to tell Kenya what we think ought to be provided in their Ordinance, but as we are not, we ought, I think, at least to tell them that the ^{whole} matter is at present under consideration with the Board of Trade and the Board of Inland Revenue.

Otherwise ? as proposed in Mr. Bowyer's minute of the 14th of May.

No. 50.

The Association of European Civil Servants in the Gold Coast object to two features in the Ordinance:-

(a) The taxation of pensions.

There may, perhaps, be something to be said, from their point of view, in regard to the taxation of pensions in respect of service in Kenya before the introduction of Income Tax. But, as regards the future, there is no more reason why pensions should not be taxed than salaries drawn in Kenya; and it would clearly be out of the question to introduce a differentiation as between pensions paid in respect of service in Kenya before and after the introduction of Income Tax.

(b) The absence of a provision for a deduction from the income of a non-resident. This question was discussed, in relation to pensioners, under Clause 16 of the Report of the Select Committee, in No. 54. The Select Committee recognised that some relief is warranted, but they considered that it was impossible to make adequate and effective provision in the Ordinance. They accordingly recommended that the Governor in Council should be given wide powers to make rules governing such cases. This provision appears as Section 90 in the Ordinance as passed (No. 55).

I doubt, however, whether we need say anything by way of comment either in reply at this stage or to Kenya, and I suggest that it would be sufficient to send a copy of this despatch and enclosure to the Governor of Kenya for his observations.

No.54.

A further copy of the Report of the Select Committee has now been included in the despatch sending home the Ordinance as passed (No.55). That despatch does not, however, include a copy of the Bill as introduced into Legislative Council, and it may perhaps be useful to send copies to the Board of Trade and the Board of Inland Revenue when we send them copies of the Ordinance.

No.55.

The first thing is, I think, to send copies of this despatch and enclosures to the Board of Trade and the Board of Inland Revenue for any observations which they may have to offer. Pending the receipt of such observations, it hardly seems worth while for the legal advisers to be troubled to examine the Ordinance.

Send copies to Board of Trade and the Board of Inland Revenue, together with copies of the Bill in No.54.

It would also probably be convenient to include in the same letters the action proposed on No.49.

J.P. Paine
19/5

Mr Roberts (Ray) (v)
I think what they mean by "Colonial" non resident shipowner is those who live in Kenya or any other Colony. In fact as a Colony ship flies the British flag there is no difference.

However we may proceed as proposed in No. 49.

All the checks what we are doing.
As to 50 it's like this check! If they live here they can square up allowances. If they don't they can reflect that U.K. pensions are taxed at source.

? be any proceed as proposed
19.6.37

I should have thought a Colonial shipowner always was a British shipowner: if they are infirmly residents they should certainly pay so. I agree with the action proposed.

(W.)
25.5.

- Transmitted 56 To Chamber of Shipping (49 and) 12 6.37
6102/37
of U.K.
- 57 To Bd. Inland Revenue (w/encll's per) cons - 14. 6.37
draft
- 58 To Bd of Trade (w/encll as per) cons 14 6.37
draft
- 59 To Bd. Coast. N° 499 - 50 Annex. 15 JUN 1937
DESTROYED UNDER STATUTE
- 60 To Kenya - 465 (w/enc. 49) cons - 17.6.37
6702/37
- 61 - - - 466 (w/enc. 50) - cons. 17.6.37.

Re: Reproduction of documents in transmission H.S.

62 Chamber of Shipping of U.K. 16.6.37
Cable (50)
? Public
17.6.37
atome

NOW SEE PART 2

61

G. O.

Mr. Flood 29/5/37

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Amud (72/619)

Downing Street,

17 JUN 1937

~~May, 1937.~~

Sir,

With reference to the recent

Income Tax Ordinance, I have etc. to
enclose for your consideration a copy
of a despatch from the Governor of the
Gold Coast forwarding a letter from the
Local Association of European Civil
Servants.

I have, etc.

(Signed) W. ORMSBY GORE.

DRAFT.

KENYA.

NO. 466

GOVERNOR.

50

FURTHER ACTION.

C. O.

Mr. Flood 29/5/37

Mr. Gwynne 4/6/37

Mr.

Sir C. Parkinson.

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

~~Mr. Gwynne~~
Any done on this or ought
we to say more to anyone!
J

Downing Street,

14 May, 1937.

Sir,

I am etc. to transmit to you,

to be laid before the Board of Inland Revenue
Board of Trade,

the enclosed copy of a despatch from the Governor of Kenya forwarding copies of the Income Tax Ordinance ~~is~~ recently enacted, together with printed copies of the Report of the Select Committee of Council which examined the Bill before its final enactment as an Ordinance.

Mr. Ormsby Gore would be glad to receive any observations which the Board may wish to furnish upon the Ordinance as enacted. Copies of the Bill as ^{first} introduced into Council are also enclosed for comparison.

I have also to enclose a

copy of ^{an} ~~a~~ letter ^{con^s will} received from the

Chamber

DRAFT.

Search

1. THE SECRETARY,
BOARD OF INLAND REVENUE.
2. THE ASSISTANT SECRETARY,
BOARD OF TRADE.

55

Report.

Bill in 54.

Chapter of Shipping
48.

To

of the Revenue

FURTHER ACTION.

Chamber of Shipping with special reference to
Clause 8(t) of the Ordinance as finally enacted
which raises the question of the taxation of the
profits of non-resident shipowners.

I am, etc.

(Signed) J. E. W. FLOOD

AIR MAIL

KENYA

No. 74

CONFIDENTIAL.



557
GOVERNMENT HOUSE

NAIROBI

KENYA

RECEIVED
19 MAY 1937
C. O. REGY

7 May, 1937.

Sir,

42

With reference to your Confidential (2) despatch of the 21st April and connected correspondence on the subject of the Income Tax Bill, I have the honour to transmit two authenticated copies of "An Ordinance to Impose a Tax upon Incomes and to Regulate the Collection Thereof", No. XII

Legal Report. of 1937, together with a Legal Report by the Attorney General, and a copy of the Bill showing the amendments made since the Bill was transmitted under cover of Sir Joseph Byrne's Confidential despatch No. 48 of the 21st April, 1933. Twelve printed copies of the Ordinance will follow by sea mail.

(69) of 4012/1/33 E.A.

(57) (58)

Copy to B.I.R. B.T. 40.

2. I take this opportunity of referring to your Confidential despatch of the 15th April, under cover of which you transmitted a copy of a letter containing the observations of the Board of Inland Revenue on questions raised by the Colonial Treasurer in connection with relief in respect of double taxation, and of asking that you may cause to be conveyed to the Board my appreciation of the trouble they have taken in this matter.

3. With regard to the question raised in the seventh paragraph of the Board's letter, Clause 16 of the Bill as published in the Kenya Gazette of the 16th February was deleted during consideration of the Bill by the

Select/

THE RT. HON.
W. ORLESBY GORE, F.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.1.

Committee's
Report.

Select Committee, and under the Bill as passed by the Legislative Council only certain non-residents will be granted any allowance, under Clause 10(2) of the Ordinance enclosed with this despatch. The reasons which led the Committee to take this action are set out on the fourth page of their report, a copy of which I enclose for ease of reference. The departure from the terms of the Model Ordinance was the result of a unanimous decision of the Committee; and I would point out that Kenya is not alone in not granting an unqualified allowance to non-residents and that I am advised that in fact no such allowance is provided for by Income Tax legislation in Nyasaland, Fiji and Ceylon.

I have the honour to be,

Sir,

Your most obedient, humble servant,

RB Brooke-Popham

AIR CHIEF MARSHAL

G O V E R N O R.

LEGAL REPORT
THE INCOME TAX BILL, 1937

The object of this Bill is to provide for the payment and collection of a tax on incomes.

2. Under the Bill, income tax is charged only on income accruing in, derived from, or received in the Colony in respect of -

- (a) gains or profits from any trade, business or profession;
- (b) gains or profits from employment, including the value of quarters, board or other allowances, including passage allowances;
- (c) the annual value of land and improvements thereon used or occupied for the purpose of residence or enjoyment and not for the purpose of gain or profit. Farm houses, occupied solely for the purpose of carrying out farming operations, are exempt;
- (d) dividends, interest or discounts;
- (e) any pension, charge or annuity;
- (f) rents, royalties, premiums and other profits arising from property.

Tax is assessable and payable in any year on the chargeable income of the preceding year. Thus the tax payable in 1937 will be assessed on the income of 1936.

3. Clause 8 sets out the incomes which are exempted from income tax.

The income of the Kenya and Uganda Railway Provident Fund has been deleted from the exemptions provided in the Bill as was introduced into the Legislative Council. From enquiries made it was discovered that apart from

compulsory contributions which can only be withdrawn on death or cessation of employment, the rules of the Fund permit voluntary contributions which can be drawn out at any time. To have allowed the exemption to remain would have afforded a loop hole to escape the tax altogether. It is not the intention to tax the income of that part of the fund made up of compulsory contributions and application can be made to the Governor to exercise his power under paragraph (g) of this Clause.

4. Clause 9 empowers the Governor to exempt from income tax interest payable on any of the Colony loans.

5. Clauses 10 and 11 show what deductions will and will not be allowed from gross income in calculating chargeable income. Special provision has been made for farmers, who will be allowed to set off annually against his income a reasonable sum to provide for the redemption, by the time the productive life of the crop has ceased, of the expenditure involved in planting the crop and bringing it to the productive stage, and in clearing and reclaiming the land on which it has been grown - vide Clause 37.

Paragraph (d) of Clause 10(1) refers, *inter alia*, to any sum expended for repair of premises. The word "premises" has been defined in Clause 2 so as to make it clear that the term includes dwelling houses.

The Bill, as was introduced, had provided a personal allowance of £150 for a non-resident. This was deleted by the Select Committee, but sub-clause 10(2) as now drafted affords exemption from tax in the case of Widows and Orphans Pensions not exceeding £150 a year and also exemption where an individual is in receipt of a similar pension from a fund to which he had been forced to contribute. The cases of Government non-resident pensioner drawing small pensions and non-residents in receipt of small incomes from investments in Kenya will be met by rules made under the provis-

6. Clauses 12 and 13 provide for allowances for wear and tear and for trade losses.

7. Clauses 14 to 18 make provision for deductions in respect of -

- (a) a personal allowance of £350 for a resident;
- (b) an allowance of £150 for a wife living with or wholly maintained by the person chargeable to tax;
- (c) an allowance for children who are either under the age of sixteen, or who, if over that age, are receiving full time instruction, of £75 for the first child and £60 for each other child, with a maximum allowance of £255;
- (d) an allowance in respect of life insurance to the extent of one-sixth of assessable income, with a maximum of £200;
- (e) an allowance for dependent relatives, with a maximum of £100.

8. Clause 18 - In order to remove doubts it has been specially provided by paragraph (b) of this Clause that the contributions by an employer to a Provident Fund are on the same footing as an employee's contributions and can be deducted. The new proviso to this Clause is intended to close the same loop hole of escape which is mentioned when dealing with the voluntary contributions to the Kenya and Uganda Railway Provident Fund.

9. Clause 19 allows a Company or a registered Society to build up a reserve fund, maintained in a liquid form, and used solely for setting off against future losses incurred.

10. Clause 21 imposes income tax on chargeable income at the following rates:-

- For every pound of the first £700: One shilling;
- For every pound of the next £500: One shilling fifty cents;

For every pound of the next £1,500: Two shillings;
For every pound of the remainder of the chargeable
income: Two shillings fifty cents.

11. Companies will be charged at the flat rate of two shillings in the pound.

12. Clause 78 allows as a set-off against tax due the amount of poll tax paid in the year in which income tax is due.

13. Clause 22 entitles a Company to deduct tax from dividends, or from debenture interest, and Clause 23 gives the recipient of such dividends or debenture interest a set-off of the amounts so deducted against the tax chargeable on his income.

With regard to those taxpayers whose tax is deducted at source, unless some specific provision were made in respect of 1937, they would have to pay tax this year on last year's income and at the same time their incomes would be subject to the deduction of tax at source during the current year. Provision is therefore made, in effect, that, in so far as the tax for 1937 is concerned, such income shall be deemed to have borne tax at the appropriate rate - see Clauses 23(2) and 24(3).

14. Clause 24 provides that, where mortgage interest is payable to a person who is not resident in the Colony, the person paying such interest shall deduct income tax from such interest at the rate of Sh.2/- in the pound.

A new sub-clause (3) has been added to this Clause making it incumbent on a mortgagor to forward the Commissioner's certificate of payment to the mortgagee or to his agent.

15. Clause 25 exempts from tax income arising out of the Colony and received in the Colony by persons on a temporary visit to the Colony, i.e. a visit not exceeding

six months in all in that year preceding the year of assessment.

16. Clauses 26 to 35 deal with the special cases of husband and wife, trustees and agents, deceased persons, joint trustees and partnerships. By Clause 26 the income of a wife not separated from her husband is deemed to be the income of the husband for income tax purposes, but a proportion of the tax due may be recovered from the wife if it is not paid by the husband.

17. Clause 37 deals with special deductions from profits which may be allowed to farmers.

Sub-clause (2) gives a farmer the option of setting off an annual sum against his profits for the purpose of getting back the initial cost of planting area also of reclaiming his land, but if he exercises his option then he cannot claim the deductions allowed by paragraph (d) of Clause 36.

Sub-clause (3) gives a farmer a reasonable opportunity of changing his mind even when he has exercised the option.

18. Clause 38 provides that a farmer shall have the right to exercise an option whether the value of live stock and produce on hand at the beginning and end of each year shall or shall not be taken into account in the determination of his chargeable income.

19. Clauses 40 to 42 and 48 make special provision regarding insurance companies, shipping companies and clubs. A new proviso has been added to Clause 40(b) under which a life insurance company will have the option of an alternative basis of assessment to be fixed by the Commissioner.

20. Clause 44 gives relief from double taxation in respect of United Kingdom income tax, and Clause 45 in respect of income tax in any other part of the British Empire.

21. Part VI - Clauses 51 to 62 - deals with the general powers of the Commissioner. Every taxpayer is under an obligation to send in a return of income.

Sub-clause (2) of Clause 51 makes provision for a person leaving the Colony without having had time to comply with the Commissioner's notice. In such a case the person must send in the return before the expiration of one month after the return to the Colony, or if he is absent from the Colony for more than twelve months, then within twelve months of leaving the Colony.

The Commissioner may call for further returns and require the production of books. He may also require a taxpayer to keep books in a prescribed form and in a prescribed language. Officials of Government, local authorities and other public bodies, employers, recipients of income on behalf of another person, occupiers of land, hotel-keepers and bankers are also under a duty to render returns and give information which may be called for.

22. Clause 22 provides that a notice sent by post shall be deemed to have been served not later than seven days after the day on which it would have been received by the addressee in ordinary course of post.

23. Clauses 63 to 67 deal with assessment. It is the duty of the Commissioner to assess every person chargeable with tax and prepare assessment lists. He may make an additional assessment at any time within six years after the year of assessment, and may, in case of objection, revise an assessment.

24. Part VIII deals with the subject of appeals from assessment. The appeal is in the first instance to a local committee and then to a judge of the Supreme Court. No appeal lies from the decision of the local committee where the amount assessed does not exceed Sns.200/- and the taxpayer has elected to abide by the decision of the local committee.

An appeal lies from the judge on a point of law or mixed law and fact.

25. Clause 71 provides that, where no valid objection or appeal has been lodged or where on objection or appeal the amount of chargeable income has been determined, the assessment shall be final, subject to the Commissioner's right to refund or to make an additional assessment.

26. Part X prescribes the time for payment of tax, penalties for non-payment, and the method of recovery of tax due. Tax is due and payable within ninety days after service of a notice of assessment, or the 30th September, whichever date is the later, and if tax is not paid within such period a penalty of 20 per cent of the amount due is added.

For the year 1937 the tax will be payable by the 30th November. Special provision has been made to cover the case of a person who leaves the Colony before paying the tax and subsequently returns.

If too much tax is paid the payor is entitled to a refund if he claims within six years after the end of the year of assessment.

27. Clause 81 provides for free postage of all communications regarding income tax.

28. Part XI deals with offences against the Ordinance and penalties therefor. No prosecution for an offence against the Ordinance may be commenced except at the instance of or with the sanction of the Commissioner.

29. Clause 90 enables the Governor in Council to exempt any person from all or any of the provisions of the Ordinance on the ground of poverty, hardship or other good cause.

A copy of the Bill showing the amendments made since the Bill was submitted to the Secretary of State under cover of Confidential despatch Kenya No. 48 of the 1st April, 1933, together with a Comparative Table, is enclosed for submission to the Secretary of State.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

20th April, 1937

Hawkins

ACTING ATTORNEY GENERAL

COMPARATIVE TABLE
THE INCOME TAX BILL, 1937

Abbreviations:

"Model" means the Model Ordinance enclosed in the Secretary of State's despatch Miscellaneous dated the 28th December, 1931.

"Nyasaland" means the Nyasaland Income Tax Ordinance (Chapter 49 of the Revised Edition).

"Ceylon" means the Ceylon Ordinance No. 6 of 1931.

Clause of the Bill.	Remarks.
1.	Short title and commencement.
- 2.	Model Clause 2. Definitions of "departure interest", "local authority", "local committee", "permanent" or "semi-permanent", "premises" and "resident in the Colony" are added. Definitions of "Commissioner" and "company" have been extended.
3.	Model Clause 3. A Deputy Commissioner and Assistant Commissioner added.
4.(1) and (2).	Model Clause 4.
(3)	Ceylon section 4(3). Prevents the disclosure of secret information by order of a Court.
(4)	Model Clause 4B. Elaborated to cover mandated territories.
(5)	Ceylon section 4(7). Legalises the ordinary operations of the Audit Department.
5.	Model Clause 5. Passage allowances are to be taken into account as income.
6.	Model Clause 6.
7.	Model Clause 7, with the addition of the proviso suggested in the Secretary of State's Miscellaneous despatch of 7th January, 1931. A further proviso is added allowing an alternative period until 31st March.
8.	Ceylon section 7. Nyasaland section 8. Several additions to the exemptions provided, and omitted the exemption in Model 8(1)(c) as there is no legislation in the Colony for building or friendly societies.
9.	Model Clause 9.
10.	Model Clause 10. This Clause has been extensively amended.
11.	Model Clause 12.

Clause of the Bill.	Remarks.
12.	Model Clause 11.
13.	Model Clause 13. Provides that any losses incurred during 1932-1935 may be carried forward as if they were losses incurred during 1936.
14.	Model Clause 15.
15.	Model Clause 16.
16.	Model Clause 17.
17.	New. Allowance will only be permitted in the case of dependent relative who is incapacitated by old age or infirmity from maintaining himself.
18.	Model Clause 18. Provision that total deduction shall not exceed \$100 is new. In order to remove doubts it has been specially provided by paragraph (b) of this Clause that the contributions by an employer to a provident fund are on the same footing as an employee's contributions and can be deducted.
19.	New. Provides for exemption from tax of a certain portion of profits if such profits are placed in special reserve fund, maintained in a liquid form, and used solely for setting off against losses incurred.
20.	New provision in consequence of the levy on salaries.
21.	Model Clauses 21 and 22.
22.	The first two sub-clauses follow Clause 21 of the Model. The others which are in form adapted from Clause 33 of the Model are necessitated by the provision regarding decedent interests payable by a Company.
23.	Model Clause 24. Sub-clause (2) is new.
24.	Model Clause 30.
25.	Model Clause 25.
26.	Model Clause 20 and Ceylon section 11.
27.	Model Clause 26.
28.	Model Clause 27.
29.	Model Clause 28.
30.	Model Clause 29.
31.	Model Clause 30.
32.	Model Clause 31.
33.	Model Clause 32. This Clause has been re-drafted to make it quite clear that the personal representative of a deceased person only pays tax on the estate of such person up to the year in which the death occurred.

Clause of
the Bill.

Remarks.

- | Clause of the Bill. | Remarks. |
|---------------------|---|
| 34. | This is a new provision, adapted from Ceylon section 28, to make trustees jointly and severally responsible for payment of the tax. |
| 35. | Model Clause 36. Sub-clause (3) is taken from Ceylon section 29(6). |
| 36. | Ceylon section 30. Extensively altered. |
| 37. | This new provision allows farmers to debit against their profits the cost of certain expenditure. |
| 38. | Nyasaland section 15. |
| 39. | Ceylon section 38. |
| 40. | Model Clause 19. New provision is made to substitute some other basis of taxation. |
| 41. | Ceylon sections 39 and 40. |
| 42. | Ceylon section 41. |
| 43. | New. |
| 44. | Model Clause 46. |
| 45. | Model Clause 47. |
| 46. | Ceylon section 49. |
| 47. | Ceylon section 50. |
| 48. | Ceylon section 51. |
| 49. | Ceylon section 52(1). |
| 50. | Ceylon section 52(2). |
| 51. | New. |
| 52. | New. |
| 53. | New. |
| 54. | Ceylon section 54(4). |
| 55. | New. |
| 56. | Model Clause 35(1). |
| 57. | Model Clause 35(2). |
| 58. | Ceylon section 56. |
| 59. | Ceylon section 57. |
| 60. | Ceylon section 58. |
| 61. | Model Clause 37. |
| 62. | Model Clause 38. |
| 63. | Model Clause 39. |

Clause of the Bill.	Remarks.
64.	Model Clause 40.
65.	Model Clause 41.
66.	Model Clause 43.
67.	Model Clause 45.
68.	New.
69.	New.
70.	Model Clause 44.
71.	Ceylon section 75.
72.	Model Clause 44(10).
73.	Suggested in the Secretary of State's miscellaneous despatch of 9th October, 1926.
74.	Model Clause 49(2).
75.	Model Clause 50. Sub-clause is new.
76.	Model Clause 51. Sub-clause (2) is new.
77.	Model Clause 52.
78.	New.
79.	Model Clause 53.
80.	Model Clause 54.
81.	Nyasaland section 55.
82.	Model Clause 55.
83.	Ceylon section 85(1).
84.	Ceylon section 85(2).
85.	Ceylon section 87.
86.	Ceylon section 88.
87.	Ceylon section 89.
88.	Model Clause 57.
89.	Model Clause 58.
90.	New.

FEDERAL BUREAU OF INVESTIGATION

C O P Y
O F
THE INCOME TAX BILL, 1937, SHOWING
THE AMENDMENTS MADE SINCE THE BILL
WAS SUBMITTED TO THE SECRETARY OF
STATE UNDER COVER OF CONFIDENTIAL
DESPATCH KENYA 1148 OF THE 21ST
APRIL, 1933.



Colony and Protectorate of Kenya

IN THE FIRST YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI

HENRY ROBERT MOORE BROOKE-POPHAM
G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C. *Governor*

Assented to in His Majesty's
name this day of
1937.

Governor

AN ORDINANCE TO IMPOSE A TAX UPON
INCOMES AND TO REGULATE THE
COLLECTION THEREOF

ABBREVIATIONS:

"Old Bill" means the Bill submitted to the Secretary of State under cover of Confidential despatch Kenya No. 48 of the 21st April, 1933.

"New" means the new provisions inserted in the Old Bill.

"Substituted" or "Deleted" means the provisions substituted for or deleted from the Old Bill.

Amendments underlined in blue-black ink were made prior to introduction of the Bill into the Council.

Amendments underlined in red ink were made during the passage of the Bill into the Council.

The numbers shown in pencil are the numbers of corresponding clauses of the Old Bill.

ORDINANCE No. XII of 1937

An Ordinance to Impose a Tax upon Incomes and to Regulate the Collection thereof

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

PART I.

PRELIMINARY

1. This Ordinance may be cited as the Income Tax Ordinance, 1937, and shall be deemed to have come into operation on the first day of January, 1937. Short title and commencement.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

"body of persons" means any body politic corporate or collegiate and any company fraternity fellowship or society of persons whether corporate or incorporate; ta

"chargeable income" means the aggregate amount of the income of any person from the sources specified in section 5 of this Ordinance remaining after allowing the appropriate deductions and exemptions under this Ordinance;

"Commissioner" means the Commissioner charged with the administration of this Ordinance, and includes a Deputy Commissioner or an Assistant Commissioner for all the purposes of this Ordinance except the exercise of the powers conferred upon the Commissioner by sections 84, 85 and 87 of this Ordinance;

"company" means—

(i) a company incorporated or registered under the provisions of the Companies Ordinance, 1933 No. 28 of 1933. (including an "existing company" as defined in that Ordinance) or under the provisions of any Ordinance amending or replacing the same;

(ii) any company which, though incorporated or registered outside the Colony, carries on business or has an office or place of business therein;

"debt interest" means interest payable by a company or body of persons under or by virtue of a debenture or debenture trust deed whether in the form of a mortgage or any other instrument or document acknowledging indebtedness;

"incapacitated person" means any infant, lunatic, idiot, or insane person;

"local authority" means a municipal council or a municipal board established under the Local Government (Municipalities) Ordinance, 1928, or a district council established under the Local Government (District Councils) Ordinance, 1928, or a local native council established under the Native Authority Ordinance, 1937;

"local committee" means a committee appointed by the Governor under section 68 of this Ordinance;

"permanent" or "semi-permanent" crop means citrus, coco-nuts, coffee, essential oils, New Zealand flax, passion fruit, pyrethrum, sisal, sugar cane, tea, wattle, and such other crops as the Governor in Council may from time to time prescribe;

"person" includes any company or association or body of persons corporate or unincorporate;

"premises" includes dwelling-house;

"resident in the Colony", when applied to an individual, means an individual who resides in the Colony except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in the Colony;

"tax" means the income tax imposed by this Ordinance;

"year of assessment" means the period of twelve months commencing on the first day of January, 1937, and each subsequent period of twelve months.

3. For the due administration of this Ordinance the Governor may appoint a Commissioner, a Deputy Commissioner, an Assistant Commissioner, and such other officers and persons as may be necessary.

4. (1) Every person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, informations, returns, assessment lists and copies of such lists relating to the income or items of income of any person, as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a magistrate. No stamp duty shall be charged in respect of any such declaration.

Administration.

Official secrecy.

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any person—

(a) other than a person to whom he is authorized by the Governor to communicate it; or

(b) otherwise than for the purposes of this Ordinance,

shall be guilty of an offence against this Ordinance and shall be liable on conviction by a magistrate of the first or second class to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and such imprisonment.

(3) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Ordinance.

(4) Where under any law in force in any part of His Majesty's Dominions or in any place under His Majesty's protection or in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom provision is made for the allowance of relief from income tax in respect of the payment of income tax in this Colony, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorized officers of the Government in that part, place or territory of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from income tax in this Colony or from income tax in that part, place or territory aforesaid.

(5) Notwithstanding anything contained in this section the Commissioner may permit any officer duly authorized in that behalf by the Auditor of the Colony to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor or any such officer shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purposes of sub-section (2) of this section.

PART II

IMPOSITION OF INCOME TAX

Charge of
income tax.

5. (1) Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereafter for the year of assessment commencing on the first day of January, 1937, and for each subsequent year of assessment upon the income of any person accruing in, derived from, or received in, the Colony in respect of—

- (a) gains or profits from any trade, business, profession or vocation for whatever period of time such trade, business, profession, or vocation may have been carried on or exercised;
- (b) gains or profits from any employment, including the estimated annual value of any quarters or board or residence or of any other allowance (other than a subsistence or travelling allowance, or an entertainment allowance which is proved to the satisfaction of the Commissioner to have been expended for the purposes for which it was made) granted in respect of employment whether in money or otherwise.

h
The expression "any other allowance" in this paragraph contained includes any passage allowance paid to or on behalf of an employee by an employer in respect of such employee's and/or family's passage from the Colony to, or to the Colony from, a place outside the Colony, but shall not include any such passage allowance granted in respect of a passage to the Colony on first appointment or a passage from the Colony on termination of such appointment;

- (c) the net annual value of land and improvements thereon used by or on behalf of the owner or used rent free by the occupier, for the purpose of residence or enjoyment, and not for the purpose of gain or profit;
- (d) dividends, interest or discounts;
- (e) any pension, charge or annuity;
- (f) rents, royalties, premiums and other profits arising from property.

(2) Any employee in receipt of a passage allowance under paragraph (b) of sub-section (1) of this section may elect within the prescribed period to apportion such allowance over a prescribed number of years:

Provided that nothing in this section contained shall be deemed to apply to the value of any quarters or of any houses situated on a farm and bona fide occupied by an owner, or by any employee of such owner, solely for the purpose of carrying on farming operations.

6. Tax shall be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment: notwithstanding that the source of income may have ceased before or during the year of assessment.

Basis of assessment.

7. Where the Commissioner is satisfied that any person usually makes up the accounts of his trade or business on some day other than that immediately preceding any year of assessment, the Commissioner may permit the gains or profits of that trade or business to be computed for the purposes of this Ordinance upon the income of the year terminating on, or any day before, the thirty-first day of March in the year of assessment or on any day subsequent to the thirty-first day of March in the year immediately preceding the year of assessment on which the accounts of the said trade or business have been usually made up:

Special periods of assessment.

Provided that, where permission has been given for any year of assessment, tax shall be charged, levied and collected for each subsequent year upon the gains and profits for the full year terminating on the like date in the year of assessment or in the year immediately preceding the year of assessment, as the case may be, subject to any such adjustment as, in the opinion of the Commissioner, may be just and reasonable.

EXEMPTIONS

8. There shall be exempt from the tax—

Exemptions.

- (a) the official emoluments received by the officer administering the Government of the Colony;
- (b) the income of the Kenya and Uganda Railways and Harbours Services;
- (c) the income of the Asiatic Widows' and Orphans' Fund established under the Asiatic Widows' and Orphans' Pension Ordinance, 1927;
- (d) the income of the European Civil Service Provident Fund established under the European Civil Service Provident Fund Ordinance, 1934:

No. 20 of 1927.

No. 27 of 1934

The income of Kenya & Uganda Railways & Harbours Services is exempt

(Widows & Orphans' Pension which is its money goes into reserve)

No. 64 of 1934

(e) The income of the Asian Civil Service Provident Fund established under the Asian Civil Service Provident Fund Ordinance, 1934;

(f) the income of any provident fund lawfully established by a local authority;

(g) the income of any other provident fund declared by the Governor under section 18 of this Ordinance to be an approved fund;

(h) the income of any local authority in so far as such income is not derived from a trade or business carried on by the local authority for the purpose of gain or profit;

Provided that the Governor in Council by order, subject to such conditions as he may impose and for such period as may be stated in the order, may exempt from the tax the income of any local authority derived from a trade or business if he is satisfied that the public interest is best served by such an exemption;

(i) the income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution, or the income of trusts of a public character;

(j) the emoluments payable to members of the permanent consular services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;

(k) the emoluments payable from Imperial funds to members of His Majesty's Forces and to persons in the permanent service of the Imperial Government in the Colony in respect of their offices under the Imperial Government;

(l) the emoluments payable from Dominion funds to any accredited representative in the Colony of any Dominion;

(m) pensions or gratuities granted in respect of wounds or disabilities caused in war;

(n) any capital sum received by way of retiring or death gratuity or as consolidated compensation for death or injuries;

(o) the income of the Post Office Savings Bank;

(p) the income of the Land and Agricultural Bank of Kenya established under the Land and Agricultural Bank Ordinance, 1930;

(q) the income of the Farmers Conciliation Board established under the Farmers Assistance Ordinance, 1936;

(r) the income of the Coffee Board established under the Coffee Industry Ordinance, 1934;

(s) the income of the Sisal Industry Committee established under the Sisal Industry Ordinance, 1934;

(t) the profits of a non-resident shipowner as defined in section 41 of this Ordinance provided that the State to which such non-resident shipowner belongs extends a similar exemption to British and Colonial non-resident shipowners carrying on business in such State;

Provided that nothing in this section shall be construed to exempt in the hands of the recipients any dividends, interest, annuities, bonuses, salaries, wages, pensions or other profits paid wholly or in part out of the income so exempted.

9. The Governor may by proclamation published in the Gazette provide that the interest payable on any loan charged on the public revenue of the Colony shall be exempted from the tax, either generally or only in respect of interest payable to persons not resident in the Colony; and such interest shall as from the date and to the extent specified in the proclamation be exempt accordingly.

Government loans.

PART III.

ASCERTAINMENT OF CHARGEABLE INCOME

10. (1) For the purpose of ascertaining the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income, including—

Deductions allowed.

(a) except as hereinafter provided, sums payable by such person by way of interest upon any money borrowed by him, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;

(b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;

- (c) where any person engaged in any trade, business, profession or vocation has expended any sum in replacing any premises, plant or machinery used or employed in such trade, business, profession or vocation, an amount equivalent to the cost of the premises, plant or machinery replaced, after deducting from the cost such sum as shall represent the total depreciation which has been allowed by reason of wear and tear since the date of erection or purchase of such premises, plant or machinery, or, in the case of such premises, plant or machinery erected or purchased before the first day of January, 1937, since that date, and any sum realized by the sale thereof or recovered under any insurance or indemnity:

Provided that for the purposes of this paragraph and notwithstanding the definition of the term "premises" contained in section 2 of this Ordinance, and subject to the provisions of the proviso to section 12 of this Ordinance, the term "premises" means any building in which such plant or machinery was situated;

- (d) any sum expended for structural alterations to premises employed in acquiring the income and any sum expended for repairs of premises, plant or machinery employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed:

Provided that no deduction shall be made for the cost of renewal of any property which has been the subject of an allowance under section 12 of this Ordinance;

- (e) bad debts incurred in any trade, business, profession or vocation, proved to the satisfaction of the Commissioner to have become bad during the year immediately preceding the year of assessment, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Commissioner to have become bad during the said year notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said year, provided that all sums recovered during the said year on account of amounts previously written off or allowed in respect of bad or

doubtful debts shall for the purposes of this Ordinance be treated as receipts of the trade, business, profession or vocation for that year;

(f) such other deductions as may be prescribed by any rule made under this Ordinance.

(2) In ascertaining the chargeable income of an individual who is not resident in the Colony there shall be allowed a deduction of one hundred and fifty pounds—

- (a) if such individual is in receipt of a pension from a fund to which such individual contributed in pursuance of a statutory or contractual obligation;
- (b) if such individual is in receipt of a pension as the wife or child of an individual who, in pursuance of a statutory or contractual obligation, contributed to a fund or scheme in order to provide on his decease for the payment of such pension:

Provided that for ascertaining the chargeable income of an individual who is not resident in the Colony, other than an individual referred to in paragraph (a) or in paragraph (b) of this sub-section, the Governor in Council may make rules for determining—

- (a) what deductions may be allowed from the income of such individual;
- (b) the individual or classes of individuals to which any such deductions shall apply.

Any such rules shall be laid before the Legislative Council and shall come into force upon such date as the Legislative Council may, by Resolution, appoint.

(3) In ascertaining the chargeable income of any person who shall have been subject to a levy on salary imposed under the Levy on Official Salaries Ordinance, 1931, the amount of salary shall be deemed to be the amount of the salary as reduced by such levy.

(4) The Governor in Council may by rules provide for the method of calculating or estimating the deductions allowed or prescribed under this section.

// 11. For the purposes of ascertaining the chargeable income of any person no deduction shall be allowed in respect of—

- (a) domestic or private expenses;
- (b) any item of expenditure or of charge except so far as it is attributable to, and incurred for the purpose of, acquiring the income;

Sub to limit

No. XII

Income Tax

1937

- (c) subject to the provisions of this Ordinance, income carried to any reserve fund or capitalized in any way;
- (d) any loss or expense which is recoverable under any insurance, contract or indemnity;
- (e) rent of any premises or part of premises not paid for the purpose of producing the income;
- (f) any amounts paid or payable in respect of United Kingdom income tax or surtax, Kenya income tax or Empire income tax as defined in this Ordinance.

12. In ascertaining the chargeable income of any person engaged in a trade, business, profession or vocation, there shall be allowed as a deduction a reasonable amount for the wear and tear of property owned by him, including plant and machinery, arising out of the use or employment of such property in the trade, business, profession or vocation during the year immediately preceding the year of assessment:

Provided that in no case shall any allowance be made for the depreciation of buildings, or other structures of a permanent nature.

13. (1) Where the amount of a loss incurred in the year preceding any year of assessment in any trade, business, profession or vocation carried on by any person either solely or in partnership is such that it cannot be wholly set off against his income from other sources for the same year, the amount of such loss shall to the extent to which it is not allowed against his income from other sources for the same year be carried forward and shall, subject as is hereinafter provided, be set off against what would otherwise have been his chargeable income for the next five years in succession:

Provided that the amount of any such loss allowed to be set off in computing the chargeable income of any year shall not be set off in computing the chargeable income of any other year.

(2) For the purposes of this section any losses incurred during the years 1932, 1933, 1934 and 1935 shall, after deducting therefrom any profits made during those years, be deemed to have been a loss incurred in a year preceding the year of assessment commencing on the first day of January, 1937:

Provided that where any person proves to the satisfaction of the Commissioner that he is unable to produce any evidence of his profit or loss during the year 1932, the Commissioner

Allowance for wear and tear.

Allowance of trade losses.

(the above items in brackets deleted)

(the second proviso deleted)

1937

Income Tax

No. XII

shall apply the provisions of this sub-section to such person as if the figures "1932" were deleted therefrom.

(3) Nothing in this section contained shall be construed as permitting the set-off of any loss incurred in any trade, business, profession or vocation which is carried on outside the Colony.

14. In ascertaining the chargeable income of an individual who is resident in the Colony there shall be allowed a deduction of three hundred and fifty pounds.

15. In ascertaining the chargeable income of an individual who is resident in the Colony and who proves to the satisfaction of the Commissioner that he had during the year immediately preceding the year of assessment a wife or wives living with or wholly maintained by him there shall be allowed a deduction of one hundred and fifty pounds.

16. In ascertaining the chargeable income of an individual who is resident in the Colony and who proves to the satisfaction of the Commissioner that he had any child living at any time within the year preceding the year of assessment who was either under the age of sixteen or who if over the age of sixteen years at any time within that year was receiving full time instruction at any university, college, school, or other educational establishment, or was serving under articles or indentures with a view to qualifying in a trade or profession there shall be allowed a deduction of seventy-five pounds in respect of one such child, and a deduction of sixty pounds in respect of each subsequent such child:

Provided that the total deduction to be allowed under this section shall not exceed a total amount of two hundred and fifty-five pounds.

The expression "child" in this section includes a step-child, an illegitimate child, or an adopted child who was during the year preceding the year of assessment wholly maintained by the individual.

17. (1) Subject to the provisions of this section, in ascertaining the chargeable income of an individual who is resident in the Colony and who proves to the satisfaction of the Commissioner that during the year immediately preceding the year of assessment he has maintained or contributed to the maintenance of a dependent relative, there shall be allowed a deduction of the sum expended on such maintenance.

Deduction in case of residents in the Colony.

Deduction for wife.

Deduction for children.

Deduction for dependants.

Deletions in case of non-residents deleted - 11.11.37 old Act

Subs to 16(a)

(Deletion in respect of earned income deleted)

(2) The conditions to be fulfilled to entitle an individual to a deduction for a dependent relative under the provisions of this section are—

(a) that the individual at his own expense maintains, or contributes towards the maintenance of, a person being a relative of the individual or of the individual's spouse; and

(b) that the person maintained is either incapacitated by old age or infirmity from maintaining himself, or is the widowed mother (whether so incapacitated or not) of the individual or of the individual's spouse.

(3) No individual shall be allowed a deduction under the provisions of this section of a sum exceeding one hundred pounds.

(4) For the purposes of this section any sum paid by way of alimony or maintenance, under an order of a competent court made on the dissolution of a marriage, or under an agreement in writing made between the parties whose marriage has been dissolved, shall be deemed to be a sum expended on the maintenance of a dependent relative.

15 18. In ascertaining the chargeable income of any person who is resident in the Colony and who—

(a) shall have made insurance (including insurance against death by accident) on his life or on the life of his wife in any insurance company; or

(b) shall, whether as employer or employee, have contributed to the Widows' and Orphans' Pension Scheme in the Colony or to an approved scheme as defined in the Widows' and Orphans' Pension Ordinance, or to the Asiatic Widows' and Orphans' Pension Fund, or to the European Civil Service Provident Fund, or to the Asian Civil Service Provident Fund, or to any provident fund lawfully established by a local authority, or to such other public or private fund as the Governor may by order declare to be an approved fund for the purposes of this section.

there shall be allowed a deduction of the annual amount of the premium paid by him for such insurance and the annual amount of such contribution as aforesaid:

Deductions in respect of life insurance and contributions to Widows' and Orphans' Fund, etc.

Cap. 34.

Provided that no deduction shall be allowed of any contribution made to any such provident fund unless such contribution is made pursuant to a statutory or contractual obligation to a provident fund under the rules of which such contribution may not be withdrawn from the fund except upon the death of the contributor or upon the termination of his employment:

Provided further that no such deduction shall be allowed in respect of any such annual amount of premium and/or contribution beyond an amount equal to one-sixth part of the assessable income: And provided further that the total deduction to be allowed under this section shall not exceed two hundred pounds in amount.

19. In ascertaining the chargeable income of a company, or of a co-operative society registered under any law for the time being in force relating to the registration of such societies, there shall be allowed a deduction from gains or profits (which would but for the provisions of this section be chargeable to tax under this Ordinance) such sum as to the Commissioner may appear reasonable:

Deduction allowed for reserve fund.

Provided that—

(a) any such sum shall be carried to a special reserve fund which shall be maintained in cash or in readily realizable securities;

(b) any sum so transferred shall be taken into account and set off against any loss which may be incurred in any subsequent year;

(c) any sum of money withdrawn from such reserve fund for any purpose whatsoever, or charged in any way whatsoever, other than for the purpose of being set off against a loss incurred under the provisions of paragraph (b) of this section, shall be deemed to be part of the chargeable income of the year in which such sum is withdrawn or charged, as the case may be, and shall be assessable accordingly;

(d) where any company is being wound up or reconstructed, any sum in such reserve fund shall be deemed to have been distributed and shall be assessable accordingly, and the tax due in respect of such sum shall, notwithstanding anything to the contrary contained in any law for the time being in force, be a first charge on the reserve fund and on the other assets of the company.

No. XII

Income Tax

1937

Proof of
divs.

19 20. Every person who claims an allowance under this Part shall make his claim on the prescribed form. Such allowance shall be granted if the claim contains such particulars and is supported by such proof as the Commissioner may require.

PART IV.

RATE OF TAX.

Rates of tax.

20 21. (1) The tax upon the chargeable income of any person, other than a company, shall be charged at the following rates:—

- For every pound of the first £700: one shilling;
For every pound of the next £500: one shilling fifty cents;
For every pound of the next £1,500: two shillings;
For every pound of the remainder of the chargeable income: two shillings fifty cents.

*Proviso added**50 1/2 omitted.*Deduction of
tax from
dividends of
companies.

21 (2) The tax upon the chargeable income of a company shall be charged at the rate of two shillings on every pound of the chargeable income thereof.

22. (1) Every company which is registered in the Colony shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the rate paid or payable by the company on the income out of which such dividend is paid: Provided that where the tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company.

(2) Every such company shall upon payment of a dividend whether tax is deducted therefrom or not furnish each shareholder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the company has deducted or is entitled to deduct in respect of that dividend.

(3) Every company which is registered in the Colony shall upon payment of debenture interest deduct therefrom tax at the rate of two shillings on every pound of such interest and shall forthwith render an account to the Commissioner of the amount so deducted, and every such amount shall be a debt due from such company to the Government of the Colony and shall be recoverable as such.

*Proviso added.*Deduction of
tax from
debenture
interest paid
by company.*(to a person not
resident in the
Colony) omitted.*

No. XII

Income Tax

1937

(4) Every such company shall upon payment of such interest furnish each person to whom such payment is made with a certificate setting forth the amount of the interest paid to him and the amount of tax which the company has deducted from such interest.

(5) The account aforesaid shall be rendered by the manager or other principal officer of the company.

(6) Any such officer of a company who fails or neglects to render an account due or to furnish a certificate under this section shall be guilty of an offence against this Ordinance.

23 23. (1) Any tax which a company has deducted or is entitled to deduct under the last preceding section from a dividend paid to a shareholder or debenture interest paid to a debenture-holder shall, when such dividend or debenture interest is included in the chargeable income of such shareholder or debenture-holder, be set off for the purpose of collection against the tax charged on that chargeable income.

Set-off in
respect of tax
deducted.

(2) In the year of assessment commencing on the first day of January, 1937, the chargeable income of any person from any dividend, portion of dividend or debenture interest to which section 22 of this Ordinance would have applied if this Ordinance had been in force at the time of the payment of such dividend, portion of dividend or debenture interest shall be deemed to have borne tax at the rate of two shillings in the pound, and such person shall be entitled to the set-off provided by this section.

Provided, however, that in the case of the chargeable income of any person from any debenture interest, the total tax chargeable to such person for such year of assessment shall not be less than the tax which would be chargeable if such debenture interest were omitted from his chargeable income and no set-off under this section were allowed.

24 24. (1) Where any person pays mortgage interest to a person not resident in the Colony or to the agent of such person and is entitled to deduct such interest under section 10 of this Ordinance he shall upon paying the interest deduct therefrom tax at the rate of two shillings on every pound of such interest and shall forthwith render an account to the Commissioner of the amount so deducted and every such amount shall be a debt from him to the Government of the Colony and shall be recoverable as such.

Deduction of
tax from
mortgage
interest
payable by
individual.*50 1/2 omitted.*

(2) Any person who fails or neglects to render an account due under this section shall be guilty of an offence against this Ordinance.

(3) The Commissioner shall, upon receipt of any tax deducted from any mortgage interest under the provisions of this section, furnish the person who has deducted and paid the tax with a certificate setting forth the amount of tax so paid and the name of the person on whose behalf it has been paid. It shall be the duty of the person to whom a certificate has been furnished under the provisions of this section forthwith to forward such certificate to the person in whose name and on whose behalf the tax has been paid or to the recognized agent of such person.

(4) In the year of assessment commencing on the first day of January, 1937, the chargeable income of any person from any mortgage interest to which sub-section (1) of this section would have applied if this Ordinance had been in force at the time of the payment of such mortgage interest, shall be deemed to have borne tax at the rate of two shillings in the pound, and such person shall, if such mortgage interest is included in the chargeable income of such person, be entitled to set off the tax so deemed to have been paid against the tax charged on the chargeable income of such person, but so, however, that the total tax chargeable to such person for such year of assessment shall not be less than the tax which would be chargeable if such mortgage interest were omitted from his chargeable income and no set-off under this section were allowed.

Temporary residents.

25. Tax shall not be payable in respect of any income arising outside the Colony and received therein by any person who is in the Colony for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in the Colony at one or more times for a period equal in the whole to six months in the year preceding the year of assessment.

PART V.

PROVISIONS RELATING TO SPECIAL CASES.

A.—Husband and Wife.

Wife's income.

26. The income of a married woman not separated from her husband under a judicial order or written agreement shall, for the purposes of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name

of the husband and not in her name: Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total income of the husband and wife may, if necessary, be collected from the wife notwithstanding that no assessment has been made upon her.

B.—Trustees, Agents, etc.

27. A receiver appointed by the court, a trustee, guardian, curator, or committee, having the direction, control or management of any property or concern on behalf of any incapacitated person shall be assessable and chargeable to tax in like manner and to the like amount as such person would be assessable and chargeable if he were not an incapacitated person.

Chargeability of trustees, etc.

28. (1) A person not resident in the Colony (hereinafter in this section referred to as a non-resident person) shall be assessable and chargeable to tax in the name of his trustee, guardian, curator, or committee, or of any attorney, factor, agent, receiver, branch, or manager, whether such factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and to the like amount as such non-resident person would be assessable and chargeable if he were resident in the Colony and in the actual receipt of such income:

Chargeability of agent of person residing out of the Colony.

Reference to trustee subject omitted

attorney deleted

Provided that in the case of any individual who is not resident in the Colony no deduction shall be allowed under sections 14, 15, 16, 17 or 18 of this Ordinance.

A non-resident person shall be assessable and chargeable to tax in respect of any income arising whether directly or indirectly, through or from any factorship, agency, receivership, branch or management, and shall be so assessable and chargeable in the name of the factor, agent, receiver, branch or manager.

(2) Where a non-resident person carries on business with a resident person, and it appears to the Commissioner that owing to the close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the

ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

new (3) Where it appears to the Commissioner by whom the assessment is made, or to the judge or local committee by whom an appeal is heard, that the true amount of the gains or profits of any non-resident person assessable and chargeable to tax in the name of a resident person cannot in any case be readily ascertained, the Commissioner or judge if he, or a local committee if it, thinks fit, may assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is assessable and chargeable as aforesaid, and in such case the provisions of this Ordinance relating to the delivery of returns or particulars by person acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons of income to be charged:

Sub to rule 2
Provided that the amount of the percentage shall in each case be determined having regard to the nature of the business, and shall, when determined by the Commissioner, be subject to an appeal as provided by Part VIII of this Ordinance.

(4) Nothing in this section shall render a non-resident person assessable or chargeable in the name of a broker or general commission agent or other agent where such broker, general commission agent or agent is not an authorized person carrying on the regular agency of the non-resident person, or a person assessable and chargeable as if he were an agent in pursuance of sub-sections (2) and (3) of this section, in respect of gains or profits arising from sales or transactions carried out through such a broker or agent.

(5) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him assessable and chargeable in pursuance of sub-sections (2) and (3) of this section in the

name of a resident person shall not of itself make him assessable or chargeable in respect of gains or profits arising from those sales or transactions.

(6) Where a non-resident person is assessable and chargeable to tax in the name of any attorney, factor, agent, receiver, branch or manager, in respect of any gains or profits arising from the sale of goods or produce manufactured or produced out of the Colony by the non-resident person, the person in whose name the non-resident person is so assessable and chargeable may, if he thinks fit, apply to the Commissioner or, in the case of an appeal to a local committee or the judge, to have the assessment to tax in respect of those gains or profits made or amended on the basis of profits which might reasonably be expected to have been earned by a merchant, or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and on proof to the satisfaction of the Commissioner, local committee or judge of the amount of the profits on the basis aforesaid the assessment shall be made or amended accordingly.

new 29. The person who is assessable and chargeable in respect of an incapacitated person or in whose name a non-resident is assessable and chargeable, shall be answerable for all matters required to be done by virtue of this Ordinance for the assessment of the income of any person for whom he acts and for paying the tax chargeable thereon.

Acts, etc., to be done by trustees.

30. Every person who in whatever capacity is in receipt of any money or value being income arising from any of the sources mentioned in this Ordinance or belonging to any other person who is assessable and chargeable in respect thereof, or who would be so assessable and chargeable if he were resident in the Colony and not an incapacitated person, shall, whenever required to do so by any notice from the Commissioner, prepare and deliver within the period mentioned in such notice a list in the prescribed form, signed by him, containing—

Lists to be prepared by representative or agent.

- (a) a true and correct statement of all such income;
- (b) the name and address of every person to whom the same shall belong.

and the provisions of this Ordinance with respect to the failure to deliver lists or particulars in accordance with a notice from the Commissioner shall apply to any such list or particulars.

Manager of
corporate
bodies of
persons.

31. The manager or other principal officer of every corporate body of persons shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this Ordinance for the assessment of such body and payment of the tax.

Indemnifica-
tion of repre-
sentative.

32. Every person answerable under this Ordinance for the payment of tax on behalf of another person may retain out of any money coming to his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax; and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Ordinance.

Deceased
persons.

33. When any individual dies and at the time of his death such individual, although liable to pay tax, has not paid tax in respect of any year of assessment, the liability to pay such tax shall pass to his personal representative and such personal representative shall, to the extent to which the assets of the estate of such individual are acquired by him in the due and proper administration of such estate, be assessable and chargeable to the tax to which such individual would have been assessable and chargeable, and shall be answerable for doing all such acts, matters, and things as such individual, if he were alive, would be liable to do under this Ordinance.

Joint trustees.

34. Where two or more persons act in the capacity of trustees of a trust they may be charged jointly or severally with the tax with which they are chargeable, in that capacity, and shall be jointly and severally liable for payment of the same.

C.—Partnership.

Partnerships.

35. Where a trade, business, profession or vocation is carried on by two or more persons jointly—

- (1) the income of any partner from the partnership shall be deemed to be the share to which he was entitled during the year preceding the year of assessment in the income of the partnership (such income being ascertained in accordance with the provisions of this Ordinance) and shall be included in the return

of income to be made by such partner under the provisions of this Ordinance;

(2) (a) the precedent partner, that is to say, the partner who of the partners resident in the Colony—

- (i) is first named in the agreement of partnership; or
- (ii) if there be no agreement, is specified by name or initials singly or with precedence to the other partners, in the usual name of the partnership; or

- (iii) is first named in the statement made under section 5 of the Registration of Business Names Ordinance; or

- (iv) is the precedent acting partner if the partner named with precedence is not an acting partner,

shall, when required by the Commissioner, make and deliver a return of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Ordinance, and declare therein the names and addresses of the other partners in the firm together with the amount of the share of the said income to which each partner was entitled for that year;

- (b) where no partner is resident in the Colony the return shall be made and delivered by the attorney, agent, manager or factor of the partnership resident in the Colony;

- (c) the provisions of this Ordinance with respect to the failure to deliver returns or particulars in accordance with a notice from the Commissioner shall apply to any return required under this section;

- (3) the income of any non-resident partner or partners from the partnership shall be assessable in the name of the partnership or of any resident partner or of any agent of the partnership in the Colony, and the tax charged thereon shall be recoverable by all means provided in this Ordinance out of the assets of the partnership or from any partner or from any such agent.

D.—Agriculture.

Ascertaining of profits from certain agricultural undertakings.

36. (1) In this section—
 “permanent cultivation” means the cultivation of land for the purpose of producing permanent or semi-permanent crops;

“estate” means any area of land used mainly for the purpose of permanent cultivation;

“immature area” means an estate or part of an estate, first planted in any one year, in which the permanent or semi-permanent crop planted in that year is not fully mature, or not in full bearing.

(2) For the purpose of ascertaining the profits from an estate the provisions of this section shall apply in addition to, and shall be read with, sections 10, 11 and 13 of this Ordinance.

(3) The income and expenditure in connection with any immature area shall be separately considered and it shall be lawful for the Commissioner to require production of such particulars as may be necessary for that purpose.

(4) Where for any accounting period the expenditure other than capital expenditure incurred by any person on any immature area exceeds the receipts therefrom, and such excess is mainly due to the fact that the permanent or semi-permanent crop in that area, or a substantial proportion thereof, is not yet in bearing, the amount of such excess shall be allowed as a deduction from the profits of that person from the estate on which such immature area exists:

Provided that the initial cost of clearing and/or planting any such immature area shall be deemed to be capital expenditure.

37. (1) In ascertaining the chargeable income of a farmer there shall, in addition to any other deductions to which the farmer may be entitled under the provisions of this Ordinance, be allowed a deduction of any sum expended on his farm during a year preceding a year of assessment on the provision of—

- (a) dipping tanks;
- (b) new fencing;
- (c) approved measures for the prevention of soil erosion;
- (d) rotation planting of permanent or semi-permanent crops;

Special deductions allowed to farmers.

(e) measures of a permanent nature for the conservation and/or distribution of water (other than for domestic purposes) incidental to dipping tanks erected, or approved measures taken for the prevention of soil erosion, or necessary in consequence of the erection of new fencing, provided that the Commissioner is satisfied that such measures are essential to the production of the income;

(f) imported cattle, sheep, horses, and swine purchased for stud purposes, imported poultry, and such other imported live stock as the Governor in Council may prescribe.

(2) Where the income is derived from the cultivation of land for the purpose of producing any permanent or semi-permanent crop, there shall, in ascertaining the chargeable income of a farmer, be set off against his gains or profits such annual sum as to the Commissioner may seem reasonable for the purpose of redeeming the initial cost of planting and maintaining such crop up to and during its productive life and for providing for the cost of clearing and reclaiming the land on which such crop is growing when the normal productive life of such crop has ceased:

Provided that where any farmer avails himself of the provisions of this sub-section, the provisions of section 36 and of paragraph (d) of sub-section (1) of this section shall not apply to him.

(3) Where any farmer wishes to avail himself of the provisions of sub-section (2) of this section he shall notify the Commissioner in writing when rendering his first return subsequent to the first day of January, 1937, and the decision so notified shall be binding upon him in respect of all subsequent returns: Provided that the Commissioner may, for reasons which appear to him to be good and sufficient, permit any farmer who has so notified his decision to revoke such decision and to avail himself of the provisions of section 36 and of paragraph (d) of sub-section (1) of this section instead of the provisions of sub-section (2) of this section in respect of any years of assessment subsequent to the year of assessment commencing on the first day of January, 1937.

(4) For the purposes of this section the word “farmer” has the meaning assigned to it in section 38 of this Ordinance.

Option to farmers.

38. (1) Notwithstanding anything in this Ordinance contained, the provisions of this section shall apply to the determination of the chargeable income derived by any person from pastoral, agricultural or other similar operations (hereinafter referred to as a farmer).

(2) Every farmer shall be entitled to the exercise of an option whether the values of live stock and produce held by him and not disposed of at the beginning and end of each year preceding a year of assessment shall or shall not be taken into account in the determination of the chargeable income derived by him from such operations.

(3) Subject to such adjustment as to the Commissioner may seem to be fair and reasonable in respect of the value of any live stock or produce held by any farmer on the first day of January, 1936, or the date upon which he commenced farming operations, whichever date is the later, every farmer who elects not to take into account the values of such live stock and produce shall be chargeable in each year of assessment in respect of all amounts whatsoever for which live stock or produce have been disposed of by him or on his behalf during the year preceding a year of assessment:

Provided that when the Commissioner is satisfied that the sale of any stock is in the nature of a capital transaction and that the money received therefrom has been expended in purchasing stock of a different kind or on purposes essential to a change over from one type of farming to another type of farming, he may exempt the money so received and expended from being taken into account as part of the income of such farmer.

(4) Every farmer making his election as in sub-section (3) of this section provided shall furnish to the Commissioner at any time when the Commissioner so requires a statement setting out to the best of his knowledge and belief the value of the live stock and produce held by him on the date specified in that sub-section which is applicable to his case.

(5) The decision as to the basis upon which a farmer elects to be assessed shall be notified by him in writing to the Commissioner when rendering his first return subsequent to the first day of January, 1937, under this Ordinance, and the decision so notified shall be binding upon him in respect of all subsequent returns: Provided that the Commissioner

may, for reasons which appear to him to be good and sufficient, permit any farmer who has so notified his election to adopt the alternative method in respect of any years of assessment subsequent to the year of assessment commencing on the first day of January, 1937.

(6) Every farmer who elects to continue to take into account the value of his live stock and produce shall include in the return rendered by him for income tax purposes the values of all live stock and produce held by him and not disposed of at the beginning and end of each year preceding a year of assessment.

(7) The value to be placed upon such live stock (other than live stock acquired by purchase for stud purposes) shall be—

(a) in the case of live stock acquired by the farmer by purchase, either the purchase price paid or such standard value as is applicable to such live stock; and

(b) in the case of live stock acquired by the farmer otherwise than by purchase, the standard value applicable to such live stock.

(8) The standard value applicable to any class of live stock shall be such as may be prescribed by rules under this Ordinance.

(9) The value to be placed upon live stock acquired by purchase for stud purposes shall be the purchase price paid for that live stock.

(10) The value to be placed upon produce included in any return shall be such fair and reasonable value as the Commissioner may fix.

37 39. Where a non-resident person carries on in the Colony an agricultural, manufacturing or other productive undertaking and sells any product of such undertaking outside the Colony or for delivery outside the Colony, whether the contract is made within or without the Colony, the full profit arising from the sale in a wholesale market shall be deemed to be income arising in or derived from the Colony:

Provided that if it is shown that the profit has been increased through treatment of the product outside the Colony other than handling, grading, blending, sorting, packing and disposal, such increase of profit shall not be deemed to be income arising in or derived from the Colony. Where any

Profits of non-resident persons from sale of exported produce.

such produce is not sold in a wholesale market, the profit arising in the Colony shall be deemed to be not less than the profit which might have been obtained if such person had sold such produce wholesale to the best advantage.

E.—Insurance Companies.

30 40. Notwithstanding anything to the contrary contained in this Ordinance, it is hereby provided that—

- (a) in the case of an insurance company (other than a life insurance company) where the gains or profits accrue in part outside the Colony the gains or profits on which tax is payable shall be ascertained by taking the gross premiums and interest and other income received or receivable in the Colony (less any premiums returned to the insured and premiums paid on reinsurance), and deducting from the balance so arrived at a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the year preceding the year of assessment and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of the said year and from the net amount so arrived at deducting the actual claims paid or outstanding (less the amount recovered in respect thereof under reinsurance), the agency expenses in the Colony and a fair proportion of the expenses of the head office of the company;
- (b) in the case of a life insurance company, whether mutual or proprietary, the gains or profits on which tax is payable shall be the investment income less the management expenses (including commission): Provided that where such a company received premiums outside the Colony the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in the Colony bore to the total premiums received after deducting from the amount so arrived at the agency expenses in the Colony and a fair proportion of the expenses of the head office of the company:

Special provision as to certain companies and businesses.
Insurance companies other than life insurance companies.

Life insurance companies.

41. Provided that in the case of an insurance company having its head office outside the Colony, the Commissioner may, by regulation, substitute some basis other than that herein prescribed for the purpose of ascertaining the portion of the income from investments to be so charged as being income derived from business carried on in the Colony.

F.—Shipping.

41. (1) Subject to the provisions of paragraph (f) of section 8 of this Ordinance, where a non-resident person carries on the business of shipowner or charterer and any ship owned or chartered by him calls at a port in the Colony, his full profits arising from the carriage of passengers, mails, live stock or goods shipped in the Colony shall be deemed to arise in the Colony:

Profits of non-resident shipowners

Provided that this section shall not apply to goods which are brought to the Colony solely for transhipment.

(2) Where for any accounting period such person produces the certificate mentioned in sub-section (3) of this section, the profits arising in the Colony from his shipping business for such period, before deducting any allowance for depreciation, shall be a sum bearing the same ratio to the sums receivable in respect of the carriage of passengers, mails, live stock, and goods shipped in the Colony as the ratio for the said period shown by that certificate of the total profits to the total sum receivable by him in respect of the carriage of passengers, mails, live stock and goods.

(3) The certificate shall be one issued by or on behalf of any income tax authority with regard to which the Commissioner is satisfied that it computes and assesses the full profits of the non-resident person from his shipping business, on a basis not materially different from that prescribed by this Ordinance, and shall certify for any accounting period as regards such business—

- (a) the ratio of the profits, or, where there are no profits, of the loss, as computed for the purposes of income tax by that authority, without making any allowance by way of depreciation, to the total sums receivable in respect of carriage of passengers, mails, live stock or goods; and

(b) the ratio of the allowance for depreciation as computed by that authority to the said total sums receivable in respect of the carriage of passengers, mails, live stock and goods.

(4) Where at the time of assessment the provisions of sub-section (2) of this section cannot for any reason be satisfactorily applied, the profits arising in the Colony may be computed on a fair percentage of the full sum receivable on account of the carriage of passengers, mails, live stock and goods shipped in the Colony.

Provided that where any person has been assessed for any year of assessment by reference to such percentage, he shall be entitled to claim at any time within six years after the end of such year of assessment that his liability to tax for that year be recomputed on the basis provided by sub-section (2) of this section.

(5) Where the Commissioner decides that the call of a ship belonging to a particular non-resident shipowner or charterer at a port in the Colony is casual and that further calls by that ship or others in the same ownership are improbable, the provisions of this section shall not apply to the profits of such ship and no tax shall be chargeable thereon.

(6) The master of any ship owned or chartered by a non-resident person who is chargeable under the provisions of this section shall (though not to the exclusion of any other agent) be deemed the agent of such non-resident person for all the purposes of this Ordinance.

42. (1) In addition to any other powers of collection and recovery provided in this Ordinance, the Commissioner may, where the tax charged on the income of any person who carries on the business of shipowner or charterer has been in default for more than three months (whether such person is assessed directly or in the name of some other person), issue to the Commissioner of Customs or other authority by whom clearance may be granted a certificate containing the name or names of the said person and particulars of the tax in default. On receipt of such certificate, the Commissioner of Customs or other authority shall be empowered and is hereby required to refuse clearance from any port in the Colony to any ship owned wholly or partly or chartered by such person until the said tax has been paid.

Master of ship to be an agent.

Refusal of clearance where tax is in arrear.

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

42.43. Where a non-resident person carries on the business of air transport or the business of the transmission of messages by cable or by wireless telegraphy he shall be assessable to tax as if he were a non-resident shipowner as defined in section 41 of this Ordinance and the provisions of the said section shall apply *mutatis mutandis* to the computation of the profits or gains of such business.

Profits of non-resident air transport, cable, etc., undertakings.

G.—Relief in Cases of Double Taxation

43.44. (1) Any person who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income and who proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, income tax in the United Kingdom for that year in respect of the same part of his income, shall be entitled to relief from tax under this Ordinance paid or payable by him on that part of his income at a rate equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds half the appropriate rate of United Kingdom tax. If, however, the rate of tax appropriate to his case under this Ordinance exceeds the appropriate rate of United Kingdom tax he shall be entitled only to relief at a rate equal to half the appropriate rate of United Kingdom tax.

Relief in respect of United Kingdom income tax.

(2) For the purposes of this section, a certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom shall be receivable in evidence to show what is the appropriate rate of United Kingdom tax in any particular case.

(3) For the purposes of this section, the expression "rate of tax" when applied to tax paid or payable under this Ordinance means the rate determined by dividing the amount of the tax paid or payable for the year (before the deduction of the relief granted under this section) by the amount of the income in respect of which the tax paid or payable under this Ordinance has been charged for that year except that

where the income which is the subject of a claim to relief under this section is computed by reference to the provisions of section 28 of this Ordinance on an amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Commissioner.

Relief in respect of Empire income tax.

45. (1) If any person resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income, proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year in respect of the same part of his income, he shall be entitled to relief from tax in the Colony paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

(a) If the Empire rate of tax does not exceed one-half of the rate of tax appropriate to his case under this Ordinance in the Colony, the rate at which relief is to be given shall be the Empire rate of tax.

(b) In any other case the rate at which relief is to be given shall be half the rate of tax appropriate to his case under this Ordinance.

(2) If any person not resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year of assessment in respect of the same part of his income, he shall be entitled to relief from tax paid or payable by him under this Ordinance on that part of his income at a rate thereon to be determined as follows:—

(a) If the Empire rate of tax appropriate to his case does not exceed the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be one-half of the Empire rate of tax.

(b) If the Empire rate of tax appropriate to his case exceeds the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds one-half of the Empire rate of tax.

(3) For the purposes of this section, Empire income tax means any income tax charged under any law in force in any part of His Majesty's Dominions (other than the United Kingdom or this Colony), or in any place under His Majesty's protection or in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom: Provided that the legislature of that part, place or territory has provided for relief in respect of tax charged on income both in that part, place or territory and this Colony in a manner similar to that provided in this section.

(4) For the purposes of this section, the rate of tax under this Ordinance shall be computed in the manner provided by sub-section (3) of the last preceding section of this Ordinance and the Empire rate of tax shall be computed in a similar manner.

(5) Where a person is for any year of assessment resident both in the Colony and in a part, place or territory in which Empire income tax is charged, he shall for the purposes of section be deemed to be resident where during that year he resides for the longer period.

45. 46. The income of a person arising from a dividend paid by a company liable to Kenya tax, United Kingdom income tax, or Empire income tax within the meaning of section 45 of this Ordinance shall, where any such tax has been deducted therefrom, be the gross amount before making such deduction; where no such deduction has been made, the income arising shall be the amount of the dividend increased by an amount on account of such taxes corresponding to the extent to which the profits out of which the said dividend has been paid have been charged with such taxes.

Income from certain dividends to include tax thereon.

H.—General

46. 47. Any sum realized under any insurance against a loss of profits shall be taken into account in the ascertainment of any profits or income.

How certain receipts from insurance to be treated.

47. 48. (1) Where a body of persons, whether corporate or unincorporate, carries on a club or similar institution and receives from its members not less than three-fourths of its gross receipts on revenue account (including entrance fees and subscriptions), it shall not be deemed to carry on a business; but where less than three-fourths of its gross receipts are received from members, the whole of the income from trans-

Ascertainment of income of clubs, trade associations, etc.

where the income which is the subject of a claim to relief under this section is computed by reference to the provisions of section 28 of this Ordinance on an amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Commissioner.

Relief in respect of Empire income tax.

45. (1) If any person resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income, proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year in respect of the same part of his income, he shall be entitled to relief from tax in the Colony paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

- (a) If the Empire rate of tax does not exceed one-half of the rate of tax appropriate to his case under this Ordinance in the Colony, the rate at which relief is to be given shall be the Empire rate of tax.
- (b) In any other case the rate at which relief is to be given shall be half the rate of tax appropriate to his case under this Ordinance.

(2) If any person not resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year of assessment in respect of the same part of his income, he shall be entitled to relief from tax paid or payable by him under this Ordinance on that part of his income at a rate thereon to be determined as follows:—

- (a) If the Empire rate of tax appropriate to his case does not exceed the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be one-half of the Empire rate of tax.
- (b) If the Empire rate of tax appropriate to his case exceeds the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds one-half of the Empire rate of tax.

(3) For the purposes of this section, Empire income tax means any income tax charged under any law in force in any part of His Majesty's Dominions (other than the United Kingdom or this Colony), or in any place under His Majesty's protection or in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom: Provided that the legislature of that part, place or territory has provided for relief in respect of tax charged on income both in that part, place or territory and this Colony in a manner similar to that provided in this section.

(4) For the purposes of this section, the rate of tax under this Ordinance shall be computed in the manner provided by sub-section (3) of the last preceding section of this Ordinance and the Empire rate of tax shall be computed in a similar manner.

(5) Where a person is for any year of assessment resident both in the Colony and in a part, place or territory in which Empire income tax is charged, he shall for the purposes of section be deemed to be resident where during that year he resides for the longer period.

45 46. The income of a person arising from a dividend paid by a company liable to Kenya tax, United Kingdom income tax, or Empire income tax within the meaning of section 45 of this Ordinance shall, where any such tax has been deducted therefrom, be the gross amount before making such deduction; where no such deduction has been made, the income arising shall be the amount of the dividend increased by an amount on account of such taxes corresponding to the extent to which the profits out of which the said dividend has been paid have been charged with such taxes.

Income from certain dividends to include tax thereon.

H.—General

46 47. Any sum realized under any insurance against a loss of profits shall be taken into account in the ascertainment of any profits or income.

How certain receipts from insurance to be treated.

47 48. (1) Where a body of persons, whether corporate or unincorporate, carries on a club or similar institution and receives from its members not less than three-fourths of its gross receipts on revenue account (including entrance fees and subscriptions), it shall not be deemed to carry on a business; but where less than three-fourths of its gross receipts are received from members, the whole of the income from trans-

Ascertainment of income of clubs, trade associations, etc.

As to be included

actions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and the body of persons shall be chargeable either in respect of the profits therefrom, or in respect of the income which would be assessable if it were not deemed to carry on a business, whichever is the greater.

(2) In this section, "members" in relation to a body of persons means those persons who are entitled to vote at a general meeting of the body at which effective control is exercised over its affairs.

(3) Nothing in this section shall operate to annul or reduce any exemption granted in section 8 of this Ordinance.

49. Where it appears to the Commissioner that with a view to the avoidance or reduction of tax a company controlled by not more than five persons has not distributed to its shareholders as dividend profits made in any period ending after the first day of January, 1936, which could be distributed without detriment to the company's existing business, he may treat any such undistributed profits as distributed, and the persons concerned shall be assessable accordingly.

50. (1) Where the Commissioner is of opinion that any transaction which reduces or would reduce the amount of tax payable, by any person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the persons concerned shall be assessable accordingly.

In this section "disposition" includes any trust, grant, covenant, agreement or arrangement.

(2) Nothing in this section or in section 49 contained shall prevent the decision of the Commissioner in the exercise of any discretion given to him by this section from being questioned in an appeal against an assessment in accordance with Part VIII.

PART VI

GENERAL POWERS OF COMMISSIONER

51. (1) It shall be the duty of every person chargeable with tax to give notice to the Commissioner within three months after the commencement of any year of assessment that he is so chargeable:

Provided that for the year of assessment commencing on the first day of January, 1937, such notice shall be given on or before the thirtieth day of June, 1937.

Notice of chargeability and returns.

Commissioner may disregard certain transactions and dispositions.

Certain undistributed profits to be treated as distributed and certain transactions and dispositions to be disregarded.

(Law. Hours (2) + (3) added)

NW

Hours 49 + 50 (1) & the new Bill added.

(2) The Commissioner may by notice in writing require any person to furnish him within a reasonable time, not being less than one month, with a return of income and such particulars as may be required for the purpose of this Ordinance with respect to the income for which such person is chargeable:

Provided that any person who leaves the Colony before the date by which the Commissioner has required such return and such particulars to be furnished, shall submit such return and such particulars within twelve months from the date of his leaving the Colony or within one month after his return to the Colony, whichever is the earlier.

(3) Any person who fails or neglects to comply with any of the provisions of this section shall be guilty of an offence against this Ordinance.

(4) Where any person leaves the Colony before the thirty-first day of March in any year of assessment or in the case of the year of assessment commencing on the first day of January, 1937, before the thirtieth day of June, 1937, and has not given to the Commissioner the notice required by this section, such person shall give such notice within thirty days after the date of the return of such person to the Colony.

52. The Commissioner may give notice in writing to any person when and as often as he thinks necessary requiring him to furnish within the time limited by such notice fuller or further returns respecting any matter of which a return is required or prescribed by this Ordinance.

53. For the purpose of obtaining full information in respect of any person's income the Commissioner may give notice to such person requiring him within the time limited by such notice, which time shall not be less than thirty days from the date of such notice, to complete and deliver to the Commissioner a prescribed return and/or to attend personally before him and to produce for examination any books, documents, accounts, and returns which the Commissioner may deem necessary.

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

Commissioner may call for further returns.

Power to call for returns, books, etc.

Returns to be deemed to be furnished by due authority.

NW

NW

NW

Books of account.

55. (1) If a person chargeable with tax fails or refuses to keep books or accounts which, in the opinion of the Commissioner, are adequate for the purposes of income tax, the Commissioner may by notice in writing require him to keep such records, books and accounts in such language as he may in the said notice prescribe.

(2) Any person who after receipt of a notice under subsection (1) of this section fails to comply with its provisions shall be guilty of an offence against this Ordinance.

Official information and official secrecy.

56. The Commissioner may require any officer in the employment of the Government of the Colony, or the Kenya and Uganda Railways and Harbours Services, or any local authority or other public body to supply such particulars as may be required for the purposes of this Ordinance and which may be in the possession of such officer:

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

Obligations of employers.

57. (1) Every employer when required to do so by notice from the Commissioner shall, within the time limited by the notice, prepare and deliver for any year a return containing—

- (a) the names and places of residence of all persons employed by him; and
- (b) the payments and allowances made to those persons in respect of that employment, *

and the provisions of this Ordinance with respect to the failure to deliver returns or particulars in accordance with a notice from the Commissioner shall apply to any such return.

(2) Where the employer is a body of persons the manager or other principal officer shall be deemed to be the employer for the purposes of this section, and any director of a company or person engaged in the management of a company shall be deemed to be a person employed.

Returns to be furnished of income received on account of, or paid to, other persons.

58. Where any person in any capacity whatever—

- (a) receives any profits or income to which this Ordinance applies which belongs to some other person, or

(b) pays to some other person, or to his order, any such profits or income,

the Commissioner may give notice to such first-named person requiring him to furnish within the time limited by such notice a return containing—

- (i) a true and correct statement of all such profits and income; and
- (ii) the name and address of every person to whom the same belongs.

59. The Commissioner may give notice in writing to any person who is the occupier of any land and improvements thereon requiring him to furnish within the time limited by such notice a return containing—

- (a) the name and address of the owner of such land and improvements; and
- (b) a true and correct statement of the rent payable and any other consideration passing therefor.

60. The Commissioner may give notice in writing to any person requiring him within the time limited by such notice to furnish a return containing the name of every lodger or inmate who is at the date of the notice resident in his house, hotel, or institution, and has been so resident, except for temporary absences, throughout the preceding three months.

61. (1) Every notice to be given by the Commissioner under this Ordinance shall be signed by the Commissioner or by some person or persons from time to time appointed by him for that purpose, and every such notice shall be valid if the signature of the Commissioner or of such person or persons is duly printed, stamped or written thereon, provided that any notice in writing under this Ordinance to any person requiring him to furnish particulars to the Commissioner, or any notice under this Ordinance requiring the attendance of any person or witness before the Commissioner, shall be personally signed by the Commissioner or by any person duly authorized by him.

(2) A signature attached to any notice and purporting to be the signature of any person so appointed shall be taken to be the signature of that person until the contrary be shown.

Occupiers to furnish returns of rent payable.

Return of lodgers and inmates.

Signature of notices.

(words deleted)

(phrase deleted)

Service
of notices.

62. Notice may be served on a person either personally or by being sent through registered post to his last known business or private address, and shall in the latter case be deemed to have been served not later than the seventh day succeeding the day on which the notice would have been received in the ordinary course by post, and in proving such notice it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

PART VII.
ASSESSMENTS.

Commissioner
to make
assessment.

63. (1) The Commissioner shall proceed to assess every person chargeable with tax as soon as may be after the expiration of the time allowed to such person for the delivery of his return.

(2) Where a person has delivered a return, the Commissioner may—

- (a) accept the return and make an assessment accordingly; or
- (b) if he has reasonable grounds for thinking that the return is not a true and correct return, refuse to accept the return and, to the best of his judgment, determine the amount of the chargeable income of the person and assess him accordingly.

(3) Where a person has not delivered a return and the Commissioner is of the opinion that such person is liable to tax, he may, according to the best of his judgment, determine the amount of the chargeable income of such person, and assess him accordingly, but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

Additional
assessments.

64. Where it appears to the Commissioner that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Commissioner may, within the year of assessment or within six years after the expiration thereof assess such person at such amount or additional amount as, according to his judgment, ought to have been charged, and the provisions of this Ordinance as to notice of assessment, appeal and other proceedings under this Ordinance shall apply to such assessment or additional assessment and to the tax charged thereunder.

65. (1) The Commissioner shall as soon as possible prepare lists of persons assessed to tax.

Lists of
persons
assessed.

(2) Such lists (herein called the assessment lists) shall contain the names and addresses of the persons assessed to tax, the amount of the chargeable income of each person, the amount of tax payable by him, and such other particulars as may be prescribed.

66. (1) The Commissioner shall cause to be served personally on or sent by registered post to each person whose name appears on the assessment lists a notice addressed to him at his usual place of abode or business stating the amount of his chargeable income and the amount of tax payable by him, and informing him of his rights under the next sub-section.

Power of
Commissioner
to revise
assessment
in case of
objection

(2) If any person disputes the assessment he may apply to the Commissioner, by notice of objection in writing, to review and to revise the assessment made upon him. Such application shall state precisely the grounds of his objection to the assessment and shall be made within thirty days from the date of the service of the notice of assessment: Provided that the Commissioner, upon being satisfied that owing to absence from the Colony, sickness or other reasonable cause, the person disputing the assessment was prevented from making the application within such period, shall extend the period as may be reasonable in the circumstances.

(3) On receipt of the notice of objection referred to in sub-section (2) of this section, the Commissioner may require the person giving the notice of objection to furnish such particulars as the Commissioner may deem necessary with respect to the income of the person assessed and to produce all books or other documents in his custody or under his control relating to such income, and may summon any person who, he thinks, is able to give evidence respecting the assessment to attend before him, and may examine such person (except the clerk, agent, servant or other person confidentially employed in the affairs of the person to be charged) on oath or otherwise.

(4) In the event of any person assessed, who has objected to an assessment made upon him, agreeing with the Commissioner as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such person:

to a judge (deleted)

Provided always that in the event of any person who, under sub-section (2) of this section, has applied to the Commissioner for a revision of the assessment made upon him failing to agree with the Commissioner as to the amount at which he is liable to be assessed his right of appeal under the provisions of this Ordinance, against the assessment made upon him, shall remain unimpaired.

Errors, etc.,
in assessment
and notices.

67. (1) No assessment, warrant or other proceedings purporting to be made in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance or any Ordinance amending the same, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

- (i) the name or surname of a person liable; or
- (ii) the description of any income; or
- (iii) the amount of tax charged;

(b) by reason of any variance between the assessment and the notice thereof;

Provided that in case of assessment the notice thereof shall be duly served on the person intended to be charged and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

PART VIII.

APPEALS.

Establishment of local committees.

68. (1) The Governor may, by notice in the Gazette, appoint for any area specified in such notice a local committee consisting of a president and not more than three other persons, selected by the Governor, for the purpose of hearing and determining appeals in accordance with the provisions of section 69 of this Ordinance.

NW

(2) Every member of a local committee shall hold office during the Governor's pleasure.

(3) The Governor may, without assigning any reason, revoke the appointment of any member of a local committee, and he may appoint new members whenever necessary.

(4) Three members of a local committee shall form a quorum for the purpose of carrying out all or any of the powers conferred upon a local committee by this Ordinance or by any rules made thereunder.

(5) In the unavoidable absence of the president from any meeting the members present shall elect a president for the meeting.

(6) The members of a local committee shall be entitled to receive such subsistence and travelling allowances as the Governor may determine.

(7) The members of a local committee shall not be personally liable for any act or default of such local committee, done or omitted to be done in good faith in the course of the operations of the committee.

(8) The Governor in Council may make rules governing appeals to a local committee, and without prejudice to the generality of the foregoing, may make rules—

- (a) prescribing the manner in which an appeal shall be made to a local committee and the fees to be paid in respect of any such appeal;
- (b) prescribing the procedure to be adopted by a local committee in hearing an appeal and the records to be kept by such committee;
- (c) prescribing the manner in which any such committee shall be convened and the places where and the times at which a local committee shall hold sittings;
- (d) prescribing a scale of costs; and
- (e) generally for the better carrying out of the provisions of this Part relating to local committees.

69. (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioner in the manner provided in sub-section (4) of section 66 of this Ordinance may, upon giving notice in writing to the Commissioner within thirty days after the date of service upon him of notice of the refusal of the Commissioner to amend the assessment as desired, appeal against such assessment to a local committee appointed for the area in which he resides:

Appeals to local committees.

NW

Provided that notwithstanding the lapse of such period of thirty days, any person may appeal against the said assessment if he shows to the satisfaction of the local committee

that, owing to absence from the Colony, sickness or other reasonable cause he was prevented from giving notice of appeal within such period, and that there has been no unreasonable delay on his part.

(2) If the local committee is satisfied that the appellant is overcharged it may reduce the amount of assessment by the amount of the overcharge, and if it is satisfied that the appellant is undercharged it may increase the amount of the assessment by the amount of the undercharge.

(3) Every person appealing shall appear before the local committee either in person or by agent on the day and at the time fixed for the hearing of the appeal:

Provided always that if it be proved to the satisfaction of the local committee that owing to absence from the Colony, sickness or other reasonable cause, any person is prevented from attending at the hearing of his appeal on the day and at the time fixed for that purpose, the local committee may postpone the hearing of such appeal for such reasonable time as it thinks necessary for the attendance of the appellant.

(4) All appeals to the local committee shall be heard *in camera*.

(5) In the case of a person who has been assessed to pay a total tax of an amount not exceeding two hundred shillings no appeal shall lie from the decision of the local committee under the provisions of section 70 in respect of the whole or any part of such tax, provided that such person has certified in writing on the notice under sub-section (1) of this section that he desires the decision of the local committee to be final and conclusive.

70. (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioner in the manner provided in sub-section (4) of section 66 of this Ordinance, or, subject to the provisions of sub-section (5) of section 69, having appealed to a local committee, is aggrieved by the decision of such committee, may appeal against the assessment to a judge upon giving notice in writing to the Commissioner within thirty days after the date of service upon him of notice of the refusal of the Commissioner to amend the assessment as desired or within thirty days after the date of the decision of the local committee as the case may be:

Appeals to
Supreme Court.

Provided that, notwithstanding the lapse of such period of thirty days, any person may appeal against the said assessment if he shows to the satisfaction of the judge that, owing to absence from the Colony, sickness or other reasonable cause he was prevented from giving notice of appeal within such period, and that there has been no unreasonable delay on his part.

(2) Every person appealing shall appear before the judge either in person or by advocate on the day and at the time fixed for the hearing of the appeal:

Provided always that if it be proved to the satisfaction of the judge that owing to absence from the Colony, sickness or other reasonable cause, any person is prevented from attending at the hearing of his appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of such appeal for such reasonable time as he thinks necessary for the attendance of the appellant.

(3) Seven clear days' notice shall, unless rules made hereunder otherwise provide, be given to the Commissioner of the date fixed for the hearing of the appeal.

(4) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(5) If the judge is satisfied that the appellant is overcharged he may reduce the amount of the assessment by the amount of the overcharge, and if he is satisfied that the appellant is undercharged he may increase the amount of the assessment by the amount of the undercharge.

(6) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by the Commissioner upon the appellant.

(7) All appeals shall be heard *in camera*, unless the judge shall, on the application of the appellant, otherwise direct.

(8) The costs of the appeal shall be in the discretion of the judge hearing the appeal and shall be a sum fixed by the Registrar of the Supreme Court.

(9) No appeal shall lie from the decision of a judge except on a question of law or of mixed law and fact.

(10) Notwithstanding that an appeal from the decision of the judge has been lodged, tax shall be assessed in accordance

(work omitted)

Now

Subs. 1/1/37

with the decision of the judge: Provided that if the amount of the assessment is altered by the order or judgment of the Court of Appeal or Privy Council, then—

- (a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the court of appeal may order; or
- (b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax, except that no penalty shall be due on such arrears under section 76 of this Ordinance.

(11) The Commissioner may, subject to the provisions of sub-section (5) of section 69, if he is dissatisfied with the decision of a local committee, appeal against the decision to a judge upon giving notice in writing to the other party to the first appeal within thirty days after the date of such decision and the provisions of this section so far as they are applicable shall apply to any such appeal by the Commissioner.

70 71. Where no valid objection or appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the chargeable income assessed thereby, or where the amount of the chargeable income has been agreed to under sub-section (4) of section 66 of this Ordinance, or where the amount of such chargeable income has been determined on objection or appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such chargeable income:

Provided that nothing in this Part shall prevent the Commissioner from making any refund under the provisions of section 80 of this Ordinance or any assessment or additional assessment for any year of assessment which does not involve reopening any matter which has been determined on appeal for the year.

72. The Rules Committee established under section 83 of the Civil Procedure Ordinance, 1924, may make rules governing appeals under this Part (other than appeals to a local committee) and providing for the method of tendering evidence and appointing places for the hearing of such appeals and prescribing the fees to be paid on such appeals.

Assessments or amended assessments to be final.

Power to make rules.
No. 3 of 1924.

PART IX

SPECIAL PROVISIONS RELATING TO PERSONS ABOUT TO LEAVE THE COLONY PERMANENTLY

78. (1) If in any particular case the Commissioner has reason to believe that a person who has been assessed to tax may leave the Colony permanently before such tax becomes payable under the provisions of section 75 or section 77 of this Ordinance without having paid such tax he may by notice in writing to such person demand payment of such tax within a time to be limited in such notice. Such tax shall thereupon be payable at the expiration of the time so limited and shall in default of payment unless security for payment thereof be given to the satisfaction of the Commissioner be recoverable forthwith in the manner prescribed by section 79 of this Ordinance.

Payment of tax by persons about to leave the Colony permanently.

(2) If in any particular case the Commissioner has reason to believe that tax upon any chargeable income may not eventually be recovered he may at any time and as the case may require—

- (a) forthwith by notice in writing require any person to make a return and to furnish particulars of any such income within a time to be specified in such notice;
- (b) make an assessment upon such person in the amount of the income returned or if default is made in making such return or the Commissioner is dissatisfied with such return in such amount as the Commissioner may think reasonable;
- (c) by notice in writing to the person assessed require that security for the payment of the tax assessed be forthwith given to his satisfaction.

(4) Notice of any assessment made in accordance with the provisions of sub-section (2) of this section shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of sub-section (2) of this section) shall be payable on demand made in writing under the hand of the Commissioner and shall in default of payment unless security for the payment thereof be given to the satisfaction of the Commissioner be recoverable forthwith in the manner prescribed by section 79 of this Ordinance.

Any person who has paid the tax in accordance with a demand made by the Commissioner or who has given security for such payment under sub-section (2) of this section shall have the rights of objection and appeal conferred by sections 66, 69 and 79 of this Ordinance and the amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.

(5) The provisions of sub-section (2) of this section shall not affect the power conferred upon the Commissioner by section 64 of this Ordinance.

PART X

PAYMENT OF TAX

Procedure in cases where objection or appeal is pending.

71 74. Collection of tax shall in cases where notice of an objection or an appeal has been given remain in abeyance until such objection or appeal is determined:

Provided that the Commissioner may in any such case enforce payment of that portion of the tax (if any) which is not in dispute.

Time within which payment is to be made.

72 75. (1) Subject to the provisions of sub-section (2) of this section tax shall be payable within ninety days after the service of a notice of assessment under section 66 of this Ordinance or by the thirtieth day of September in the year of assessment whichever date is the later.

(2) (a) Any person who leaves the Colony before the thirtieth day of September in any year of assessment and who at the time of his departure has not been assessed for that year of assessment shall pay the tax for that year of assessment within ninety days after the date of his return to the Colony or within ninety days after the date of the service of a notice of assessment under section 66 of this Ordinance whichever date is the later.

(b) Any person who leaves the Colony before the thirtieth day of September in any year of assessment and who at the time of his departure has been assessed for that year of assessment but has not paid the tax for that year of assessment shall pay the tax for that year of assessment within ninety days after the date of his return to the Colony.

(3) For the year of assessment commencing on the first day of January, 1937, sub-section (1) and sub-section (2) of this section shall be read as if the word "November" were substituted for the word "September".

Subs to the Act

73 76. (1) Subject to the provisions of sub-section (2) of this section if any tax is not paid within the period prescribed in section 75 of this Ordinance—

Penalty for non-payment of tax; and enforcement of payment.

(a) a sum equal to twenty per centum of the amount of the tax payable shall be added thereto, and the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;

(b) the Commissioner shall serve a demand note upon the person assessed, and if payment is not made within thirty days from the date of the service of such demand note, the Commissioner may proceed to enforce payment as hereafter provided;

(c) a penalty imposed under this section shall not be deemed to be part of the tax paid for the purposes of claiming relief under any of the provisions of this Ordinance.

(2) The Commissioner may remit the whole or any part of the penalty under sub-section (1) of this section where he is satisfied that the imposition thereof would in the circumstances cause hardship or be inequitable, or for any other good cause shown.

74 77. Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of an appeal, the tax outstanding under the assessment as determined on such objection or appeal, as the case may be, shall be payable within the time specified in section 75 of this Ordinance or within thirty days from the service on the person assessed of the notification of the tax payable, whichever date is the later, and if such tax is not paid within such period the provisions of the last preceding section shall apply.

Collection of tax after determination of objection or appeal.

75 78. (1) Where any individual chargeable with tax for any year of assessment has paid hut tax or poll tax under the Native Hut and Poll Tax Ordinance, 1934, Northern Frontier poll tax under the Northern Frontier Poll Tax Ordinance, 1930, or non-native poll tax under the Non-Native Poll Tax Ordinance, 1936, for the same year of assessment, a deduction shall be made from the tax payable by him under this Ordinance for the same year of assessment of the amount so paid as hut tax, poll tax, Northern Frontier poll tax or non-native poll tax, as the case may be: Provided that no such deduction shall be allowed unless the receipt

Set-off of poll tax against tax due. No. 40 of 1934. No. 53 of 1930. No. 50 of 1936.

for the hut tax, poll tax, Northern Frontier poll tax or non-native poll tax is surrendered at the time of payment of the tax due under this Ordinance.

(2) No deduction in respect of payment of non-native poll tax shall be allowed under this section to an amount in excess of the amount of non-native poll tax fixed in section 3 of the Non-Native Poll Tax Ordinance, 1936.

No. 50 of 1936.

(3) The receipt of the Commissioner showing that non-native poll tax has been deducted from a payment of tax due under this Ordinance shall be deemed to be a receipt for payment of non-native poll tax for the purposes of section 12 of the Non-Native Poll Tax Ordinance, 1936.

No. 50 of 1936.

Suits for tax by Commissioner.

79. (1) Tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner in his official name with full costs of suit from the person charged therewith as a debt due to the Government of the Colony.

(2) The Commissioner may appear personally or by an advocate in any suit instituted under this section or on any appeal under this Ordinance.

Repayment of tax.

80. (1) If it be proved to the satisfaction of the Commissioner that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within six years from the end of the year of assessment to which the claim relates. The Commissioner shall give a certificate of the amount to be repaid, and upon the receipt of the certificate the Treasurer shall cause repayment to be made in conformity therewith.

(2) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any year of assessment as regards which that person has failed or neglected to deliver a return or has been assessed in a sum in excess of the amount contained in his return, provided that he has received notice of the assessment made upon him for that year, unless it is proved to the satisfaction of the Commissioner that such failure or neglect to deliver a true and correct return did not proceed from any fraud or wilful act or omission on the part of that person.

(3) Any person who is aggrieved by the decision of the Commissioner as to the amount to be repaid under this section shall have the same right to appeal against such decision as if he were aggrieved by an assessment made upon him.

81. All returns, additional information and resulting correspondence and payment of tax under the provisions of this Ordinance may be sent free of postage to the Commissioner in envelopes marked "Income Tax".

Free postage.

PART XI

OFFENCES AND PENALTIES

82. Any person guilty of an offence against this Ordinance or any person who contravenes or fails to comply with any of the provisions of this Ordinance or of any rules made thereunder, for which no other penalty is specifically provided, shall be liable on summary conviction before a magistrate of the first or second class to a fine not exceeding fifty pounds, and in default of payment to imprisonment for any term not exceeding three months.

Penalties for offences.

83. Every person who—

- (a) fails to comply with the requirements of a notice given to him under this Ordinance; or
(b) without sufficient cause fails to attend in answer to a notice or summons issued to him under this Ordinance or having attended fails to answer any question lawfully put to him,

Penalty for failure to attend on summons, etc.

shall be guilty of an offence and shall be liable on summary conviction before a magistrate of the first or second class to a fine not exceeding fifty pounds, and in default of payment to imprisonment for a term not exceeding three months.

84. (1) Every person who without reasonable excuse—
(a) makes an incorrect return by omitting or understating any income of which he is required by this Ordinance to make a return; or

Penalty for making incorrect returns, etc.

- (b) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership,

shall be guilty of an offence and shall on summary conviction by a magistrate of the first or second class be liable to a fine not exceeding one hundred pounds and double the amount of tax which has been undercharged in consequence of such

(words deleted)

(b) deleted

incorrect return, or information, or would have been so, or undercharged if the return or information had been accepted as correct.

(2) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made in the year of assessment in respect of or during which the offence was committed or within three years after the expiration thereof.

(3) The Commissioner may compound any offence under this section, and may before judgment stay or compound any proceedings thereunder.

Penal provisions relating to fraud, etc.

85. (1) Any person who wilfully with intent to evade or to assist any other person to evade tax—

- (a) omits from a return made under this Ordinance any income which should be included; or
- (b) makes any false statement or entry in any return made under this Ordinance; or
- (c) gives any false answer whether verbally or in writing to any question or request for information asked or made in accordance with the provisions of this Ordinance; or
- (d) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or records; or
- (e) makes use of any fraud, art, or contrivance, whatever or authorizes the use of any such fraud, art or contrivance.

shall be guilty of an offence, and shall for each such offence be liable on summary conviction by a magistrate of the first or second class to a fine not exceeding two hundred pounds and treble the amount of tax for which he is liable under this Ordinance for the year of assessment in respect of or during which the offence was committed, or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

(2) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder.

(c) + (d) deleted

83. The institution of proceedings for, or the imposition of a penalty, fine, or term of imprisonment under this Ordinance shall not relieve any person from liability to payment of any tax for which he is or may be liable.

84. No prosecution in respect of an offence under section 82, section 83, section 84 or section 85 of this Ordinance may be commenced except at the instance of or with the sanction of the Commissioner.

85. The provisions of this Ordinance shall not affect any criminal proceedings under any other Ordinance or law for the time being in force in the Colony.

86. The Governor in Council may from time to time make rules generally for carrying out the provisions of this Ordinance and may, in particular, by those rules provide—

- (a) for the form of returns, claims, statements and notices under this Ordinance;
- (b) for the deduction and payment of tax at the source in respect of emoluments and pensions payable out of the revenue of the Colony or from the funds of the Kenya and Uganda Railways and Harbours Services;
- (c) for assessing the amount to be taken as the annual value of land and improvements thereon occupied rent free by persons in the public service of the Colony or of the Kenya and Uganda Railways and Harbours Services;
- (d) for any such matters as are authorized by this Ordinance to be prescribed.

80. The Governor in Council may exempt any person or class of persons from all or any of the provisions of this Ordinance on the ground of poverty, hardship, or on any ground which to him may seem sufficient.

Passed in the Legislative Council the twenty-eighth day of April, in the year of our Lord one thousand nine hundred and thirty-seven.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

Acting Clerk to the Legislative Council.

Tax to be payable notwithstanding any proceedings for penalties, etc. Prosecution to be with the sanction of the Commissioner.

Savings for criminal proceedings.

Rules.

Power of Governor in Council to exempt persons.

Refund Clause deleted



COLONY AND PROTECTORATE OF KENYA

**Report of the Select Committee of Legislative
Council on the Provisions of a Bill to Impose
a Tax upon Incomes and to Regulate the
Collection thereof**

1937

**PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER
NAIROBI KENYA COLONY**

**Report of the Select Committee of Legislative Council
Appointed to Consider and Report upon the Provisions
of a Bill to Impose upon Incomes and to Regulate
the Collection thereof**

YOUR EXCELLENCY,

On the 8th day of March, 1937, we were appointed a Select Committee to consider and report upon a Bill to impose a tax upon incomes and to regulate the collection thereof.

2. An announcement was made in Legislative Council to the effect that the Select Committee would hear witnesses up to and including the 31st March, but that memoranda should, if possible, be submitted by the 22nd of March. This announcement was repeated in the local press and in newspapers circulating up-country.

We held our first meeting on the 10th March and subsequently met on thirteen occasions. Many memoranda were received and nineteen witnesses were heard. We did not have the advantage of hearing witnesses, or considering memoranda, from representative mining interests.

3. A full list of the amendments which we recommend are set out in the annexed Schedule, but those affecting changes in principle are dealt with *seriatim* in this Report.

4. We may mention that the copies of the Report of the Income Tax Codification Committee which the drafting committee had asked should be obtained from the Crown Agents had not been received at the time we concluded this Report, and, if copies had not been obtained from a private source locally, we would have been seriously handicapped in our deliberations.

Clause 5.—At a very late stage in our deliberations we were informed that the Secretary of State had drawn the attention of the Government to adverse criticism offered by the Joint East African Board with regard to the provision of clause 5 (b) relating to passage allowances. The Secretary of State, on the information before him, did not view with favour the proposal to levy income tax on passage allowances and required further supporting arguments before he could agree to the inclusion of this provision in the Bill.

**Report of the Select Committee of Legislative Council
Appointed to Consider and Report upon the Provisions
of a Bill to Impose upon Incomes and to Regulate
the Collection thereof**

YOUR EXCELLENCY,

On the 8th day of March, 1937, we were appointed a Select Committee to consider and report upon a Bill to impose a tax upon incomes and to regulate the collection thereof.

2. An announcement was made in Legislative Council to the effect that the Select Committee would hear witnesses up to and including the 31st March, but that memoranda should, if possible, be submitted by the 22nd of March. This announcement was repeated in the local press and in newspapers circulating up-country.

We held our first meeting on the 10th March and subsequently met on thirteen occasions. Many memoranda were received and nineteen witnesses were heard. We did not have the advantage of hearing witnesses, or considering memoranda, from representative mining interests.

3. A full list of the amendments which we recommend are set out in the annexed Schedule, but those affecting changes in principle are dealt with seriatim in this Report.

4. We may mention that the copies of the Report of the Income Tax Codification Committee which the drafting committee had asked should be obtained from the Crown Agents had not been received at the time we concluded this Report, and, if copies had not been obtained from a private source locally, we would have been seriously handicapped in our deliberations.

Clause 5.—At a very late stage in our deliberations we were informed that the Secretary of State had drawn the attention of the Government to adverse criticism offered by the Joint East African Board with regard to the provision of clause 5 (b) relating to passage allowances. The Secretary of State, on the information before him, did not view with favour the proposal to levy income tax on passage allowances and required further supporting arguments before he could agree to the inclusion of this provision in the Bill.

We understand that this provision was not inserted with the object of increasing the yield from income tax, but rather in order to place all taxpayers deriving income from the Colony on an equal footing. So long as this principle is maintained we should raise no objection to an alternative which would exclude passage allowances from the scope of the Bill but we have not been able to find any comprehensive alternative solution equitable alike to the taxpayer who receives a passage allowance and to one who is compelled to make his own arrangements with regard to overseas leave.

Clause 10.—Doubts were expressed to us as to whether under the provisions of this clause, rates on immovable property and insurance, would be regarded as an outgoing or expense, and thus be deductible as a charge incurred in the production of the income.

We have no doubt that the provisions of clause 10 include rates on immovable property and insurance, as an outgoing or expense. Should any difficulty arise as to the interpretation of the clause, power exists under paragraph (f) of clause 10 (1) to make rules to clarify the position.

Paragraph (d) of clause 10 (1) refers, *inter alia*, to any sum expended for repair of premises. We recommend that the word "premises" should be defined so as to make it clear that the term includes dwelling houses.

With regard to the replacement of plant and machinery, we recommend that where plant or machinery is replaced, the provisions of paragraph (c) of the clause should apply in like manner to buildings or works which are incidental thereto. The applicant for the allowance will, under our recommendation, have to satisfy the Commissioner that such buildings or works are essentially incidental to the plant or machinery replaced. We also recommend that the clause should not be limited to the replacement of machinery "which has become obsolete", to use the expression in the draft clause. Whether a machine has become obsolete or not is, of course, a question of fact, but we are of the opinion that many cases may arise where, in order to compete successfully in a highly competitive world market, it is absolutely essential to replace a machine although it has not, strictly speaking, become obsolete. We were strongly urged to provide for depreciation on buildings, but we came to the conclusion that such a course would be without precedent and that, in view of the fact that the replacement provisions relating to plant and machinery, would,

if our recommendation is adopted, apply to buildings incidental thereto, the case of industrial organizations would be met.

Clause 13.—After a great deal of consideration and discussion we finally agreed to recommend that the year 1932 should be included in the provisions of sub-clause (2) of this clause. It must be realised, however, that the provisions of this sub-clause are mandatory in that, if it is desired to take into account losses incurred during these years, it will be necessary for the claimant to produce his books for the full period. In other words, except in the case of a claimant who has commenced his trade, business, profession or vocation in a year subsequent to 1932, a person who has failed to keep accounts from 1932 onwards will be unable to claim the benefits of the clause.

The Treasurer invited attention to the possible dangers which might arise from a further extension of the period allowed for calculating net losses under this clause. From the point of view of the Crown, examination of accounts for an additional year would naturally impose an extra volume of work on the staff engaged in the administration of the Ordinance, but in his opinion this was of little importance as compared with the injustice which might be inflicted on the taxpayer. He viewed with considerable apprehension the possibility that persons seeking relief under this Clause would be debarred from obtaining it by reasons of their inability to produce satisfactory evidence of income and expenditure covering the whole period from 1932 onwards, and expressed the view that, although Graduated Poll Tax Returns might prove of some assistance in this regard, the returns were not designed to supply the detailed information requisite for income tax purposes. As, however, the unofficial members of the Committee were of the opinion that on balance the suggested amendment would operate to the benefit of the taxpayer, the Treasurer did not feel called upon to press his objections.

The position of a company which, owing to losses, has to reduce its capital, was raised in relation to this clause.

It was suggested that, as the losses may have been written off and consequently no longer appear in the balance sheet, they would not be allowed to be set off against subsequent profits. In our opinion this would not be the case. Provided the Commissioner is satisfied that the losses have

been actually incurred and have at one time appeared in the profit and loss account then, notwithstanding their absence from the balance sheet, they may, under the provisions of the Bill, be taken into account.

A further point raised on this clause was whether an individual who had converted his business into a company would be able to carry forward losses incurred before such conversion against profits made after the conversion. We are satisfied that, under the provisions of the Bill, he will be able to do so, and that no additional specific provision need be made.

Clause 14.—Under the provisions of this clause, as drafted, certain anomalies arise. For example, although the Bill in dealing with allowances for children purports to limit the allowance to four children, it would be possible, in addition to the allowance under the appropriate clause, to claim a further £100 under the provisions of this clause for a fifth child. We feel that it would be preferable to conform to precedent in other countries and to limit the allowance for dependents to such persons as normally fall within the definition of a "dependent relative". We recommend, therefore, that sub-clause (2) of this clause be deleted and a new clause be inserted, under which the allowance will only be permitted in the case of a dependent relative who is incapacitated by old age or infirmity from maintaining himself. If, however, the dependent relative is a widowed mother or mother-in-law of the claimant, infirmity or old age will not be required in order to claim the deduction.

Clause 16.—This clause provides an allowance for non-residents of £150. After very careful thought and prolonged discussions we came to the conclusion that an exemption of this kind, without any restrictions whatever, would largely reduce the yield of tax without any corresponding relief to the taxpayer and add materially to the cost of administration by reason of the large number of refunds and adjustments involved.

We were reluctant, however, to do away altogether with the non-resident's allowance, because we appreciate that such action would, in many cases, involve hardship.

We have no doubt that a claim for relief is warranted in the case of those pensioners whose pensions are derived from funds to which they were compelled to contribute, and pensions drawn by widows and orphans from funds to which

the deceased husband or father was compelled to contribute. We recommend that these cases should be specifically dealt with in the Bill.

At the same time we realize that pensioners in receipt of small non-contributory pensions, and other non-residents whose small incomes are derived solely or to a very large extent from the Colony, should also receive favourable consideration. It is not convenient to provide adequate and effective relief in the Bill itself for the number of cases which will arise, and we recommend that the Governor in Council be given wide powers to make rules governing such cases. The advantage of this method is that the advice of the Income Tax Commissioner can be sought before such rules are made, and the detailed provisions which must be worked out to cover these cases can more conveniently be set out in rules than in the Ordinance itself.

Clause 19.—Certain doubts were expressed as to whether contributions made by an employer to a Provident Fund for his employee could be deducted under the provisions of this clause. This is clearly the intention and we recommend an amendment which will make the position clear. Funds lawfully established by local authorities have also been specifically mentioned. It was pointed out that possibilities of evasion of tax existed under the clause as drafted, inasmuch as there are Provident Funds which are not compulsory and to which voluntary contributions may be made and withdrawn from time to time. We consider that a deduction in respect of contributions to Provident Funds should only be allowed in respect of obligatory contributions which are made to funds from which contributions may only be withdrawn either on the death of, or on the termination of the employment of, the contributor.

COMPANIES

In the draft Bill it was proposed that companies should be taxed on the same basis as individuals, except that the maximum rate of tax should be Sh. 2 in the £ and that no allowances would be permitted. It became clear from evidence given to us that a tax on a sliding scale would give rise to difficulties, inasmuch as it would be impossible, or at any rate very difficult, to ascertain the appropriate rate of tax to be deducted from interim dividends and from dividends paid from reserve funds. We therefore recommend that companies should pay a flat rate tax of Sh. 2 in the £. With regard to the question of reserves, strong pleas were submitted

for an exemption from tax of undistributed profits. We are of the opinion that the total exemption from tax of undistributed profits would be without any precedent, and would, if granted, lead to requests from individuals for similar exemptions for money deposited by them in banks as a safeguard against bad times. We do, however, consider that a case has been made out for the exemption from tax of a certain portion of the profits if such profits are placed in special reserve fund, maintained in a liquid form, and used solely for setting off against losses incurred, and we recommend accordingly. If our recommendation is accepted any moneys placed to such a reserve fund will only remain tax free if they are set off against a loss incurred. Were it not for this provision, the loss could be carried forward under clause 13 and be set off against the profits of the next five years, but, under our proposals, before such losses can be carried forward any moneys in the special reserve fund must be taken into account. In effect, therefore, the proposal will in no way affect the yield of tax although it might defer the payment of the tax. As against this objection, there must be taken into account the undoubted advantage which will accrue to the Colony from the stabilization of the finances of companies. It should also lead to a more consistent yield of tax. The Member for Nairobi North, while supporting this recommendation in theory, expresses doubts as to whether it will be workable in practice.

Clause 23 of the Bill makes special provision for 1937 with regard to dividends and debenture interest paid in 1936 and from which tax would have been deducted at source had the Bill then been in force. No specific provision has, however, been made for the year of commencement commencing on the 1st day of January, 1938, in respect of dividends, etc., distributed during 1937 before the Bill receives the assent of His Excellency the Governor. We consider that the cases that may arise should be dealt with by the Governor in Council under suggested new clause 90 of the Bill and that the relief from double taxation of the same dividend should be given to the company which distributed the dividend and not to the individual recipient.

Clause 24.—No provision existed in the Bill for the issue of a certificate to an overseas mortgagee showing the amount of tax which had been deducted at source from the interest paid to him. We recommend that provision be made whereby the Commissioner will send such a certificate to the mortgagor, and it will be the duty of the mortgagor to transmit the

certificate to the overseas mortgagee or to his agent. The Member for Nairobi South disagrees with this recommendation. In his opinion the responsibility for transmitting the certificate to the mortgagee should lie on the Commissioner.

Clause 33.—Under the clause as drafted it would appear that if a person died in a year of assessment his personal representative would, apart from being liable in respect of the tax for that year based on the income of the preceding year, in addition be liable to pay in the year after the death of the individual tax in respect of the income received by the deceased in the year in which he died. We can see neither logic nor equity in this provision. It is difficult to find any reason for taxing a person in a year subsequent to that in which he died, especially in view of the fact that, if the person had left the Colony permanently before the commencement of a new year of assessment, he would not, under the provisions of the Bill, be liable to pay tax for that year.

SPECIAL PROVISION FOR FARMERS

Clause 37.—We recommend that the provisions of this clause should be extended to cover the costs of conserving and distributing water incidental to the provision of dipping tanks, to measures for the prevention of soil erosion, and consequential upon the provision of fencing. It seems to us only logical that, if a farmer erects dipping tanks, or fences paddocks on his farm, he should, if he is to be allowed to deduct the cost of doing so, also be allowed to deduct the cost of conserving and distributing the necessary water supply.

In the case of permanent and semi-permanent crops special provisions are necessary. The grower of sisal, essential oils, tea or other such crop, has to expend, over several years, a considerable amount of what is really his working capital in the growing of his crop, and when the productive life of his crop is finished, has to reclaim his land in order that he may eventually replant it and thus continue his business. It is obvious that such expenditure is a first charge against the profits derived from the crop in question.

We recommend, therefore, that the grower of such crops be allowed to set off annually against his income a reasonable sum to provide for the redemption, by the time the productive life of the crop has ceased, of the expenditure involved in planting the crop and bringing it to the productive stage, and in clearing and reclaiming the land on which it has been grown.

Revenue will be safeguarded since the sum so set off against income will be only such as to the Commissioner seems reasonable for this purpose.

Further, a producer, if he elects to avail himself of this provision, will not be entitled to the benefits of the provisions of the Bill relating to immature areas and of paragraph (d) of clause 37, under which we recommend that the cost of rotation planting of any permanent or semi-permanent crop should be allowed as a deduction.

Clause 40.—With regard to life insurance companies, we are unable to accept the recommendation that mutual life assurance companies should be totally exempt from income tax and with this view we understand the Secretary of State agrees. We recommend, however, that a proviso be added to clause 40 (b), under which a life insurance company will have the option of an alternative basis of assessment to be fixed by the Commissioner.

Clause 55.—Exception was taken to the powers conferred upon the Commissioner by this clause, and it was suggested that the languages which the Commissioner should be empowered to prescribe should be specified. The majority of the Committee is of the opinion, however, that such a course would be impracticable and recommends that the clause be not amended.

Clause 57.—This clause requires an employer, when called upon to do so by the Commissioner, to submit a return containing the names and places of residence of all persons employed by him. It was suggested that, as this provision would cover native employees, a considerable amount of unnecessary work would be thrown on employers in submitting particulars of native employees whose incomes would not be sufficient to bring them within the taxing provisions of the Bill. We do not consider it advisable specifically to exclude natives from the provisions of the clause, but we understand that, except in rare cases, returns of native employees will not be asked for, and that, if any form of return is prescribed, a notice to that effect will appear thereon.

Clause 80.—This clause was considered in its relation to holding companies. It was suggested that such companies, that is to say, companies whose sole income is derived from investments from which tax had been deducted at source, would not be allowed to claim a refund in respect of their costs of administration. We are satisfied that there is nothing in the Bill to prevent such companies from taking into account

their costs of administration and claiming a refund under the provisions of this clause.

LOCAL COMMITTEES

With regard to local committees we have recommend several amendments to the relevant clause, providing, *inter alia*, for a scale of costs to be prescribed, and for appeals to local committees to be heard *In camera*.

EXEMPTIONS

We recommend that a general exemption clause be inserted to enable the Governor in Council to exempt any person from all or any of the provisions of the Ordinance on the ground of poverty, hardship or other good cause.

CONCLUSION

We are sensible to the fact that some of our recommendations are unusual and that no precedent exists for them in the Income Tax laws of other countries, but the Colony is only just emerging from an unprecedented depression and, as it is vitally necessary for the welfare of the Colony as a whole that commerce and industry should be given the opportunity of rehabilitating itself, we consider that special provisions are necessary.

We desire to place on record our keen appreciation of the excellent work done by our Secretary, Mr. H. E. Stacey. His ability and untiring zeal have been of the greatest value to us in our deliberations and in the preparation of this Report.

We have the honour to be,
Your Excellency's obedient servants,

H. C. WILLAN,
(The Attorney General has seen and approved of this Report in its draft form and has authorized me to sign it on his behalf.)

- G. WALSH.
- H. C. WILLAN.
- H. E. SCHWARTZ.
- F. C. CAVENDISH-BENTINCK.
- A. C. HOEY.
- N. S. MANGAT.
- C. J. WILSON.

Nairobi,
3rd April, 1937.

SCHEDULE.

1. That clause 2 be amended—

(a) by inserting between the definitions of "local committee" and "tax" the following definitions:—

"permanent" or "semi-permanent" crop means citrus, coco-nuts, coffee, essential oils, New Zealand flax, passion fruit, pyrethrum, sisal, sugar cane, tea, wattle and such other crops as the Governor in Council may, from time to time, prescribe;

"person" includes any company or association or body of persons corporate or unincorporate;

"premises" includes dwelling-house;

"resident in the Colony" when applied to an individual means an individual who resides in the Colony except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in the Colony.

(b) by deleting the definition of "local authority" and substituting therefor the following:—

"local authority" means a municipal council or a municipal board established under the Local Government (Municipalities) Ordinance, 1928, or a district council established under the Local Government (District Councils) Ordinance, 1928, or a local native council established under the Native Authority Ordinance, 1937.

No. 19 of 1928.

No. 21 of 1928.

No. 2 of 1937.

2. That sub-clause (4) of clause 4 be amended by substituting the words "part, place or territory" for the words "part or place" in lines 10 and 13 thereof.

3. That clause 5 be amended by deleting therefrom paragraph (f) thereof, and substituting therefor the following:—

"(f) rents, royalties, premiums and any other profits arising from property."

4. That clause 7 be amended—

(a) by deleting therefrom the seventh, eighth, and ninth lines thereof, and substituting therefor the following:—

" , or any day before, the thirty-first day of March in the year of assessment or on any day subsequent to the thirty-first day of March in the

year immediately preceding the year of assessment on which the accounts of the said trade or business have been usually made up;"

(b) by inserting, between the word "year" and the word "immediately" in the fourth line of the proviso to the clause, the words—

"of assessment or in the year";

(c) by inserting, between the word "assessment" and the word "subject" in the fifth line of the proviso to the clause the words "as the case may be,".

5. That clause 8 be amended—

(a) by substituting the figure "18" for the figure "19" which appears in the second line of paragraph (h) thereof;

(b) by deleting therefrom the first three lines of paragraph (i) thereof and substituting therefor the following:

"(i) the income of any local authority in so far as such income is not derived from a trade or business carried on by the local authority for the purpose of gain or profit;"

(c) by deleting therefrom paragraph (n) thereof and substituting therefor the following:—

"(n) pensions or gratuities granted in respect of wounds or disabilities caused in war;"

(d) by relettering paragraph (s) thereof as paragraph (u);

(e) by inserting therein as paragraphs (s) and (t) the following—

"(s) the income of the Coffee Board established under the Coffee Industry Ordinance, 1934;

No. 54 of 1934.

(t) the income of the Sisal Industry Committee established under the Sisal Industry Ordinance, 1934;"

No. 11 of 1934.

(f) by deleting therefrom paragraph (d) and relettering paragraphs (e) to (u) as paragraphs (d) to (t) respectively.

6. That clause 10 be amended—

(a) by deleting paragraph (c) from sub-clause (1) thereof and substituting therefor the following—

"(c) where any person engaged in any trade, business, profession or vocation has expended any sum

in replacing any plant or machinery which was used or employed in such trade, business, profession or vocation, an amount equivalent to the cost of the plant or machinery replaced, after deducting from the cost such sum as shall represent the total depreciation which has been allowed by reason of wear and tear since the date of purchase of such plant and machinery or, in the case of such plant and machinery purchased before the first day of January, 1937, since that date, and any sum realized by the sale thereof or recovered under any insurance or indemnity.

For the purposes of this paragraph, and subject to the provisions of the proviso to section 12 of this Ordinance, 'plant' or 'machinery' shall include any buildings or works which, in the opinion of the Commissioner, are essentially incidental thereto;"

and

(b) by inserting the following new sub-clause as sub-clause (2) and renumbering sub-clause (2) as sub-clause (4)—

"(2) In ascertaining the chargeable income of an individual who is not resident in the Colony there shall be allowed a deduction of one hundred and fifty pounds—

(a) if such individual is in receipt of a pension from a fund to which such individual contributed in pursuance of a statutory or contractual obligation;

(b) if such individual is in receipt of a pension as the wife or child of an individual who, in pursuance of a statutory or contractual obligation, contributed to a fund or scheme in order to provide on his decease for the payment of such pension:

Provided that for ascertaining the chargeable income of an individual who is not resident in the Colony, other than an individual referred to in paragraph (a) or paragraph (b) of this sub-section, the Governor in Council may make rules for determining—

(a) what deductions may be allowed from the income of such individual;

(b) the individual or classes of individuals to which any such deductions shall apply.

Any such rules shall be laid before the Legislative Council and shall come into force upon such date as the Legislative Council may, by resolution, appoint."

7. That clause 11, be amended—

(a) by deleting therefrom paragraph (b) thereof and substituting therefor the following—

"(b) any item of expenditure or of charge except so far as it is attributable to, and incurred for the purpose of, acquiring the income;"

(b) by deleting therefrom paragraph (c) thereof and substituting therefor the following—

"(c) subject to the provisions of this Ordinance, income carried to any reserve fund or capitalized in any way;"

(c) by deleting therefrom paragraph (f) thereof and substituting therefor the following—

"(e) rent of any premises or part of premises not paid for the purpose of producing the income;"

and

(d) by relettering paragraph (g) as paragraph (f).

8. That clause 12, be amended by deleting the words "or works" which appear in the second line of the proviso to the clause.

9. That clause 13 be amended by inserting therein, between the word "years" and the figure "1933" which appear in the second line of sub-clause (2) thereof, the following: "1932,"

10. That clause 14 be amended—

(a) by deleting the words, brackets and figure "of sub-section (3)" which appear in the first line of sub-clause (1) thereof;

(b) by deleting therefrom sub-clause (2) thereof and substituting therefor the following—

"(2) The conditions to be fulfilled to entitle an individual to a deduction for a dependent relative under the provisions of this section are—

(a) that the individual at his own expense maintains, or contributes towards the maintenance of, a

person being a relative of the individual or of the individual's spouse; and

- (b) that the person maintained is either incapacitated by old age or infirmity from maintaining himself, or is the widowed mother (whether so incapacitated or not) of the individual or of the individual's spouse."

and

(c) by renumbering the clause as "17".

11. That the present clause 16 be deleted.

12. That clause 19 be amended—

- (a) by deleting therefrom the first two lines thereof and substituting therefor the following—

" 19. In ascertaining the chargeable income of any person who is resident in the Colony and who—";

- (b) by deleting the first line of paragraph (b) thereof and substituting therefor the following—

" (b) shall, whether as employer or employee, have contributed to the Widows' and Orphans' ";

- (c) by deleting the words "or to the Kenya and Uganda Railway Provident Fund," from the fifth and sixth lines of paragraph (b) thereof;

- (d) by inserting between the word "Fund" and the word "or" in the eighth line of paragraph (b) thereof the words—

" or to any provident fund lawfully established by a local authority";

- (e) by inserting the following proviso after the word "aforesaid" in the nineteenth line of the clause—

" Provided that no deduction shall be allowed of any contribution made to any such provident fund unless such contribution is made pursuant to a statutory or contractual obligation to a provident fund under the rules of which such contribution may not be withdrawn from the fund except upon the death of the contributor or upon the termination of his employment";

and

- (f) by inserting the word "further" between the word "Provided" and the word "that" in the first line of the first proviso to the clause.

13. That clauses 15, 17, 18 and 19 be renumbered as clauses 14, 15, 16 and 18 respectively.

14. That the following new clause be inserted as clause 19—

Deduction allowed for reserve fund.

" 19. In ascertaining the chargeable income of a company, or of a co-operative society registered under any law for the time being in force relating to the registration of such societies, there shall be allowed a deduction from gains or profits (which would but for the provisions of this section be chargeable to tax under this Ordinance) such sum as to the Commissioner may appear reasonable:

Provided that—

- (a) any such sum shall be carried to a special reserve fund which shall be maintained in cash or in readily realizable securities;

- (b) any sum so transferred shall be taken into account and set off against any loss which may be incurred in any subsequent year;

- (c) any sum of money withdrawn from such reserve fund for any purpose whatsoever, or charged in any way whatsoever, other than for the purpose of being set off against a loss incurred under the provisions of paragraph (b) of this section, shall be deemed to be part of the chargeable income of the year in which such sum is withdrawn or charged, as the case may be, and shall be assessable accordingly;

- (d) where any company is being wound up or reconstructed, any sum in such reserve fund shall be deemed to have been distributed and shall be assessable accordingly, and the tax due in respect of such sum shall, notwithstanding anything to the contrary contained in any law for the time being in force, be a first charge on the reserve fund and on the other assets of the company."

15. That clause 20 be amended by substituting the word "person" for the word "individual" which appears in the first line thereof.

16. That clause 21 be amended—

(a) by deleting therefrom the first line thereof and substituting therefor the following—

“21. (1) The tax upon the chargeable income of any person, other than a company;”

(b) by deleting therefrom the proviso thereto; and

(c) by inserting therein the following new sub-clause as sub-clause (2)—

“(2) The tax upon the chargeable income of a company shall be charged at the rate of two shillings on every pound of the chargeable income thereof.”

17. That clause 23 be amended—

(a) by deleting therefrom sub-clause (1) thereof and substituting therefor the following—

“(1) Any tax which a company has deducted or is entitled to deduct under the last preceding section from a dividend paid to a shareholder or debenture interest paid to a debenture-holder shall, when such dividend or debenture interest is included in the chargeable income of such shareholder or debenture-holder, be set off for the purpose of collection against the tax charged on that chargeable income.”

(b) by deleting from sub-clause (2) thereof the words “at the appropriate rate (in the case of debenture interest at the rate of two shillings in the pound)” which appear in the seventh, eighth and ninth lines thereof, and substituting therefor the words “at the rate of two shillings in the pound”; and

(c) by deleting therefrom sub-clause (3) thereof.

18. That clause 24 be amended by inserting the following sub-clause as sub-clause (3), and by renumbering the present sub-clause (3) as (4)—

“(3) The Commissioner shall upon receipt of any tax deducted from any mortgage interest under the provisions of this section furnish the person who has deducted and paid the tax with a certificate setting forth the amount of tax so paid and the name of the person on whose behalf it has been paid. It shall be the duty of the person to whom a certificate has been furnished under the provisions of this section forthwith to forward such certificate

to the person in whose name and on whose behalf the tax has been paid or to the recognized agent of such person.”

19. That clause 28 (1) be amended—

(a) by substituting a full stop for the comma which appears after the word “income” in the tenth line thereof; and

(b) by deleting therefrom the proviso thereto.

20. That clause 33 be deleted and the following substituted therefor—

“33. When any individual dies and at the time of his death such individual, although liable to pay tax, has not paid tax, in respect of any year of assessment, the liability to pay such tax shall pass to his personal representative and such personal representative shall, to the extent to which the assets of the estate of such individual are acquired by him in the due and proper administration of such estate, be assessable and chargeable to the tax to which such individual would have been assessable and chargeable, and shall be answerable for doing all such acts, matters and things as such individual, if he were alive, would be liable to do under this Ordinance.”

21. That clause 36 be amended—

(a) by deleting therefrom the definition of “permanent cultivation” and substituting therefor the following—

“‘permanent’ cultivation means the cultivation of land for the purpose of producing permanent or semi-permanent crops.”

(b) by substituting the words “permanent or semi-permanent crop” for the word “trees” where it appears in the second line of the definition of “immature areas” in sub-clause (1) thereof, and in the fourth line of sub-clause (4) thereof;

(c) by substituting the word “is” for the word “are” where it appears in the third line of the definition of “immature areas” in sub-clause (1) thereof, and in the fifth line of sub-clause (4) of that clause; and

(d) by deleting therefrom the words “for the same period” which appear in the seventh line of sub-clause (4) thereof.

16. That clause 21 be amended—

- (a) by deleting therefrom the first line thereof and substituting therefor the following—

“21. (1) The tax upon the chargeable income of any person, other than a company;”

- (b) by deleting therefrom the proviso thereto; and
(c) by inserting therein the following new sub-clause as sub-clause (2)—

“(2) The tax upon the chargeable income of a company shall be charged at the rate of two shillings on every pound of the chargeable income thereof.”

17. That clause 23 be amended—

- (a) by deleting therefrom sub-clause (1) thereof and substituting therefor the following—

“(1) Any tax which a company has deducted or is entitled to deduct under the last preceding section from a dividend paid to a shareholder or debenture interest paid to a debenture-holder shall, when such dividend or debenture interest is included in the chargeable income of such shareholder or debenture-holder, be set off for the purpose of collection against the tax charged on that chargeable income.”

- (b) by deleting from sub-clause (2) thereof the words “at the appropriate rate (in the case of debenture interest at the rate of two shillings in the pound)” which appear in the seventh, eighth and ninth lines thereof, and substituting therefor the words “at the rate of two shillings in the pound”; and

- (c) by deleting therefrom sub-clause (3) thereof.

18. That clause 24 be amended by inserting the following sub-clause as sub-clause (3), and by renumbering the present sub-clause (3) as (4)—

“(3) The Commissioner shall upon receipt of any tax deducted from any mortgage interest under the provisions of this section furnish the person who has deducted and paid the tax with a certificate setting forth the amount of tax so paid and the name of the person on whose behalf it has been paid. It shall be the duty of the person to whom a certificate has been furnished under the provisions of this section forthwith to forward such certificate

to the person in whose name and on whose behalf the tax has been paid or to the recognized agent of such person.”

19. That clause 28 (1) be amended—

- (a) by substituting a full stop for the colon which appears after the word “income” in the tenth line thereof; and

- (b) by deleting therefrom the proviso thereto.

20. That clause 33 be deleted and the following substituted therefor—

“33. When any individual dies and at the time of his death such individual, although liable to pay tax, has not paid tax, in respect of any year of assessment, the liability to pay such tax shall pass to his personal representative and such personal representative shall, to the extent to which the assets of the estate of such individual are acquired by him in the due and proper administration of such estate, be assessable and chargeable to the tax to which such individual would have been assessable and chargeable, and shall be answerable for doing all such acts, matters and things as such individual, if he were alive, would be liable to do under this Ordinance.”

21. That clause 36 be amended—

- (a) by deleting therefrom the definition of “permanent cultivation” and substituting therefor the following—

“‘permanent’ cultivation means the cultivation of land for the purpose of producing permanent or semi-permanent crops;”

- (b) by substituting the words “permanent or semi-permanent crop” for the word “trees” where it appears in the second line of the definition of “immature areas” in sub-clause (1) thereof, and in the fourth line of sub-clause (4) thereof;

- (c) by substituting the word “is” for the word “are” where it appears in the third line of the definition of “immature areas” in sub-clause (1) thereof, and in the fifth line of sub-clause (4) of that clause; and

- (d) by deleting therefrom the words “for the same period” which appear in the seventh line of sub-clause (4) thereof.

22. That clause 37 be deleted and the following substituted therefor—

Special deductions allowed to farmers.

" 37. (1) In ascertaining the chargeable income of a farmer there shall, in addition to any other deductions to which the farmer may be entitled under the provisions of this Ordinance, be allowed a deduction of any sum expended on his farm during a year preceding a year of assessment on the provision of—

- (a) dipping tanks;
- (b) new fencing;
- (c) approved measures for the prevention of soil erosion;
- (d) rotation planting of permanent or semi-permanent crops;
- (e) measures of a permanent nature for the conservation and/or distribution of water (other than for domestic purposes) incidental to dipping tanks erected, or to approved measures taken for the prevention of soil erosion, or necessary in consequence of the erection of new fencing, provided that the Commissioner is satisfied that such measures are essential to the production of the income;
- (f) imported cattle, sheep, horses, and swine purchased for stud purposes, imported poultry, and such other imported live stock as the Governor in Council may prescribe.

(2) Where the income is derived from the cultivation of land for the purpose of producing any permanent or semi-permanent crop, there shall, in ascertaining the chargeable income of a farmer, be set off against his gains or profits such annual sum as to the Commissioner may seem reasonable for the purpose of redeeming the initial cost of planting and maintaining such crop up to and during its productive life and for providing for the cost of clearing and reclaiming the land on which such crop is growing when the normal productive life of such crop has ceased:

Provided that where any farmer avails himself of the provisions of this sub-section, the provisions of section 36 and of paragraph (d) of sub-section (1) of this section shall not apply to him.

(3) Where any farmer wishes to avail himself of the provisions of sub-section (2) of this section he shall notify the Commissioner in writing when rendering his first return subsequent to the first day of January, 1937, and the decision so notified shall be binding upon him in respect of all subsequent returns:

Provided that the Commissioner may, for reasons which appear to him to be good and sufficient, permit any farmer who has so notified his decision to revoke such decision and to avail himself of the provisions of section 36 and of paragraph (d) of sub-section (1) of this section instead of the provisions of sub-section (2) of this section in respect of any years of assessment subsequent to the year of assessment commencing on the first day of January, 1937.

(4) For the purposes of this section the word 'farmer' has the meaning assigned to it in section 38 of this Ordinance."

23. That clause 38 be amended—

- (a) by substituting a colon for the full stop which appears after the word "assessment" in the last line of sub-clause (3) thereof;
- (b) by inserting after such colon the following proviso—

" Provided that when the Commissioner is satisfied that the sale of any stock is in the nature of a capital transaction and that the money received therefrom has been expended in purchasing stock of a different kind or on purposes essential to a change over from one type of farming to another type of farming, he may exempt the money so received and expended from being taken into account as part of the income of such farmer."

and

- (c) by deleting the words "good and sufficient reasons and upon such terms as he may consider necessary for the protection of revenue" which appear in the seventh and eighth lines of sub-clause (5) thereof and substituting therefor the following: "reasons which appear to him to be good and sufficient".

24. That clause 40 be amended—

- (a) by substituting a colon for the full stop which appears at the end of paragraph (b); and

(b) by inserting immediately after such colon the following proviso—

“ Provided that in the case of an insurance company having its head office outside the Colony, the Commissioner may, by regulation, substitute some basis other than that herein prescribed for the purpose of ascertaining the portion of the income from investments to be charged as being income derived from business carried on in the Colony.”

25. That clause 41 be amended by substituting the bracket and letter,“(0)” for the bracket and letter “(s)” where they appear in the first line of sub-clause (1) thereof.

26. That clause 45 be amended by substituting the words “part, place or territory” for the words “part or place” in the ninth and tenth lines of sub-clause (3) thereof and in the second line of sub-clause (5) thereof.

27. That the following heading be inserted between clauses 46 and 47—

“ H.—GENERAL.”

28. That clause 49 be amended—

(a) by deleting from the first line thereof the brackets and figure “(1)”; and

(b) by deleting therefrom the word “private” which appears in the second line thereof.

29. That the following marginal note be added to clause 50—

“ Commissioner may disregard certain transactions and dispositions.”

30. That clause 51 be amended by deleting therefrom sub-clause (2) thereof and substituting therefor the following—

“(2) The Commissioner may by notice in writing require any person to furnish him within a reasonable time, not being less than one month, with a return of income and such particulars as may be required for the purpose of this Ordinance with respect to the income for which such person is chargeable:

Provided that any person who leaves the Colony before the date by which the Commissioner has required such return and such particulars to be furnished, shall

submit such return and such particulars within twelve months from the date of his leaving the Colony or within one month after his return to the Colony, whichever is the earlier.”

31. That clause 68 be amended—

(a) by deleting the word “and” which appears in the last line of paragraph (c) of sub-clause (8) thereof;

(b) by renumbering paragraph (d) as paragraph (e) and by inserting the following paragraph as paragraph (d)—

“(d) prescribing a scale of costs; and”.

32. That clause 69 be amended by deleting therefrom sub-clause (2) thereof and substituting therefor the following—

“(2) If the local committee is satisfied that the appellant is overcharged it may reduce the amount of assessment by the amount of the overcharge, and if it is satisfied that the appellant is undercharged it may increase the assessment by the amount of the undercharge.

(3) Every person appealing shall appear before the local committee either in person or by agent on the day and at the time fixed for the hearing of the appeal:

Provided always that if it be proved to the satisfaction of the local committee that owing to absence from the Colony, sickness, or other reasonable cause, any person is prevented from attending at the hearing of his appeal on the day and at the time fixed for that purpose, the local committee may postpone the hearing of such appeal for such reasonable time as it thinks necessary for the attendance of the appellant.

(4) All appeals to the local committee shall be heard *in camera*.”

33. That the following new clause be added to the Bill as clause 90—

“ 90. The Governor in Council may exempt any person or class of persons from all or any of the provisions of this Ordinance on the ground of poverty, hardship, or on any ground which to him may seem sufficient.”

Power of
Governor in
Council to
exempt persons.

32, Mitre House,
Western Road,
Brighton.

52
10
May, 1937.

Sir,

Kenya
Income Tax Ordinance 1937

I am forwarding with this letter draft Income Tax forms as follows :-

- No. 1 Personal returns (Individuals) with Notes and Instructions
- No. 1A Return - Partnerships with Notes and Instructions
- No. 1B Return - Companies etc. with Notes and Instructions
- No. 10 Employers Return
- No. 10a Employers Return (Heads of Departments)

These forms have been revised to meet the provisions of the Bill as amended by the Select Committee and so far as I am aware finally passed into Law on the 19th ult. So far as possible the wording of the forms follows the Ordinance as it is not advisable to introduce any wording not approved by the Ordinance.

2. In order to avoid delay in putting the Ordinance into operation I should be glad if the Inland Revenue Department in Kenya could check the wording of the forms to ensure that they will meet the special conditions prevailing there and if no material alterations are considered necessary steps can be taken to have them printed and issued to taxpayers. As it is probable that a large number of enquiries will be made by taxpayers it may be desirable not to serve the forms until

copy (attached) to Kenya (53)

71

shortly before my arrival on the 19th prox. unless there is no doubt that any such enquiries can be dealt with in the Department.

3. The return form for non-residents No. 1C has not yet been revised as it is understood that the number of Taxpayers involved will not be large and little difficulty should be experienced in dealing with them after my arrival in Kenya.

4. It is considered advisable to draw the attention of all Companies to the provisions of Section 22 of the Ordinance which concerns payment of dividends and mortgage interest since the date of the Ordinance. A draft letter and memorandum is enclosed which should be printed and issued immediately to all Companies as defined by Section 2.

5. If there should be any matters upon which my advice is required it should be possible to write me from the Balmoral Castle which arrives at Cape Town on May 31st.

I have the honour to remain, Sir,

Your obedient servant,



The Under Secretary of State
for the Colonies,
Downing Street,
London.

38054/1/37.

Codelement Sp...
11/5/37

C D
P 13 MAY
D 13 5 37

C. O.

Mr. Pasquin 11/5 at once.

Mr.

Mr.

Sir C. Parkinson

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

No. 115.

Income Tax Personal returns
forms are being revised
by Commission and it
is hoped to despatch them
by air mail on 18th May

DRAFT. Tel.

Governor

Nairobi

FURTHER ACTION.

Reani A. M. Brown

in use

GOLD COAST.

NO. 264

GOVERNMENT HOUSE,
ACCRA.

23. April, 1937.



Sir,

7th April, 1937.

I have the honour to transmit, at the request of the Association of European Civil Servants (Gold Coast), a letter addressed to you by that Association on the subject of income tax legislation in Kenya.

I have the honour to be,

Sir,

Your most obedient, humble Servant,

Samuel H. H. H.

*Answer - 5/5
copy to Kenya (51)*

The Right Honourable

W. G. A. OSMERY-COBE, P. C., M. P.,

Esq., Esq., Esq.

Association of European Civil Servants.
(GOLD COAST)

74

Phone No.

P. O. Box No. 571.
ACCRA,
GOLD COAST COLONY.Ref. No. 128.7th April, 1937.

Sir,

I am directed by the Council of the Gold Coast Civil Servants Association respectfully to bring to your notice certain features in the Income Tax Bill recently introduced in Kenya which adversely affect members of our Association who have had or may in future have service in that Colony.

2. The first point to which we desire to invite attention is that pensions will be subject to income tax. In the case of a pensioner who continues to live in the Colony after retirement such a provision is not open to objection for he enjoys the amenities and public service of the Colony in the same way as do other residents, but in the case of a non-resident pensioner it is respectfully submitted that it is wrong in principle that he should be called upon to pay tax to a Government of a Colony from which he derives no benefit, for a pension should be regarded as a debt due by the Colonial Government for services already earned and that Government should not whittle down its obligations by

THE RIGHT HONOURABLE

/unilateral

THE SECRETARY OF STATE FOR THE COLONIES.

2.

unilateral action. We are aware that the Bill contains a provision for relief in respect of United Kingdom or Empire income tax. There are, however, many Civil Servants who for financial or other reasons are obliged to reside in parts of the Empire or other places abroad where there is no income tax, and the provision in question will not assist them. It is respectfully submitted therefore that pensions of non-residents should be exempted from the tax.

3. Apart from the foregoing however there is another provision recently introduced into the bill which has caused this Association the gravest apprehension. Under clause 15 of the Bill as originally published, the chargeable income of an individual ~~resident~~ resident in the Colony or who is a British subject, was allowed a deduction of £150. In the new draft Bill however (as given in "The Times" of 20th February, 1937) the deductions have been altered to a personal allowance of £350 for non-residents. If this principle of discrimination is once admitted it is to be feared that the unofficial element in Kenya, who make no secret of their desire to get rid of official from Overseas, will continually press for an increased exemption for residents and a decreased one for non-residents so that the unfortunate non-resident pensioner who has nobody to look after his interests will as time goes on be maltreated more and more heavily.

/4.

3.

4. It is to be observed in this connection that the Income Tax Ordinance of Northern Rhodesia upon which it is understood that the Kenya Bill purports to be based provides that "An individual who is resident in the territory or who is a British subject shall be allowed a deduction of £300 (section 15)", and it would appear that a like principle has hitherto been adopted in income tax legislation of other colonies e.g. section 17 of Trinidad Income Tax Ordinance which provides that deductions shall only be allowed in the case of an individual who is resident in the Colony or who, if not resident in the Colony, is a British subject.

5. We would humbly request therefore that our representations be brought to the notice of the Government of Kenya and that if that Government cannot see their way wholly to exempt pensions from tax they should at least extend to non-resident pensioners who are British subjects the same exemptions as are granted to residents.

I have the honour to be,

Sir,

Your most obedient,

humble Servant,



SECRETARY.
for COUNCIL CHAIRMAN.

3.

4. It is to be observed in this connection that the Income Tax Ordinance of Northern Rhodesia upon which it is understood that the Kenya Bill purports to be based provides that "An individual who is resident in the territory or who is a British subject shall be allowed a deduction of £300 (section 15)", and it would appear that a like principle has hitherto been adopted in income tax legislation of other colonies e.g. section 17 of Trinidad Income Tax Ordinance which provides that deductions shall only be allowed in the case of an individual who is resident in the Colony or who, if not resident in the Colony, is a British subject.

5. We would humbly request therefore that our representations be brought to the notice of the Government of Kenya and that if that Government cannot see their way wholly to exempt pensions from tax they should at least extend to non-resident pensioners who are British subjects the same exemptions as are granted to residents.

I have the honour to be,

Sir,

Your most obedient,

humble Servant,



SECRETARY.
for COUNCIL CHAIRMAN.

Extract from 20 ... of 1963 37.

KENYA INCOME-TAX BILL PASSED

OLD CONTROVERSY ENDED

FROM OUR CORRESPONDENT

NAIROBI, APRIL 21

The Income Tax Bill passed its third reading to-day. The controversy, which has raged for 17 years, on whether or not an income-tax should be introduced into Kenya, ended quietly in the Legislative Council, the opponents of the Bill, numbering six, did not even call for a division, and the cries of "Aye" drowned those of "No". The only community unitedly opposed to the Bill was the Arab, whose two representatives on the Council voted with the European minority.

The new Governor, Air Chief Marshal Sir Robert Brooke-Popham, was cordially welcomed on his first appearance in the Legislature. Major Cavendish-Bentinck, acting chairman of the European elected members, and supported by all sections of the non-official members, expressed the hope that after a few months the Governor would conclude that the complications that had been predicted for his Governorship of Kenya were not as real or as formidable as had been portrayed.

The Governor, in a brief reply, said that so long as all were animated by the idea of the constructive development of Kenya and the welfare of its peoples they could all foresee steady progress.

TELEGRAPHIC ADDRESS:
CONVENTION, CANNON, LONDON.

TELEPHONE NO. 9
CITY 4444 (18 LINES)



SECRETARY:
A. G. V. LEIGH, M.B.E., M.A.

THE LONDON CHAMBER OF COMMERCE (Incorporated).

DFM/DG



69, CANNON STREET,

LONDON, E.C.4.

16th April, 1937.



Sir,

With reference to your letter of the 30th March, I have the pleasure to enclose for your information, a copy of a letter and memorandum which the East African Section of this Chamber have addressed to the Colonial Secretary in Kenya.

Yours faithfully,

A. G. Leigh
Secretary.

The Under Secretary of State,
Colonial Office,
Downing Street,
LONDON, S. W. 1.

Ans'd.

13.

78
44

AEA/DG

15th April, 1937.

Sir,

KENYA INCOME TAX ORDINANCE.

I am directed by the East African Section of this Chamber, to send you the enclosed Memorandum of observations on the Kenya Income Tax Ordinance.

The Section, whilst regretting that in the short time at their disposal, they have only been able to outline briefly the various points which have occurred to them, venture to express the hope that their observations will nevertheless receive the earnest consideration of Government before the Ordinance is passed into law.

I have the honour to be, Sir,

Your obedient Servant.

80

MEMORANDUM OF OBSERVATIONS BY THE EAST AFRICAN
SECTION OF THE LONDON CHAMBER OF COMMERCE ON THE
KENYA INCOME TAX ORDINANCE, 1937.

Observations on the Context.

It is provided in Section 5 (b) that the taxable gains or profits from any employment include allowances paid by an employer to or on behalf of an employee in respect of his and /or his family's passage to and from the Colony, except the passage on first appointment.

The Section assume that the sums so paid by the employer will be treated as trade expenses in the first place and deductible by him in his trading accounts before arriving at the amount of taxable gains or profits. Otherwise it would appear that the sums in question will be liable to tax twice over.

Provision is made in Section 13 for the setting-off of trade losses against chargeable income for the next five years in succession, and for the purposes of the assessment commencing on the 1st January 1937, for the setting-off of any losses incurred during the three years 1933, 1934 and 1935. The Section venture to submit that the concession should be extended to 1931 and 1932. It is suggested that it is inconsistent to allow back losses to rank back over a period of three years only, whereas they are carried forward for five years.

The Section respectfully point out, moreover, that most of the East African crops, such as sisal, coffee, etc., go in cycle periods of six to seven years with a resultant effect on trading results. They feel that this factor should certainly be taken into account, and is an additional reason for the extension of allowances in respect of trade losses to 1932 at least.

It is not clear from Section 16 whether the deduction

of £150 allowed to individual non-residents is also allowed to Companies.

It is urged that under both Section 28 (6), which relates to appeals by non-residents, and Section 68, which deals with appeals generally, the traders should be given the option of appealing either to the Local Committee or to the Court direct.

It is maintained that there may be strong objections on the part of traders in a comparatively small European community to disclose their business affairs to a Committee which may be composed of other traders, whether they are in a similar line of business or not. The option of appealing to the Court direct is therefore a facility to which individual traders should be entitled for the protection of their business interests.

The Section trust that this point will receive the closest consideration.

The Section desire also to draw attention to the frequent use in the Ordinance of the word "pounds" (£). Since the pound does not exist in East African currency it is assumed that the word refers to "the pound sterling", or the equivalent of 20 East African shillings. Having regard, however, to the fact that the pound unit is employed in other Empire currencies and represents varying values, the Section submit that some definition of the word "pound" is called for, and should be included in that Section of the Ordinance which deals with interpretations.

Further Observations.

The attention of the Section has been drawn to two other points not arising directly from the wording of the Ordinance itself, but bearing on the application of its provisions after they have become law.

Under Section 12 provision is made for allowances in respect of wear and tear of property, including machinery. The allowances made in their books by reference to rates throughout the Colony may, however, be widely divergent, and very much dependent on local conditions. It is submitted therefore, that the provisions of this section should be generously interpreted.

On the question of relief from taxation (Sections 4 and 45), it is recognized that the same in other parts of the Empire has shown administration to be complicated and so often difficult, and British firms trading with India have called attention to the exceptional difficulties which have arisen when claiming relief. It is the intention of the Government to consider the matter in detail, and to ensure that the procedure so far as the United Kingdom are concerned shall be as simple and expeditious as possible.

Reference to the

Under Section 12 provision is made for allowances in respect of wear and tear of property, plant and machinery. The allowances made in their book by difference countries throughout the Colony may, however, be widely divergent, very much dependent on local conditions. It is submitted therefore, that the provisions of the Section should be generously interpreted.

On the question of relief from double taxation (Sections 4 and 5), it is recognized that experience in other parts of the Empire has shown administration to be complicated and sometimes difficult, and British firms trading with India have called attention to the excessive difficulties which have arisen when claiming relief. The Commission therefore hope that every effort will be made when finalizing rules, to ensure that the procedure so far as Kenya and the United Kingdom are concerned shall be as simple and expeditious as possible.

11th April 1951

43
83
CORRECTION REGISTRATION

21 APR 1937

C. O. REGY

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 20th April 1937. Received 4.12 p.m 20th April 1937.

No 88

Income Tax bill passed Legislative Council today Tuesday amicably and with negligible opposition.

3054/1/37

C. O.

Mr. *Spencer* 194
Mr. *Flood* 16 of
Mr.

- Sir C. Parkinson.
- Sir G. Tomlinson
- Sir C. Bottomley
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

20 April, 1937

Sir,

DRAFT.

The Secretary,
Board of Inland
Revenue.

(39)

I am to acknowledge the receipt of your letter of the 15th of April, Reference No. T. 2015/1/37, containing the observations of the Board of Inland Revenue on points raised by the Government of Kenya in connection with the provisions of the Kenya Income Tax Bill.

To for Kenya 17/4/37 (40)

2 As my hon. is grateful for the care and expedition with which the letter from the Treasurer of Kenya has been answered, together and Board. I am to transmit to you, for the information of the Board, a copy of a despatch which

FURTHER ACTION.

Which has been sent to
the Governor of Kenya by
Air Mail.

I am etc

Signed, J. W. FLOOD

C. O.

Mr. *Lyons*
Mr. *Flood*
Mr.

Sir C. Parkinson.
Sir G. Tomlinson.
Sir C. Bottomley.
Sir J. Stuckburgh.
Parlt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

30054(1/5) 40
AIR MAIL
Air Mail
Today
55
Amad

15 April, 1937

Sir,

DRAFT.
Kenya
Copy
For

37
Copy to S/I. Rev. (2)

~~Per B.I.R. 15/4/37.~~

I have etc to refer to my
telex No 53 of the 13th of
April and to transmit to
you a copy of a letter
containing the observations of
the Board of Inland Revenue
on questions raised by the
Colonial Treasurer in regard
to the provisions of the Kenya
Income Tax Bill relating
to the grant of relief in
respect of double taxation.

FURTHER ACTION.

2. It is understood that the
information furnished by the
Board is desired by the
Treasurer in order that he
may be in a position to
reply

Reply to certain questions
which ~~will~~ be raised by
the ^{unofficial} Elected Members when
the Bill is discussed in
the Legislative Council.

3. As regards the seventh paragraph
of the Board's letter, I shall
be obliged if you will inform me
as early as possible whether
there is any intention of
^{altering} debating the provisions of
Clause 16 of the Bill as
published in the Kenya Gazette
of the 16th of February.

Yours,

(Signed) W. ORMSBY GORE.
(Signed) W. ORMSBY GORE.

86
39

Any further communication should be addressed to

THE SECRETARY.

INLAND REVENUE,

SOMERSET HOUSE,

LONDON, W.C.2

Taxes,

INLAND REVENUE.

SOMERSET HOUSE, LONDON, W.C.2.

quoting the following reference:—

T. 2015/1/37.

15th April, 1937.

Sir,

Income Tax: Kenya.

1. I am directed by the Board of Inland Revenue to refer to the letter of the 1st April which has been received from the Treasurer of Kenya in regard to the provisions of the Kenya Income Tax Bill relating to the grant of relief in respect of double taxation. A copy of this letter and the enclosures was forwarded to you semi-officially on the 10th instant

2. The Board have not had an opportunity of examining the provisions of the Income Tax Bill in the form in which it is being considered by the Legislative Council and they have therefore considered the issues on the basis of the information contained in the Treasurer's letter. Certain amendments are suggested in the examples enclosed with the Treasurer's letter and are set out in the enclosed notes.

3. The general scheme which is in force in the United Kingdom for the relief of double taxation within the Empire provides for the grant of relief from United Kingdom Income Tax at the Dominion rate of tax or at one half the appropriate rate of United Kingdom Income Tax whichever is the less. The first slice of relief is thus given at the expense of the United Kingdom Exchequer and any balance of relief where the Dominion rate of tax exceeds one half the United Kingdom appropriate rate is left to be given in the Dominion or Colonies concerned.

4. It is not possible, as the Treasurer observes, to secure an exact equivalence between the amounts of Dominion tax paid and of relief granted. The system of granting relief by reference to rates of tax was adopted after careful consideration of all the issues involved, and was fully considered by the Royal Commission on the Income Tax in 1920, to which reference is made in paragraph 43 of the report of the Departmental Committee on Colonial Income Tax (Cmd. 1788 of 1922).

Ent to (33)

(22)
Wood.

Copy to Kenya (20)

5. The particular queries contained in the Treasurer's letter are answered as follows:-

Enclosure B.

Page 3 - Example 1.

(page 2 of the Treasurer's letter).

- (1) The half appropriate rate in the United Kingdom is not Sh.1.0256, but Sh.2.0512 as indicated in the example. The difficulty raised by the Treasurer does not therefore arise.
- (2) Dominion Income Tax relief in the United Kingdom would amount to £6. 3. 9. The effect of Section 24, Finance Act 1920 is to grant a portion (in the ratio of United Kingdom income to total income) of the United Kingdom allowances against the United Kingdom income. If this income is also taxed in the Dominion, dominion income tax relief is granted on this income less the allowances applicable thereto. The third interpretation mentioned at the top of page 3 does not arise.

Page 4 - Example 2 - No observations.

Page 5 - Example 3 -

First paragraph. This is only true where the non-resident is a British subject or within one or other of the classes enumerated in Section 24 of the Finance Act, 1920.

The Treasurer's attention should be drawn to Section 40 of the Finance Act, 1927, and to Part II (2) of the Fifth Schedule to the Finance Act 1927, Amendments to Section 27, Finance Act 1920, subsection (iv) [copies are enclosed]. Section 40 of the Finance Act, 1927, enacts the grant of personal etc. allowances by

way of deduction of tax instead of by way of deduction from assessable income. The proviso to subsection (1) of this section requires that the amount of any such deduction "shall be subject to such adjustment as may be proper in any case where relief is given in respect of Dominion income tax".

The effect of this proviso is that the deduction of tax in respect of personal etc. allowances is given at rates which take account of dominion income tax relief. The application of this proviso is not without difficulty but it gives the same result in the examples quoted as the Treasurer's computation.

Pages 6, 7, 8 and 9 -

Examples 4, 5, 6 and 7 -

The Board have no practical experience of the grant of reciprocal relief in the circumstances given, but, so far as they can see, the position would be as stated in these examples.

Page 10, - Example 8 -

Relief would be due in the United Kingdom at half the appropriate rate, i.e., 9¹/₂d. in the £. Subject to this amendment, the position is as stated in the Example.

- 6. In addition to the foregoing points of detail the Board wish to offer the following general observations.
- 7. It is observed in Examples 2, 6, 7 and 8, which relate to persons resident in the United Kingdom or the Dominions, that no personal allowance is granted. This is a departure from the principle of the Model Ordinance which provides in Section 15 for the grant of a personal allowance in the case of British subjects and also from the provisions of the Kenya Income Tax Bill as published in the Gazette of 16th February, 1957, which provided in Clause 16 for the grant of a personal allowance to non-resident

way of deduction of tax instead of by way of deduction from assessable income. The proviso to subsection (1) of this section requires that the amount of any such deduction "shall be subject to such adjustment as may be proper in any case where relief is given in respect of Dominion income tax".

The effect of this proviso is that the deduction of tax in respect of personal etc. allowances is given at rates which take account of dominion income tax relief. The application of this proviso is not without difficulty but it gives the same result in the examples quoted as the Treasurer's computation.

Page 6, 7, 8 and 9 -

Examples 4, 5, 6 and 7 -

The Board have no practical experience of the grant of reciprocal relief in the circumstances given, but, so far as they can see, the position would be as stated in these examples.

Page 10, - Example 8 -

Relief would be due in the United Kingdom at half the appropriate rate, i.e., 9 $\frac{1}{2}$ d. in the £. Subject to this amendment, the position is as stated in the Example.

6. In addition to the foregoing points of detail the Board wish to offer the following general observations.

7. It is observed in Examples 2, 6, 7 and 8, which relate to persons resident in the United Kingdom or the Dominions, that no personal allowance is granted. This is a departure from the principle of the Model Ordinance which provides in Section 15 for the grant of a personal allowance in the case of British subjects and also from the provisions of the Kenya Income Tax Bill as published in the Gazette of 16th February, 1957, which provided in Clause 16 for the grant of a personal allowance to non-resident

individuals/

individuals though of a lower amount than for resident individuals. The Board are not aware of the reasons which have led to the withdrawal of the personal allowance in the case of non-resident individuals, and the Secretary of State may think it desirable to suggest that the matter should receive further consideration, at any rate in relation to British subjects.

8. In regard to the general question of Dominion Income Tax relief in the United Kingdom, the Board informed the Secretary of State in their letter of 26th June, 1936, of certain alterations of practice which had been rendered necessary by decisions of the Courts. The Examples with which the Treasurer is here concerned are not likely to be affected by the questions raised in that letter but it would be as well that the Treasurer should be made aware of its contents if this has not already been done.

I am, Sir,

Your obedient Servant,

E. M. W. H. H.

The Under Secretary of State,
Colonial Office.

Detailed Notes on the enclosures to the Treasurer's
letter of 1st April, 1937.

ENCLOSURE A.

Clause 44 (1) of the Bill, line 13, before "rate of United Kingdom tax" insert "appropriate". It is understood that this amendment has already been notified to the Treasurer by cable.

ENCLOSURE B.

page 2, lines 9 - 10, delete "the balance in the Dominion or Colony concerned" and substitute "it is left to the Dominion or Colony concerned to grant complementary relief".

Many Dominions and Colonies do not in fact grant this relief.

Exemplifications

(a) and (b).

It is not correct to speak of refunding "rates" of tax. The position is that relief is given from United Kingdom Income Tax at a rate which has regard to Colonial or Dominion rates. The last sentence of (a) ("The Colonial rate.....Home Government") should be amended to read "relief will be granted by the United Kingdom by reference to the Colonial rate". The last sentence of (b) should be similarly amended to read "relief will be granted by the United Kingdom at Sh. 1/50 in the £ on that item of income and by Kenya at cents 50 in the £ under the first provision of Section 44 (1) of the Bill of February, 1937."

Example No. 1.

Taxpayer resident in Kenya.

It should be stated that the taxpayer is a British subject, or otherwise entitled to claim Section 24, Finance Act 1920.

First column headed "Kenya assessment".

The fourth paragraph ("one-half of this is Sh. 2.0512.....double taxation") is not correct and should be omitted.

The last paragraph beginning "This position is more usually arrived at....." should also be omitted. The method of computation

Detailed Notes on the Enclosures to the Treasurer's

letter of 1st April, 1937.

ENCLOSURE A.

Clause 44 (1) of the Bill, line 15, before "rate of United Kingdom tax" insert "appropriate". It is understood that this amendment has already been notified to the Treasurer by cable.

ENCLOSURE B.

page 2, lines 9 - 10, delete "the balance in the Dominion or Colony concerned" and substitute "it is left to the Dominion or Colony concerned to grant complementary relief".

Many Dominions and Colonies do not in fact grant this relief.

Exemplifications

(a) and (b).

It is not correct to speak of refunding "rates" of tax. The position is that relief is given from United Kingdom Income Tax at a rate which has regard to Colonial or Dominion rates. The last sentence of (a) ("The Colonial rate.....Home Government") should be amended to read "relief will be granted by the United Kingdom by reference to the Colonial rate". The last sentence of (b) should be similarly amended to read "relief will be granted by the United Kingdom at Sh. 1/50 in the £ on that item of income and by Kenya at cents 50 in the £ under the first provision of Section 44 (1) of the Bill of February, 1937."

Example No. 1.

Taxpayer resident in Kenya.

It should be stated that the taxpayer is a British subject, or otherwise entitled to claim Section 24, Finance Act 1920.

First column headed "Kenya assessment".

The fourth paragraph ("one-half of this is Sh. 2.0612.....double taxation") is not correct and should be omitted.

The last paragraph beginning "This position is more usually arrived at....." should also be omitted. The method of computation

gives the correct result in the case of the particular example,
but is not of universal application.

Second column headed "U.K. assessment for relief".

Third paragraph.

It is not correct to speak of "raising a notional assessment". The first two and a half lines ending at "thus found due" should be omitted and the following substituted -
"A computation of liability is made on the assumption that the taxpayer is resident in the U.K. and of the tax so computed the taxpayer is liable.....".

Fourth paragraph.

"Assessable" income should be "total" income, "chargeable" should be "taxable" income.
The last paragraph ("It is understood..... SS. 5. 9 shown") should be omitted.

Example 2 - 6, 7, 8.

These examples assume that no personal allowance is granted to non-residents. See paragraph 7 of letter.

Example 3.

It should be stated that the taxpayer is a British subject, or otherwise entitled to claim Section 24, Finance Act, 1920.

(a) in the last paragraph is incorrect and should be omitted.

(b) gives the correct result, but it is suggested that the passage in brackets should be omitted.

Example 8, page 10.

Second column headed "U.K. assessment".

last paragraph, Dominion Income Tax relief. This paragraph is not correct and should be deleted. Dominion Income Tax would be granted by the U.K. at one-half the U.K. appropriate rate i.e. 9½d.

Relief £52 at 9½ = £1. 5. 4
Net tax payable £1. 5. 4.

Section 40, Finance Act, 1927.

Substitution
of reliefs
by way of
deductions
from tax for
reliefs by
way of
deductions
from assess-
able income,
&c.

40. (1) The enactments set out in Part I of the Fifth Schedule to this Act in so far as they provide for relief from income tax either by means of a deduction from assessable income or from the amount of earned income or from the amount of total income, shall, subject to the amendments specified in the third column of the said Part I, have effect as if they provided for relief from income tax by means of a deduction from the amount of income tax with which any individual is chargeable equal to tax at the standard rate on the amount of the deduction from income to which he would have been entitled under the said provisions:

Provided that the amount of any deduction under this subsection shall be subject to such adjustment as may be proper in any case where relief is given in respect of Dominion income tax.

(2) Every individual shall, in substitution for the relief under section twenty-three of the Finance Act, 1920, be entitled to have the amount of the income tax which remains chargeable on him in respect of his total income after there has been made any deduction of tax to which he is entitled under subsection (1) of this section reduced by a further deduction equal to [one-half (a)] of the amount so remaining chargeable or equal to [one-half (b)] the tax at the standard rate on [one hundred and seventy-five (c)] pounds, whichever is the less:

Provided that, where an individual has received relief from United Kingdom income tax in respect of Dominion income tax, the deduction to be made under this subsection shall not be less than it would have been if no such relief had been given, but nothing in this subsection shall affect any adjustment required to be made under subsection (3) of section twenty-seven of the Finance Act, 1920 (which provides for an adjustment where relief in respect of Dominion income tax has been/

been allowed in respect of any part of the income of any individual at a greater rate than the rate appropriate to his case).

(3) Where under the provisions of the Income Tax Acts an individual is entitled to claim relief from income tax (other than relief in respect of life insurance premiums), by repayment or otherwise, in respect of any amount which is paid or borne by him out of his income or which is allowable or may be deducted therefrom, or in respect of any reduction of an assessment relating to his income or any part thereof, or in respect of any adjustment or set off with regard to a loss, and claims that relief for any year of assessment, any relief granted shall not extend so as to make the total income tax paid or payable by that individual for that year less than it would have been if the amount in respect of which relief had been deducted in computing his total income for that year and the amount of any other deductions or reliefs to which he is entitled for that year had been determined accordingly.

(4) Any reference in any provision of the Income Tax Acts to any allowance or deduction which is replaced by a relief under this section shall be construed as a reference to such last-mentioned relief.

94

FINANCE ACT 1927.

FIFTH SCHEDULE:

PART 2.

2. Amendments of section 27 of Finance Act, 1920.

(1) Subsection (1) - In paragraphs (a) and (b) the words "appropriate rate of United Kingdom income tax" shall be substituted for the words "appropriate rate of United Kingdom tax," and the last paragraph of the subsection shall be omitted.

(1i) Subsection (3) - The reference to the relief relating to the rate of tax on the first two hundred and twenty-five pounds of taxable income shall be construed as a reference to the relief substituted by Part III of this Act for the relief under section twenty-three of the Finance Act, 1920.

(1ii) Subsection (8) - Paragraphs (b) and (c) shall be construed as if the references therein to United Kingdom super-tax were omitted.

(iv) For the purposes of section twenty-seven a person shall not be deemed to have paid or to be liable to pay United Kingdom income tax on such part of his income as is equal to the amount by reference to which he is by virtue of subsection (1) of section forty of this Act granted relief from income tax by means of a deduction of tax.

(v) The words in paragraph (d) of subsection (8) of section twenty-seven from "For the purposes of this section" to the end of the section shall cease to have effect, and in lieu thereof the following provisions shall have effect for the purposes of the said section:-

The "appropriate rate of United Kingdom income tax" for any year of assessment shall be as follows:-

(a) In the case of a person whose income is chargeable at the standard rate only, a rate ascertained by dividing the amount of tax payable by him for that year in respect of his total income (before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of section twenty-seven of the Finance Act, 1920) by the amount of his total income less any amount by reference to which he is by virtue of subsection (1) of section forty of this Act granted relief from income tax by means of a deduction of tax;

/ (b) In

15

(b) In the case of a person part of whose total income is chargeable at a rate or rates in excess of the standard rate, the sum of the following rates:-

(i) The rate which would have been the appropriate rate in the case of that person if his income had been chargeable at the standard rate only; and

(ii) The rate ascertained by dividing the amount of the sur-tax payable by that person for the preceding year by the amount of his total income for that year:

Provided that, as respects the year 1928-29, this paragraph shall have effect as if for sub-paragraph (b) (ii) thereof there were substituted the following words:-

“(ii) The rate ascertained by dividing the amount of the super-tax payable by that person for that year by the amount of his total income from all sources for that year as estimated for super-tax purposes”

C. O.

30054/1/37

37 96

C.D.
R 14 APR
D 17 4 37

Mr. Crosswith 13/4.
Mr. Parkin 13/4 at once
Mr.

Could you send 10/30/47
13/4/47 etc

Sir C. Parkinson.
Sir G. Tomlinson
Sir C. Bottomley
Sir J. Shuckburgh.
Permt. U.S. of S.
Partly. U.S. of S.
Secretary of State.

No. 83

DRAFT. Rel.
Governor
Nairobi.

(33)

Income Tax questions. Reference
Treasurer's Letter to Board of
Island Revenue of 1st April.
It is hoped that it will be
possible for reply to be
sent by Air Mail leaving
16th April.

~~Section 44 (1) of Bill.
Board suggest insertion of
word "appropriate" before
"rate of United Kingdom
tax" at end of first
paragraph. Sentence.~~

Rever.

Board observe that word
"appropriate" has been omitted
before "rate of U.K. tax" at
end of first sentence of
copy of clause 44 (1)

FURTHER ACTION.

sent to them. They suggest that
it should be reinserted as in
the printed text transmitted
with your conf. rep. No 41
of 20 Feb.

Seen.

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 12th. April, 1937. Received 3.57 p.m. 12th. April.

No.81. Confidential.

32

Your telegram No.78 confidential. Proposed amendment of Income Tax Bill. In Bill as finally redrafted sub clause (b) and (c) clause 11 taken from Southern Rhodesia Ordinance and inserted in substitution for old subclause (c) and (d) (see model of sub clause 12 (c) and (d)) after prolonged discussion as being more suitable to conditions in Kenya.

Walsh and Willan are strongly of opinion that suggested amendment should not be introduced at this late stage particularly as sub clause (b) and (c) as now drafted would appear to meet all cases which would come under suggested new sub clause.

Walsh and Willan agree to proposed amendment of clause 28 and this will be moved in Council.

Grateful if you will inform Harragin and Tax Commissioner.

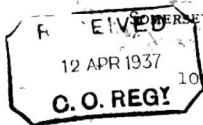
Copy to Mr. Mundy

SECRETARIES' OFFICE,

INLAND REVENUE,

28
33
EXERCISE HOUSE, LONDON, W.C.2

T.2015/1/37.



10th April, 1937.

Dear Grossmith,

Kenya Income Tax Bill.

Here is the duplicate of the Kenya Treasurer's letter about the double taxation relief provisions in the Income Tax Bill.

We appreciate that it is desired to get on with the Bill with all speed and we will furnish our observations as quickly as we can, but it may not be possible to do so in time to reach Kenya by the 19th April. I will ring up early next week to say how we are getting on in order that if necessary you may warn Kenya by telegraph that we may not be ready in time.

Yours sincerely,

Eric North

C. A. Grossmith, Esq.

1st April, 1957

The Secretary,
Board of Inland Revenue,
Somerset House,
London. W.C.2.

Sir,

I am directed by the Hon'ble the Colonial Secretary of Kenya to approach you direct, in order to connect with to-day's Air Mail, in regard to certain points which are not clear to the Government of Kenya in connection with the Double Taxation Relief provisions in the Income Tax Bill now being introduced into the Colony.

The introduction of this measure will affect a number of taxpayers in the Colony who derive a portion of their income from the United Kingdom, and my reason for addressing you on this matter is to seek your advice regarding the effect of double taxation on such incomes.

I enclose for your information copy of the relative sections in the draft Bill, namely Section 44 which deals with relief in respect of United Kingdom incomes, and Section 45 which deals with incomes arising in British possessions. (Enclosure "A")

It is understood that the United Kingdom provisions relating to Dominion Income Tax Relief are designed for the purpose of relieving the taxpayer from the lesser of the two taxes, but actually in practice it would appear that the relief granted by you to a resident in this Colony is not so great as that afforded to a resident in the United Kingdom.

In this connection I would invite your attention to certain examples attached to this letter (Enclosure "B"), and I would be grateful for your advice as to whether the computations are in accordance with your practice.

It has been claimed by certain opponents of the proposed Bill that complete relief is not, in practice, obtained, and it would appear that this contention is correct, judging from the few actual examples that have been brought to my notice.

I.....

I am aware that the onus of obtaining any such relief is on the taxpayer, but at the same time it is incumbent on Government to give correct information to its taxpayers in this respect and to advise them in regard to any claim to which they are entitled in accordance with the provisions of the United Kingdom Finance Acts.

I would therefore ask you to be good enough to reply to the following queries -

Notes on Enclosure "B"

Pages 1 and 2

These contain somewhat abbreviated explanations and premises, the obvious lack of detail being intentional, as the notes were originally merely to afford to certain persons interested a general idea of Double Taxation Relief provisions affecting Kenya and the United Kingdom. For example, there should be inserted after the words "as diminished by the allowances", contained in lines 3 and 4 of paragraph 4, the reservation "excluding Life Assurance Relief and Dominion Income Tax Relief".

Page 3 - Example 1

Concerning this Example the following enquiries are directed to you, viz :-

(1) For the purposes of Section 44(1) of the Kenya Bill, is the "true half United Kingdom Appropriate Rate", Shs. 1.0256, arrived at correctly? The facts and premises involved are :-

- (a) The United Kingdom Assessment is a notional one envisaged by Section 24, F.A.1920, in respect to a Total Income of £1,000 of which £500 arises in the United Kingdom and £500 (Salary) in Kenya.
- (b) The ratio of United Kingdom Income to Total Income is, therefore, as 500:1000, or half.
- (c) One-half the United Kingdom Appropriate Rate is Shs. 2.0512.

If, for the purposes of the Kenya section quoted, this Shs.2.0512 should be multiplied by the ratio under (b) above, yielding Shs. 1.0256, there may arise cases in which Kenya will have to grant relief in respect of United Kingdom Tax.

(2) Is the Dominion Income Tax Relief £9.7.6. or £6.3.9? Apparently the whole of the Income, £1,000 is doubly taxed to the extent of one-half, £500. If the Allowances of £340 fall to be apportioned to the two items of Income in the ratio of United Kingdom Income to Total Income (£500:£1,000), the Kenya Income subject to Dominion Income Tax Relief becomes £330 (£500 minus £170 Allowances).

A third interpretation is that the relief should be: $\frac{1}{2} \times £400 \times \text{Shs.}0.375$, the £400 being the Kenya Salary of £500 as reduced by the Home Earned Income Allowance of £100, but this interpretation is considered to be quite erroneous so far as concerns a Computation under Section 24, F.A.1920.

Page 4 - Example 2

This example is the converse of Example 1. As the Salary in this case is earned in the United Kingdom, there appears to be nothing to occasion any restriction of the Dominions Income Tax Relief.

Page 5 - Example 3.

Apparently, excluding the factor of Dominion Income Tax Relief, Non-Residents of the United Kingdom, whose sole income is derived from that country are liable to Tax in the same sum as Residents.

As regards Dominion Income Tax Relief, if the amount allowable therefor is restricted to £15, as under Note (b), the spirit and intention of Section 27, F.A.1920, appear to be frustrated, as the whole of the £700 has been doubly taxed. The possibility of this restriction follows from consulting the authorities who state that "to the extent that the Home Allowances are set against the Dominion Income the latter cannot be said to be doubly taxed", and it seems abundantly clear that Residents of the United Kingdom do so have their relief restricted. Inquiry is made, however, as to whether this practice extends to a Non-Resident's Computation under Section 24, F.A.1920, in cases similar to Example 3 where the Income assessed is derived from the United Kingdom.

Taking now a case exactly opposite to Example 3, namely, that of a Resident of the United Kingdom deriving £700 (Unearned) from Kenya, the Kenya Income Tax payable would be £35 and the United Kingdom Computation would proceed as under :-

Tax Payable, vide Example 3	£119. 18. 9.
Less:- D.I.T.R.- £600 (£700 as restricted by the P. A. of £100 at Sh.1.00 in the £	30. 0. 0.
<u>Net United Kingdom tax Payable</u>	<u>£ 89. 18. 9.</u>

By the introduction of Income Tax into Kenya, this investor, despite the intention of Section 27, F.A. 1920, suffers a loss of £5 (£35 minus £30). A married person in similar circumstances would obtain Dominion Income Tax Relief of only £26, being £520 (£700 less Married Allowance of £180) at Sh.1.00. From these instances, it appears that, the greater the Home Allowances set against the Dominion Income, the less the amount of relief obtainable.

Pages 6, 7, 8 & 9.-Examples 4, 5, 6 & 7.

Four Examples are given purporting to interpret the four classes of Empire Tax Relief possible under the Kenya Bill. Assuming that the correct formula has been followed in calculating the Appropriate

KENYA INCOME TAX BILL, 1957

G. - Relief in Cases of Double Taxation

44. (1) any person who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income and who proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, income tax in the United Kingdom for that year in respect of the same part of his income, shall be entitled to relief from tax under this Ordinance paid or payable by him on that part of his income at a rate equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds half the rate of United Kingdom tax. If, however, the rate of tax appropriate to his case under this Ordinance exceeds the appropriate rate of United Kingdom tax he shall be entitled only to relief at a rate equal to half the appropriate rate of United Kingdom tax.

Relief in respect of United Kingdom income tax.

(2) For the purposes of this section, a certificate issued by or on behalf of the Commissioners or Inland Revenue in the United Kingdom shall be receivable in evidence to show what is the appropriate rate of United Kingdom tax in any particular case.

(3) For the purposes of this section, the expression "rate of tax" when applied to tax paid or payable under this Ordinance means the rate determined by dividing the amount of the tax paid or payable for the year (before the deduction of the relief granted under this section) by the amount of the income in respect of which the tax paid or payable under this Ordinance has been charged for that year except that where the income which is the subject of a claim to relief under this section is computed by reference to the provisions of section 28 of this Ordinance on an amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Commissioner.

45. (1) If any person resident in the Colony who has paid by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income, proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year in respect of the same part of his income, he shall be entitled to relief from tax in the Colony paid or payable by him on that part of his income at a rate thereon to be determined as follows :-

Relief in respect of Empire income tax.

- (a) If the Empire rate of tax does not exceed one-half of the rate of tax appropriate to his case under this Ordinance in the Colony, the rate at which relief is to be given shall be the Empire rate of tax.
- (b) In any other case the rate at which relief is to be given shall be half the rate of tax appropriate to his case under this Ordinance.

104

(2) If any person not resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year of assessment in respect of the same part of his income, he shall be entitled to relief from tax paid or payable by him under this Ordinance on that part of his income at a rate thereon to be determined as follows:-

- (a) If the Empire rate of tax appropriate to his case does not exceed the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be one-half of the Empire rate of tax.
- (b) If the Empire rate of tax appropriate to his case exceeds the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds one-half of the Empire rate of tax.

(3) For the purposes of this section, Empire income tax means any income tax charged under any law in force in any part of His Majesty's Dominions (other than the United Kingdom or this Colony), or in any place under His Majesty's protection or in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom: Provided that the legislature of that part or place has provided for relief in respect of tax charged on income both in that part or place and this Colony in a manner similar to that provided in this section.

(4) For the purposes of this section, the rate of tax under this Ordinance shall be computed in the manner provided by sub-section (3) of the last preceding section of this Ordinance and the Empire rate of tax shall be computed in a similar manner.

(5) Where a person is for any year of assessment resident both in the Colony and in a part or place in which Empire income tax is charged, he shall for the purposes of this section be deemed to be resident where during that year he resides for the longer period.

ENCLOSURE 11

103

RELIEF IN RESPECT OF UNITED KINGDOM INCOME TAX.

Section 44 (1) refers to two rates of Income Tax, viz:-

- (1) "The rate of tax appropriate to his case under this Ordinance", and,
- (2) "The appropriate rate of United Kingdom tax".

The first rate, is determined by dividing the Kenya tax payable by the gross amount of Kenya income. For example:- Suppose a person to have a gross Kenya income of £1,000 and that, after deducting all allowances, the tax payable is £45. Obviously, the effective rate is cents 90 in the £ over the whole £1,000 ($\frac{£45}{£1,000}$).

The effective rate is "the rate of tax appropriate to his case under this Ordinance".

The second rate mentioned is obtained by dividing the United Kingdom tax paid by the taxable income, that is, by the gross or assessable income as diminished by the allowances. For example:- Assume a person to have a gross income of £1,500 subject to U.K. tax and that such person's Allowances total £500, leaving £1,000 on which the tax is, say £237.10.0. $\frac{£237.10.0}{£1,000}$ equals a rate of 3s. 4/9d. in the £, and this is "the appropriate rate of United Kingdom tax".

It will be noted that the tax of £237.10.0 is NOT divided by the gross income of £1,500, but by the net taxable income of £1,000.

The words "rate of tax" used in sub-section (3) of Section 44 have exactly the same meaning as the rate first exemplified above.

Where a resident of the United Kingdom has suffered on part of his Income both United Kingdom Tax and a Dominion or Colonial Tax, the Home provisions regarding Dominion Income Tax Relief operate with a view to relieving that part of his income from the lesser of the two Taxes. If such an individual's United Kingdom appropriate rate is at least double the Dominion rate, the relief is obtainable wholly from the Home Government. In other cases, partial relief is obtained in the United Kingdom and the balance in the Dominion or Colony concerned.

Exemplification:-

- (a) An item of income has suffered a United Kingdom appropriate rate of Sh.4/- in the £ and a Colonial Rate of Sh.2/-. The Colonial rate will be wholly refunded by the Home Government.
- (b) An item of income has suffered a United Kingdom Appropriate rate of Sh.3/- and a Colonial Rate of Sh.2/- (Kenya, say). Sh.1/50 in the £ on that item of income will be refunded by the United Kingdom and Cents 50 in the £ by Kenya under the first provision of Section 44 (1) of the Bill of February 1937.
- (c) An item of income has suffered an appropriate United Kingdom rate of Sh.2/- in the £ and a Kenya rate of Sh.2/75. Relief from the Home Government is Sh.1/- in the £ and Kenya, in terms of the second part of Section 44 (1), would also refund Sh.1/ in the £.

So far as Kenya is concerned, cases under (b) are unlikely and, under (c), impossible, by reason of the higher rates obtaining at Home.

Each case has its own "appropriate rate of United Kingdom Tax" and its own (effective) rate of Dominion Tax.

Example 1.

Taxpayer resident in Kenya.

Kenya Assessment.

Dividends from Home	£81. 5.0	
Add back tax @ 3.4/9d. in the £ deducted at source.	<u>118.15.0</u>	£500
Salary earned in Kenya.		500
Assessable Income.		1000
Less:- Allowances.		625
<u>Chargeable Income.</u>		<u>£375</u>

Tax due:-
 £375 @ 3.1.00 in the £ = £118.15.0 Payable in Kenya.
 Appropriate Kenya Rate under Section 44.

$\frac{£118.15.0}{£1000} = \text{3.0.375 in the £.}$

The U.K. Notional Appropriate rate is 3.4.1023 in the £ (£135.7.6 divided by £660)

One half of this is 3.2.0512 and applying the ratio of Kenya income to total income (£500:£1000), this must be halved again, yielding a true half U.K. appropriate rate of 3.1.0256, which is the rate envisaged by Sec. 44 (1). This is greater than "the rate of tax appropriate to his case under this Ordinance (3.0.375), and so no relief is due in Kenya from double taxation.

A claim, however, lies against the U.K. Government which grants relief on the item of income doubly taxed (£330 being half the notional U.K. chargeable income, at the Dominion rate (3.0.375) or one-half the full U.K. appropriate rate (3.2.0512, being half of 3.4.1023) whichever is the lesser.

The U.K. will, therefore, give relief on £330 at 3.0.375, that is, £6.3.9d.

In other words, upon the introduction of Income Tax into Kenya, the Imperial Government will forego voluntarily £6.3.9d. of the £64.14.4½d. normally due to it.

This position is more usually arrived at thus:-

Tax, as opposite	£129. 8.9
Less:- D.I.T.R. - £660 at 3.0.375 in the £)	<u>12. 7.6</u>
<u>Notionally Due:</u>	<u>£117. 1.3</u>

Proportion thereof payable at Home is £500, or £ 58.10.7½

Amount of Refund is 60. 4.4½

Tax Suffered by Deduction: £118.15.0

U.K. Assessment for Relief.

Taxpayer has suffered by deduction 3.4/9d. in the £ on his £500 Dividends, and Kenya has charged at the rate of 4½d. in the £ on the same £500, a total of 3.5.1½d. in the £.

Taxpayer therefore invokes the provisions of Secs. 24 and 27 of the U.K. Finance Act 1920 to obtain relief from double taxation.

Accordingly a notional assessment is raised, and, of the tax thus found due, Taxpayer is liable to one half, being the ratio of Kenya income (£500) to total income (£1,000) and the difference between this half and the £118.15.0 suffered by deduction is refundable.

Dividends (Gross).	£500
Kenya Salary.	500
Assessable Income.	£1000
Less:- Allowances.	340
<u>Chargeable Income.</u>	<u>£ 660</u>

Tax Notionally due:-

£135 @ 3.1.7d. in the £	£ 10. 17. 9
525 @ 3.4.9d. in the £	<u>124. 13. 9</u>
(For calculation of U.K. Appropriate Rate)	£135. 7. 6

Less:- Life Assurance Relief.	
£50 @ 3.2.4½d.	5. 18. 6
	<u>£129. 8. 9</u>

One-half thereof is £ 64.14.4½

Less:- Dominion Income Tax Relief.	
£330 @ 3.0.375	6. 3. 9
<u>Due to U.K.</u>	<u>£ 58.10.7½</u>

Paid by deduction at source.	£118.15.0
Actually due.	<u>58.10.7½</u>
<u>Refundable.</u>	<u>£ 60. 4.4½</u>

It is understood that, where the Home Allowances are set against the Dominion Income, the latter is to that extent not considered as doubly taxed. (See "SMELLING", 8th Ed., at Page 87). This rule of practice may not, of course, be applicable to a Computation under Section 24, F.A. 1920. If not, then the D.I.T.R. would be: £500 of £1000 at 3.0.375, or 3.18.25. That is, £9.7.6d. instead of the £6.3.9d. shewn.

Example 2.

Taxpayer Resident in U.K.

Kenya Assessment.

The Kenya Bill does not compel aggregation and so the Assessable Income is £500 Gross Kenya Dividends.

The Tax ultimately payable by a Non-Resident in such circumstances is Sh. 1/- in the £ on the £500, or £25.0.0.

The effective Rate is, therefore, Sh. 1/- in the £.

As this is less than half the U.K. Appropriate Rate, no relief is due from Kenya in terms of Section 44 (1).

U.K. Assessment.

<u>Assessable Income.</u>	£1000
<u>Less:- Allowances.</u>	<u>340</u>
<u>Chargeable Income.</u>	£ 660

<u>Tax due:-</u>	
£135 @ Sh. 1/7d. in the £	£ 10. 13. 9
£525 @ Sh. 4/9d. in the £	<u>124. 13. 9</u>
(For calculation of U.K. appropriate rate)	135. 7. 6
<u>Less:- Life Assurance Relief.</u>	<u>5. 18. 9</u>
	129. 8. 9

<u>Less:- Dominion Income Tax Relief.</u>	25. 0. 0
£500 @ Sh. 1/-	<u>25. 0. 0</u>
<u>Net Tax Payable</u>	<u>£104. 8. 9</u>

Calculation of appropriate rate.
£135.7.6 divided by £660 =
Sh. 4.1023 in the £.

Half appropriate rate.

Sh. 20512 in the £.

As the Dominion Rate of Sh. 1/- is less than this half Appropriate Rate, the D.I.T.R. claimable is £500 at the Dominion Rate, or £25.

The net effect in this particular case is that the U.K. forego Tax equal to the Kenya tax, the individual ultimately being no worse off than prior to the introduction of Income Tax in Kenya.

Example 3.

A Bachelor resident in Kenya; sole income being £700 derived from U.K. Companies; Claim under Sections 24 and 27 of the 1920 Finance Act.

U. K. Tax deducted at source:-

£700 at 4/9d. in the £ £166.5.0.

Kenya Assessment.

U.K. Assessment.

U.K. Dividends (Gross)	£700
<u>Less:- Personal Allowance</u>	<u>350</u>
<u>Taxable Income.</u>	<u>£350</u>

U.K. Dividends (Gross)	£700
<u>Less:- Personal Allowance</u>	<u>100</u>
<u>Taxable Income.</u>	<u>£600</u>

Tax Due:-

Tax Due:-

£350 at 1s. 1/- in the £ £17.10.0

£155 at 1s. 1/7d. in the £ £10.15.9
465 at 4/9d. in the £ £109.5.0

Tax Payable. £17.10.0

Tax Payable. £119.18.9

Effective Rate:-

£ $\frac{17.10.0}{700}$ or Sh. 0.50 in the £.

Approp rate Rate:-

£ $\frac{119.18.9}{600}$ or Sh. 4.00 in the £.

D. I. T. R. As the Kenya Rate of 6d. (Cents 50) in the £ is less than one-half of the U.K. Appropriate Rate (Sh. 2/-), no relief is due from Kenya in terms of Section 44 (1) of its Ordinance, but there is eligible from the U. K. Authorities either:-

- (a) £700 at 6d. (£17.10.0 --- the whole of the Kenya Tax); or
- (b) £600 at 6d. (£15, which leaves £2.10.0 of the Kenya Tax irrecoverable.)

Example 3.

A Bachelor resident in Kenya;
sole Income being £700 derived
from U.K. Companies; Claim
under Sections 24 and 27 of
the 1920 Finance Act.

U. K. Tax deducted at source:-

£700 at Sh.4/9d. in the £ £168.5.0.

Kenya Assessment.

U.K. Dividends (Gross)	£700
<u>Less:- Personal Allowance</u>	<u>350</u>
<u>Taxable Income.</u>	<u>£350</u>

Tax Due:-

£350 at Shs.1/- in the £ £17.10.0

Tax Payable. £17.10.0

U.K. Assessment.

U.K. Dividends (Gross)	£700
<u>Less:- Personal Allowance</u>	<u>100</u>
<u>Taxable Income.</u>	<u>£600</u>

Tax Due:-

£135 at Sh.1/7d. in the £ £10.13.9
465 at Sh.4/9d. in the £ 109. 5.0

Tax Payable. £119.18.9

Effective Rate:-

£ $\frac{17.10.0}{700}$ or Sh.0.50 in the £.

Appropriate Rate:-

£ $\frac{119.18.9}{600}$ or Sh.4.00 in the £.

D. I. T. R. As the Kenya Rate of 6d. (Cents 50) in the £ is less than one-half of the U.K. Appropriate Rate (Sh.2/-), no relief is due from Kenya in terms of Section 44 (1) of its Ordinance, but there is exigible from the U. K. Authorities either:-

- (a) £700 at 6d. (£17.10.0 --- the whole of the Kenya Tax); or
- (b) £600 at 6d. (£15, which leaves £2.10.0 of the Kenya Tax irrecoverable.)

Example 4.

SECTION 45 (1) (a).

RESIDENT IN KENYA.

£1000 income derived from the Dominion and remitted to Kenya.

Kenya Assessment.

Dominion Assessment.

Income	£1000
Allowances (say)	<u>625</u>
<u>Taxable Income.</u>	<u>£ 375</u>

Income	£1000
Allowances (say)	<u>500</u>
<u>Taxable Income.</u>	<u>£ 700</u>

Tax due:- £375 @ 3.1/- in the £ £18.15.0

Tax due:(say) £9.0.0

Kenya Appropriate Rate £18.15.0
= Sh.0.375

Empire Appropriate Rate £9
= Sh.0.18

Tax payable:- £18.15.0
Less:- Empire Income Tax Relief (to the extent of the whole of the Empire Tax as the Empire Appropriate Rate is less than half of the Kenya Appropriate Rate. (Sh.0.18 to Sh.0.375) 9. 0.0

Tax payable:- £9.0.0

No Deduction

Tax due in Kenya. £ 9.15.0

Tax due in Dominion. £9.0.0

NOTE: It is assumed that the Dominion reciprocates as regards Empire Income Tax Relief.

Example 5.

SECTION 45 (1) (b).

RESIDENT IN KENYA.

£1,000 income derived from the Dominion and remitted to Kenya.

<u>Kenya Assessment.</u>		<u>Dominion Assessment.</u>	
Income.	£1,000	Income.	£1,000
Allowances (say)	<u>625</u>	Allowances (say)	<u>300</u>
<u>Taxable Income.</u>	<u>£ 375</u>	<u>Taxable Income.</u>	<u>£ 700</u>
<u>Tax due:</u>		<u>Tax due:- (say)</u>	<u>£30.0.0</u>
£375 @ Sh. 100 in the £	£18.15.0	Empire Appropriate Rate	<u>£30</u>
Kenya Appropriate Rate	<u>£18.15.0</u>		<u>£1,000</u>
	£1,000		
= <u>Sh. 0.375</u>		= <u>Sh. 0.60</u>	
<u>Tax payable:-</u>	£18.15.0	<u>Tax payable:-</u>	£30.0.0
<u>Less:- Empire Income</u>		<u>Less:- Empire Income</u>	
Tax Relief to the extent of half the Kenya A. R. (S.O. 1875)	<u>9. 7.6</u>	Tax Relief to the extent of half the Kenya A.R. (S.O. 1875) as it is the lesser.	<u>9.7.6.</u>
<u>Tax due in Kenya.</u>	<u>£ 9. 7.6</u>	<u>Tax due in Dominion.</u>	<u>£20.12.6</u>

NOTE: It is assumed that the Dominion reciprocates as regards Empire Income Tax Relief, in which case the corresponding Section of their Ordinance would apply viz. Section 45 (2) (a).

Example 6.

SECTION 45 (2) (a).

RESIDENT IN DOMINION.

£1,000 derived from Kenya and remitted to Dominion.

Kenya Assessment.

Income.	£1,000
No Allowance for non- residents.)	
<u>Taxable Income.</u>	<u>£1,000</u>

Tax due:-

£700 @ 1/- in the £	£35. 0.0
£300 @ 1/50 in the £	<u>22.10.0</u>
<u>Tax due.</u>	<u>£57.10.0</u>

Appropriate Rate Sh. 1/15 in the £.
viz:- £57.10.0
£1000

Tax due as above £57.10.0

<u>Less:-</u> Empire Income Tax Relief, being half the appropriate rate of Dominion Tax as that is the lesser tax -	
£1,000 @ Sh. 0.30	<u>15. 0.0</u>
<u>Due to Kenya.</u>	<u>£42.10.0</u>

Dominion Assessment.

Income.	£1,000
Less:- Allowances (say)	150
<u>Taxable Income.</u>	<u>£ 850.</u>

Tax due:- (say) £30.0.0

Appropriate Rate £30.0.0 = Sh. 0.60
£1000

Tax due £30.0.0

<u>Less:-</u> Empire Income Tax Relief being half the Appropriate Rate of Dominion Tax as it is the lesser (Sh. 0.30)	<u>15.0.0</u>
<u>Due to Dominion.</u>	<u>£15.0.0</u>

Total tax paid £57.10.0 which is the higher of the two Taxes.

NOTE: It is assumed that the Dominion reciprocates as regards Empire Income Tax Relief in which case the corresponding Section in their Ordinance would apply, viz. Section 45 (1) (b).

Example 7.SECTION 45 (2) (b).RESIDENT IN DOMINION.

£1,000 derived from Kenya and remitted to Dominion.

Kenya Assessment.

Income	£1,000
No allowance for non-residents	
<u>Taxable Income.</u>	<u>£1,000</u>
Tax due:-	
£700 @ 1/- in the £	£55.0.0
£300 @ 1/50 in the £	22.10.0
<u>Tax due</u>	<u>£57.10.0</u>

Appropriate Rate 9.1.15 in the £
viz:- £57.10.0
£1000

Tax due as above £57.10.0

<u>Less:-</u> Empire Income Tax Relief to the extent that the Kenya Appropriate Rate (9.1.15) exceeds half the Dominion A. R. (9.0.70), viz. by S.O. 45:-	
£1,000 @ 9.0.45 in the £	22.10.0
<u>Tax due to Kenya.</u>	<u>£55.0.0</u>

Dominion Assessment.

Income	£1,000
<u>Less:-</u> Allowances (say)	150
<u>Taxable Income.</u>	<u>£ 850</u>
Tax due:- (say)	£70.0.0

Appropriate Rate 9.1.40 in the £
viz:- £70
£1000

Tax due as above £70.0.0

<u>Less:-</u> Empire Income Tax Relief to the extent of half the Dominion A. R. as it is the greater (9.0.70).	
£1,000 @ 9.0.70 in the £	55.0.0
<u>Tax due to Dominion.</u>	<u>£55.0.0</u>

The Taxpayer has suffered one tax only and that the higher, £70.

NOTE: It is assumed that the Dominion reciprocates as regards Empire Income Tax Relief in which case the corresponding Section in their Ordinance would apply, viz. Section 45 (1) (b).

Example 8.

A Pensioner of Kenya resident in the United Kingdom, being a Married Man.

Kenya Assessment.

Pension (Sole Income). £265
 Allowances - for Non-Resident NIL
Taxable Income. £265

Tax Due @ 3s.1/- in £ £ 13.5.0

Effective Rate: 3s.1.00

Dominion Income Tax Relief:

As the Kenya Rate of 3s.1/- exceeds one-half the U.K. Appropriate Rate, 9½d. Relief is due under Section 44 (1) on £265 at 2½d. (Cents 21) in the £, viz:-
£ 9.15.2½d.

Net Tax Payable. £10. 9.9½d.

U. K. Assessment.

Pension from Kenya (Sole Income) - - - Gross £265
 Less:- E.I.R. - 1/5th £53
 Personal Allowance 180 255
Taxable Income. £ 52

Tax Due @ 3s.1/7d. in £ £2.10.8

Appropriate Rate: $\frac{£2.10.8}{32} = 3s.1/7d.$

Dominion Income Tax Relief:

As the Dominion Rate of 3s.1/- exceeds one-half the U.K. Appropriate Rate, 9½d, no relief is competent;

Net Tax Payable. £2.10.8

C. O.

Codes & list
9.9/10
9.4.37

1937

Mr. Paken 9/4

Mr. Flood 9 above

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley

Sir J. Shackburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

No. 78. Confidential.

(18) Your Dep. No. 60 Confidential.

Following from Harragin begins

I have discussed Income Tax Bill with Commissioners (designate)

A number of amendments noted for future consideration but ~~only~~

the following ~~need~~ be made forthwith:

(1) Clause 11

No provision made to exclude capital expenditure. Suggest new sub-clause (a) to read as follows: "Save as otherwise provided in this Ordinance any capital withdrawn or any sum employed or intended to be employed as capital."

DRAFT. Tel.

Governor
Nairobi

FURTHER ACTION.

Clause 28 (1) ⊙

of Bill as published

The proviso refers to deduction under Section 16 ⊙ This deduction has now been deleted ⊙ Suggest new proviso as follows: "Provided that in the case of any individual who is not resident in the Colony no deduction shall be allowed under sections 14, ~~15~~, 15, 16 17 and 18 of this Ordinance ⊙"

This will permit the deductions under the foregoing sections ⊙

As regards proposal that STACEY should be attached to Somerset House Commissioner considers unnecessary ⊙ Ends ⊙

38054/1/37

26 110

C. O.

Mr. Reid 6.4

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Boltonby. 6.4

Sir J. Shuckburgh.

→ Perm. U.S. of S. 7/4 At a ce

Parly. U.S. of S.

Secretary of State.

Codes & sent
8/11/37
7 4 37
C

1-APR
18-

70 75.

Confidential. your telegram

In view of facts reported in your telegram

Nº 77 do not wish to press my views

as to taxation of passage allowances

DRAFT. code tel

Governor

Nairobi 170

FURTHER ACTION.

COPY FOR REGISTRATION

RECEIVED

6 - APR 1937

C. O. REGY

Telegram from the Officer Administering the Government of Kenya to the Secretary of State for the Colonies.

Dated 5th. April, 1937. Received 4.22 p.m. 5th. April, 1937.

No. 77 Confidential.

(9)

Reference paragraph 3 of your despatch of the 25th. March Confidential. Income Tax. Select Committee has reported and report is unanimous. It recommends retention of provision to levy Income Tax on passage allowances. This is also in accordance with the advice of the Executive Council which considered this point when approving the introduction of the Bill. Passage allowances have been commonly regarded as part of hidden emoluments and referred to as such in sundry reports.

As report has been signed by Harragin and Walsh it will be invidious for the Government to move amendment deleting the provision and amendment would be bitterly opposed by the Unofficial Members. It could only be carried by official vote and it would be realised that this was by your instructions.

I deprecate jeopardising harmonious passage of the Bill on this point and I trust that you will allow the provision to remain. Harragin who is strongly in favour of the provision will be able to argue its merits should you care to consult him.

Pending the receipt of your instructions I propose to take no action.

Am 2 (26)

38054/1/37.

1st April, 1937.

Dear Harragin,

As arranged this morning I have written to Mundy at Glasgow asking him if he can make it convenient to come up for a discussion with you on the Kenya Income Tax Bill some time before the 12th.

I find that the letter offering him the appointment will not go off from Somerset House until to-morrow, which means that he will not have had a copy of the Bill before Saturday evening at the earliest, and as he will no doubt want a bit of time to consider the Bill and the draft Forms it looks as though some time at the end of next week would be the most suitable for the discussion. I do not know how long it is likely to take but I have taken the liberty of suggesting to him provisionally that he should arrange to be available in London on Thursday and Friday, the 8th and 9th. I hope that this will be convenient

W. HARRAGIN, ESQ.

(71, Thorne R^d, Norwich)

convenient to you. I will let you know as soon as I get his reply. In the meantime, it might perhaps be helpful to him if I could let him know whether you think that the business will take two days or whether you expect to be able to get through it in one.

Yours sincerely,

J. J. Pasquin

38064/1/37.

17. 120
1st April, 1937.

Dear Mundy,

An official letter offering you the appointment of Commissioner of Income Tax in Kenya is now on its way to you by way of Somerset House and you ought to receive it shortly.

In that letter we are sending to you, amongst other things, a copy of the Income Tax Bill as published in the Kenya Gazette for introduction into the Legislative Council, and we are asking you whether you could make it convenient to come to London to discuss the Bill with the Attorney-General of Kenya.

I now enclose a copy of a further despatch from Kenya enclosing for your consideration a set of draft Forms for use in connection with the administration of the Ordinance. Since that despatch was sent, we have had a telegram from Kenya saying that it is now proposed to debate the Bill in Council on the 19th of April.

Barragin

*Kenya Desp. No. 60
of 20/3/37.
(w. Encl. in
original)*
J. C. MUNDY, ESQ.

Harragin, the Attorney-General, has now arrived and called here this morning. He told me that the report of the Select Committee had been completed before his departure and that we shall shortly receive an advance copy by air mail. In the meantime, he would very much like to have a talk with you some time before the 12th of April, which would give us a week in which any further amendments of the Bill which you and he thought desirable could be telegraphed out and circulated in Kenya in preparation for the debate. Harragin is staying in Norwich, so that it will take a day or two to arrange a meeting between you and him. It hardly seems possible to arrange a meeting during the early part of next week, particularly as you will no doubt wish to have a day or two to think over the Bill and the Forms. If, therefore, you can manage it the most suitable days would probably be Thursday and Friday, the 8th and 9th. I do not know whether the discussion would, in fact, be likely to take two days, but it would seem prudent at any rate to arrange provisionally to be available on two days if possible.

I am afraid this is all rather a rush for you but in view of the Legislative Council programme we should

be

be most grateful if you could make it convenient to come up on those days. If they would not be convenient, and if you could manage an earlier meeting, perhaps you will be good enough to let me know by telegram.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "J. J. Parkin". The signature is written in a cursive style with a large initial "J" and "P".

AIR MAIL

KENYA
No. 60

CONFIDENTIAL



18.
123
GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED
31 MAR 1937
C. O. REGI

26 March, 1937.

Sir,

with reference to Mr. Logan's confidential despatch No. 41 of the 20th February forwarding copies of the Income Tax Bill, I have the honour to state, for your information, that the second reading of the Bill was debated in the Legislative Council from the 3rd to the 8th March. It is regretted that copies of the debate are not yet available for transmission.

On the 8th March Council appointed a Select Committee to examine the Bill in detail in the light of the points made in debate, and that Committee continues to sit under the Chairmanship of the Attorney General.

The 31st March has been fixed as the final date upon which the Committee will accept any representations which the public may have to put forward for its consideration; and a session of the Legislative Council is being summoned for the 8th April when the Report will be laid on the Table. It is anticipated that the Bill will pass through its final stage on the following day.

2. Mr. W. Harragin, K.C., Attorney General, was originally due to proceed on leave on the 12th March but, in view of his appointment as Chairman of the Select Committee,

THE RT. HON.

W. ORMSBY GORE, P.C., M.P.,
Secretary of State for the Colonies,
DOWNING STREET, LONDON, E.W.1.

8.
Repl. very early to J.C. Murray (19)
Ans 2 (32)

Committee, arrangements have been made for him to proceed by air on the 26th March. He will arrive in London on the 2nd April. There will be a number of points of detail which it will be advantageous for him to discuss with the Income Tax Commissioner, who is to be appointed in accordance with correspondence terminating in my Confidential telegram No.58 of the 19th March. I should be glad therefore if arrangements could be made accordingly shortly after Mr. Harragin's arrival in the United Kingdom.

(12) on 37054/2/37

3. In the meantime the Income Tax Commissioner will no doubt be supplied with a copy of the Bill, and the Attorney General will be able to explain to him the main variations which the Select Committee is likely to make. Copies of the Report of the Select Committee will be forwarded by Air Mail as soon as possible.

4. After the Bill becomes law there will be a considerable amount of work to be done in the framing of Rules and preparation of Forms upon which the advice of the Income Tax Commissioner will be required. I am therefore forwarding with this despatch, for his preliminary examination, a set of forms prepared by Mr. Surfleet for use under the 1933 Bill which may serve as a basis for the new Forms.

Sent to Mr Munday

I have the honour to be,

Sir,

Your most obedient, humble servant,

Admiral

ACTING GOVERNOR.

TELEGRAPHIC ADDRESS:
CONVENTION, CANNON, LONDON.

TELEPHONE NO. 9
CITY 4444 (15 LINES)



THE LONDON CHAMBER OF COMMERCE (Incorporated).

DEFM/26 RECEIVED

- 1 APR 1937

C. O. REGY

69, CANNON STREET.

LONDON, E. C. 4.

31st March, 1937.



SECRETARY:
A. de V. LEIDN, M.B.E., M.A.

EAST AFRICAN SECTION.

Sir,

13

I have received your letter of the 30th March, reference 38054/1/37, on the subject of the Kenya Income Tax Bill and have to thank you for your courtesy in informing the Acting Governor in Kenya that this Chamber wishes for an extension of time to the 31st May in order to submit views in regard to the Bill.

You will appreciate that in view of the various negotiations which took place between the announcement of the introduction of an Income Tax into Kenya and the final agreement between the members of the Legislative Council, the Section did not consider it advisable to study the implications of the Bill until the draft was officially published. As you are aware, this did not take place until the 16th February in the Kenya Official Gazette and the Chamber did not receive copies until a short while ago. The time for consideration of the various proposals was therefore necessarily short. However, the views of the Section are being collected with as little delay as possible and, as you suggest, I will communicate by air mail with Kenya as soon as this has been completed.

As requested, I shall have pleasure in sending you a copy of any comments which are communicated to Kenya in this way.

Yours faithfully,

Mark E. Howard
pr Secretary.

The Under Secretary of State,
Colonial Office,
Downing Street,
LONDON, S. W. 1.

COPY FOR REGISTRATION

14
Telegram from the Officer Administering the Government of Kenya to the Secretary of State for the Colonies.

Dated 30th. March, 1937. Received 10.6 a.m. 30th. March.

RECEIVED

30 MAR

C. O. RECY

No.71.

12

Your telegram No.72. By arrangement with Elected Members report of Select Committee Income Tax Bill which I am advised will be unanimous is being laid April 8th but will not be debated until April 19th. I do not consider any further delay in passing Bill can be contemplated if revenue is to be collected during year. You will doubtless discuss with Harregin who arrives home by air March 31st.

38054/1/37

177

C. O.

Mr. Flood 27.3.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley 29.3.37

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

MAF
30

17th March 1937

DRAFT.

The Secretary

London Chamber of Commerce

Copy to Henry or (15)

Sir

I am so to ask the rec^d. of your letter of the 24th of March on the subject of the Kenya Income Tax Bill, & to request you to inform the London Chamber of Commerce that he has telegraphed to the Acting Governor to say that the Chamber wish to submit ^{their views} ~~some remarks~~ and ask for an extension of time to the 31st of May.

2. I am, however, to point out that the Bill, as originally drafted, was published early in October last, so that ample time has been afforded for comment on any points of principle, and, if the Colonial Govt. does not wish to extend the time for receiving observations, Mr. Bunchy Gull would ~~not be prepared~~ ^{least} ~~not be prepared~~ to put any pressure upon them. I am therefore to suggest that any comments which the Chamber may wish to make should be put forward ^(by air mail) with as little delay as possible since it would not be

FURTHER ACTION.

Copy copy Kenya LF
air mail.
Copy bill to F.S.A. Board
with compl.

right to hold up consⁿ of the Bill indefinitely.

3. I am also to request that a copy of any comments which the Chamber may send to Kenya may be forwarded to this office for consⁿ information.

3

JOHN E. WOOD

P.S. I am to add that the Acting Governor has ^{stated} now reported that the report of the Select Committee which examined the Income Tax Bill will be laid before Council on the 8th of April but will not be debated until the 19th of April.

TELEGRAPHIC ADDRESS:
CONVENTION, CANNON, LONDON.

TELEPHONE NOS
CITY 4444 (18 LINES)

128



THE LONDON CHAMBER OF COMMERCE (Incorporated).



ABA/DG

69, CANNON STREET,

RECEIVED
25 MAR 1937
C. O. REGY

LONDON, E. C. 4.

25 MAR 1937 4th March, 1937.

SECRETARY:
A. de V. LEIGH, M. B. E., M. A.

Sir,

KENYA INCOME TAX ORDINANCE.

The East African Section of this Chamber had before them, at their meeting today, a summary of the main provisions of this Ordinance. A number of points arising in connection with it were discussed, and whilst it was generally felt that the Ordinance, so far as it went, corresponded in broad principles to British law, the Section felt that there were certain questions of vital importance to British firms and companies trading in and with East Africa which required further consideration such as the taxation of non-resident traders, double income tax relief, procedure in connection with appeals and so forth.

It was stated that the Select Committee to which the Ordinance had been referred, had fixed the 31st March as the last date for receiving evidence, but the Section submit that the time is much too short to enable London interests to consult expert opinion and coordinate their views. They therefore venture to hope that it may be possible for the time in which observations may be submitted to be extended to the 31st May. If this extension can be afforded, the Section will proceed to consider the matter in more detail and submit their views as early as possible.

I have the honour to be, Sir,

Your obedient servant,

A. de V. Leigh
Secretary.

The Right Hon. W. G. A. Ormsby-Gore, M. P.,
Secretary of State,
The Colonial Office,
Downing Street,
LONDON, S. W. 1.

*Amund-13
By S. Kamara*

10129

By Air Mail

OFFICE OF THE
CONFERENCE OF EAST AFRICAN GOVERNORS,

P. O. Box 601,

NAIROBI

CONFIDENTIAL

REPLYING PLEASE

C/Tax/B.1.

QUOTE

24th February, 1937

Subject KENYA INCOME TAX BILL

- 8 MAR 1937
C. O. REGY

Reference No. of

Reference No. of

Enclosures

The Secretary to the Governors' Conference presents his compliments and has the honour to forward the accompanying copy of letter addressed to the Governments of Uganda, Tanganyika, and Zanzibar, dated 24. 2.37, for information.

THE UNDER SECRETARY OF STATE,

COLONIAL OFFICE,

DOWNING STREET, S.W.1.

C/Tax/B.1.

CONFIDENTIAL

24th February, 1927.

Sir,

In paragraph 4 (1) of my letter of the 16th February (C/CC/K.2.), I mentioned among the subjects which might possibly be included in the Agenda for the next Governors' Conference, the question of Income Tax legislation. I now have the honour to enclose, for your information, three copies of the Income Tax Bill recently published by the Government of Kenya, and to lay before you the following observations which have been furnished to me by that Government.

2. On the 2nd December, 1926, the Governor of Kenya sent to the Secretary of State a confidential telegram, from which the following are the relevant extracts:-

"Basis for this Government's view that there is no necessity at this juncture to ask neighbouring territories to pass legislation to prevent evasion is briefly as follows

- (a) Under the Companies Ordinance any Company operating in Kenya must be registered in Kenya and would thus come within the scope of any Income Tax Ordinance.
- (b) The principal method of evasion which can be foreseen is that of a Company transferring its Headquarters from Kenya to a neighbouring territory and carrying on a species of mail order business to serve the Kenya market.
- (c) In my opinion, this, in practice would almost certainly never occur; the inconvenience of having no Headquarters Office in Kenya, the loss of personal contact and consequent loss of business and practical difficulties of economical disposing of premises and equipment, and other considerations would strongly militate against the possibility which would be further reduced in my view to a minimum if steps were taken to acquaint the general business public with the fact that neighbouring territories of Uganda and Tanganyika have expressly undertaken to enact legislation to prevent evasion if it should prove necessary.

I realize that various methods of evasion will inevitably be attempted. You are however aware that it was never the intention of this Government to pass an Income Tax Ordinance without appointing for the purpose of its

HON. CHIEF SECRETARY,
ZANZIBAR.

administrat

administration a Commissioner who it is assumed would be familiar with such forms of evasion and could in due course in the light of experience advise whether it was necessary to approach the other Governments concerned. This would ensure that unnecessary inconvenience was not caused in requesting other Governments to pass legislation which might prove unnecessary it would at the same time ensure that, if such a request had to be made, expert advice as to the methods to be adopted would be immediately and locally available.

2. The Kenya Government, as at present advised, remains of the opinion that there would be no justification in asking the Governments of Uganda, Tanganyika, and Zanzibar to pass special legislation at this juncture. While it is recognized that for so long as Kenya is the only one of the four territories to adopt Income Tax, evasions may occur, it is considered that unless any emergency arises in the meantime, it would be preferable before approaching other Governments as regards special legislation, to await the arrival in the Colony of the Kenya Income Tax Commissioner, who should be able to advise regarding possible channels of evasion, and the means of blocking them.

3. The Government of Kenya presumes that the Secretary of State will not desire to issue any instructions regarding the inclusion in the Governors' Conference agenda of the question of introducing Income Tax in other East African territories, pending the enactment of the Kenya Bill, which is to be introduced into Legislative Council during the first week in March.

4. A similar letter is being addressed to the Governments of Tanganyika and Uganda; and copies are being sent to the Governments of Kenya, Northern Rhodesia, and Nyasaland, and to the Under Secretary of State for the Colonies, for information.

I have the honour to be,

Sir,

Your obedient servant,

L. H. ...

SECRETARY OF GOVERNMENT COLONIES

C. O.

Ans - (25)
AIR MAIL

9

Mr. Flood 20/3/37

x Sir G. Bant 23/3/37

Mr.

Sir C. Parkinson.

Sir G. Tomkinson.

x Sir C. Bottomley 23

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

23 MAR
24

Downing Street,

25 March, 1937.

Sir,

I have etc. to acknowledge the receipt of your Confidential despatch No.41 of the 20th of February in which you enclosed copies of the Report of the Committee which considered the Income Tax Bill and of the Bill as redrafted and presented to Legislative Council. You will no doubt forward to me in due course a report of the proceedings in Council.

2. There are, however, two points upon which I think I may comment at the present moment. The first is that of the taxation of companies. In the report of the Inter-departmental Committee on Income Tax in the Colonies (Cmd.1788 of 1922) it was recommended (paragraphs 32-36) that the rate of

DRAFT.

KENYA.

CONFIDENTIAL.

O.A.G.

FURTHER ACTION.

income tax on companies should be a flat rate and not graduated. The reasons for diverging from this recommendation in the case of the Bill now under consideration are no doubt those set forth in paragraphs 9 and 10 of the Committee's report. In view of the fact that it appears that most of the companies in Kenya are private, I do not wish to press for the adoption of the more general practice, but the question whether the same rates should be applied to companies as to individuals is one which may require future consideration.

3. The second matter on which I wish to comment is the provision in Clause 5(b) of the Bill to levy income tax on passage allowances. At the March meeting of the Executive Council ~~the~~ the Joint East African Board attention was drawn by Mr. Peto to this provision which, in his opinion, was unreasonable. A summary of the discussion of the Board's meeting appears in the issue of "East Africa and Rhodesia" for the 11th ⁷ March and I understand that the Board are about to make representations on the subject.

G. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomkinson.

Sir C. Bottomley.

Sir J. Strachan.

Parliament, U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

It is, of course, obvious that this provision will apply ^{only} to officials of the Colonial Government and to ^{such} private individuals ^{as} are employed in some capacity in Kenya ^{and whose} terms of service ^{shall} provide for the grant of free passages from time to time. I do not view this provision with any favour. It is possible, and it is indeed necessary, to draw sharp distinction between persons whose ordinary residence is in Kenya and persons who are required to be there by virtue of their employment. In order to secure the services of officers it is necessary to recognise the fact that they require periodical leave and it is not really equitable to take ^{the} passage allowances into account in assessing their emoluments. The amount which can be received in respect of such a tax can only be negligible and it amounts

in fact to imposing an extra tax upon the salaries of officials which is not paid by the private individual. It is, of course, true that the individual has to find his own passages if he chooses to take leave, but then he is not a member of the Government Service and he can please himself as to leaving Kenya or not.

4. In my view the existence of such a provision can only cause ill feeling and I think that some further arguments in support of it should be put forward before I am asked to agree.

I have, etc.

(Signed) W. ORMSBY GORE.

AIR MAIL

KENYA

No. 41

CONFIDENTIAL.



GOVERNMENT HOUSE

NAIROBI

KENYA

134

8

20 February, 1937.

RECEIVED
2-MAR 1937
C. O. REC.

Sir,

(14) on 38008/36
Estimate No
(in use)

With reference to Mr. Wade's despatch No.78 of the 30th January and to previous correspondence on the subject of the introduction of Income Tax in Kenya, I have the honour to inform you that the Acting Governor recently appointed a small Committee to redraft the Income Tax Bill, which was published in the Gazette dated the 3rd October, 1936.

Amended (14)
Copy of Bill sent to J.C.C. (16)

It will have been observed that the Standing Finance Committee in Part II of its Report on the Estimates of the Colony for 1937 recommended that the revenue to be derived from Income Tax during the year should be assessed at £43,500 instead of £83,500 as had been envisaged when the Draft Revenue Estimates had been presented in the Legislative Council. It was therefore necessary that the rates and allowances provided for in the Bill as originally drafted should be the subject of revision.

2. The Report of the redrafting Committee, together with the new Bill recommended by the Committee, was duly considered by the

Acting/

THE RIGHT HONOURABLE
W. ORMSBY GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

Acting Governor in Council on the 15th February, when Council advised that the Bill be published with a view to its introduction in the Legislative Council subject to certain minor drafting amendments.

The new Bill will be introduced in the Legislative Council during the next Session starting on the 2nd March. In the meantime, I forward for your information and for reference to the Joint East African Board should you so desire, copies of the Bill, as published. Copies of the Committee's Report, which it will be observed is of a confidential nature, are also enclosed, and the Attorney General informed Mr. Wade that he had been desired by Captain Schwartz and Major Cavendish Bentinck to state that they had signed this Report on the understanding that it would not be made public.

3. Copies of the Bill have been supplied to the Governments of Uganda, Tanganyika and Zanzibar and to the Secretary to the Governors' Conference, for their information.

I have the honour to be,

Sir,

Your most obedient, humble servant,

M. M. M. M.

ACTING GOVERNORS' DEPUTY.

COLONY AND PROTECTORATE OF KENYA



A BILL TO IMPOSE A TAX UPON INCOMES AND
TO REGULATE THE COLLECTION THEREOF

**A Bill to Impose a Tax upon Incomes and to
Regulate the Collection thereof**

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

PART I.

PRELIMINARY

1. This Ordinance may be cited as the Income Tax Ordinance, 1937, and shall be deemed to have come into operation on the first day of January, 1937. Short title and commencement.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

“body of persons” means any body politic corporate or collegiate and any company fraternity fellowship or society of persons whether corporate or incorporate;

“chargeable income” means the aggregate amount of the income of any person from the sources specified in section 5 of this Ordinance remaining after allowing the appropriate deductions and exemptions under this Ordinance;

“Commissioner” means the Commissioner charged with the administration of this Ordinance, and includes a Deputy Commissioner or an Assistant Commissioner for all the purposes of this Ordinance except the exercise of the powers conferred upon the Commissioner by sections 84, 85 and 87 of this Ordinance;

“company” means—

(i) a company incorporated or registered under the provisions of the Companies Ordinance, 1933 (including an “existing company” as defined in that Ordinance) or under the provisions of any Ordinance amending or replacing the same; No. 28 of 1933

(ii) any company which, though incorporated or registered outside the Colony, carries on business or has an office or place of business therein;

"debt interest" means interest payable by a company or body of persons under or by virtue of a debenture or debenture trust deed whether in the form of a mortgage or any other instrument or document acknowledging indebtedness;

"incapacitated person" means any infant, lunatic, idiot, or insane person;

"local authority" means a municipal council or a municipal board established under the Local Government (Municipalities) Ordinance, 1928, or a district council established under the Local Government (District Councils) Ordinance, 1928;

"local committee" means a committee appointed by the Governor under section 68 of this Ordinance;

"tax" means the income tax imposed by this Ordinance;

"year of assessment" means the period of twelve months commencing on the first day of January, 1937, and each subsequent period of twelve months.

3. For the due administration of this Ordinance the Governor may appoint a Commissioner, a Deputy Commissioner, an Assistant Commissioner, and such other officers and persons as may be necessary.

4. (1) Every person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, informations, returns, assessment lists and copies of such lists relating to the income or items of income of any person, as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a magistrate. No stamp duty shall be charged in respect of any such declaration.

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any person—

(a) other than a person to whom he is authorized by the Governor to communicate it; or

(b) otherwise than for the purposes of this Ordinance, shall be guilty of an offence against this Ordinance and shall be liable on conviction by a magistrate of the first or second

No. 19 of 1928
No. 21 of 1928

Administra-
tion.

Official
secrecy.

class to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and such imprisonment.

(3) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Ordinance.

(4) Where under any law in force in any part of His Majesty's Dominions or in any place under His Majesty's protection or in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom provision is made for the allowance of relief from income tax in respect of the payment of income tax in this Colony, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorized officers of the Government in that part or place of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from income tax in this Colony or from income tax in that part or place aforesaid.

(5) Notwithstanding anything contained in this section the Commissioner may permit any officer duly authorized in that behalf by the Auditor of the Colony to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor or any such officer shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purposes of sub-section (2) of this section.

PART II

IMPOSITION OF INCOME TAX

5. Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereafter for the year of assessment commencing on the first day of January, 1937, and for each subsequent year of assessment upon the income of any person accruing in, derived from, or received in, the Colony in respect of—

(a) gains or profits from any trade, business, profession or vocation for whatever period of time such trade, business, profession, or vocation may have been carried on or exercised;

Charge of
income tax.

"debenture interest" means interest payable by a company or body of persons under or by virtue of a debenture or debenture trust deed whether in the form of a mortgage or any other instrument or document acknowledging indebtedness;

"incapacitated person" means any infant, lunatic, idiot, or insane person;

"local authority" means a municipal council or a municipal board established under the Local Government (Municipalities) Ordinance, 1928, or a district council established under the Local Government (District Councils) Ordinance, 1928;

"local committee" means a committee appointed by the Governor under section 68 of this Ordinance;

"tax" means the income tax imposed by this Ordinance;

"year of assessment" means the period of twelve months commencing on the first day of January, 1937, and each subsequent period of twelve months.

No. 19 of 1928
No. 21 of 1928

Administration.

3. For the due administration of this Ordinance the Governor may appoint a Commissioner, a Deputy Commissioner, an Assistant Commissioner, and such other officers and persons as may be necessary.

Official
secrecy.

4. (1) Every person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, informations, returns, assessment lists and copies of such lists relating to the income or items of income of any person, as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a magistrate. No stamp duty shall be charged in respect of any such declaration.

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any person—

(a) other than a person to whom he is authorized by the Governor to communicate it; or

(b) otherwise than for the purposes of this Ordinance, shall be guilty of an offence against this Ordinance and shall be liable on conviction by a magistrate of the first or second

class to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and such imprisonment.

(3) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Ordinance.

(4) Where under any law in force in any part of His Majesty's Dominions or in any place under His Majesty's protection or in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom provision is made for the allowance of relief from income tax in respect of the payment of income tax in this Colony, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorized officers of the Government in that part or place of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from income tax in this Colony or from income tax in that part or place aforesaid.

(5) Notwithstanding anything contained in this section the Commissioner may permit any officer duly authorized in that behalf by the Auditor of the Colony to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor or any such officer shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purposes of sub-section (2) of this section.

PART II

IMPOSITION OF INCOME TAX

5. Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereafter for the year of assessment commencing on the first day of January, 1937, and for each subsequent year of assessment upon the income of any person accruing in, derived from, or received in, the Colony in respect of—

Charge of
income tax.

(a) gains or profits from any trade, business, profession or vocation for whatever period of time such trade, business, profession, or vocation may have been carried on or exercised;

- (b) gains or profits from any employment, including the estimated annual value of any quarters or board or residence or of any other allowance (other than a subsistence or travelling allowance, or an entertainment allowance which is proved to the satisfaction of the Commissioner to have been expended for the purposes for which it was made) granted in respect of employment whether in money or otherwise.

The expression "any other allowance" in this paragraph contained includes any passage allowance paid to or on behalf of an employee by an employer in respect of such employee's and/or family's passage from the Colony to, or to the Colony from, a place outside the Colony, but shall not include any such passage allowance granted in respect of a passage to the Colony on first appointment or a passage from the Colony on termination of such appointment;

- (c) the net annual value of land and improvements thereon used by or on behalf of the owner or used rent free by the occupier, for the purpose of residence or enjoyment, and not for the purpose of gain or profit;
- (d) dividends, interest or discounts;
- (e) any pension, charge or annuity;
- (f) rents, royalties, premiums and any other gains or profits not falling within any of the foregoing paragraphs of this section:

Provided that nothing in this section contained shall be deemed to apply to the value of any quarters or of any houses situated on a farm and bona fide occupied by an owner, or by any employee of such owner, solely for the purpose of carrying on farming operations.

6. Tax shall be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment: notwithstanding that the source of income may have ceased before or during the year of assessment.

Bas. of assess-
ment.

7. Where the Commissioner is satisfied that any person usually makes up the accounts of his trade or business on some day other than that immediately preceding any year of assessment, the Commissioner may permit the gains or profits of that trade or business to be computed for the purposes of this Ordinance upon the income of the year terminating on that day in the year immediately preceding the year of assessment on which the accounts of the said trade or business have been usually made up:

Special periods
of assessment.

Provided that, where permission has been given for any year of assessment, tax shall be charged, levied and collected for each subsequent year upon the gains and profits for the full year terminating on the like date in the year immediately preceding the year of assessment, subject to any such adjustment as, in the opinion of the Commissioner, may be just and reasonable.

EXEMPTIONS

8. There shall be exempt from the tax—

Exemptions.

- (a) the official emoluments received by the officer administering the Government;
- (b) the income of the Kenya and Uganda Railways and Harbours Services;
- (c) the income of the Asiatic Widows' and Orphans' Fund established under the Asiatic Widows' and Orphans' Pension Ordinance, 1927;
- (d) the income of the Kenya and Uganda Railway Provident Fund established under the State Railway Provident Fund Ordinance;
- (e) the income of the European Civil Service Provident Fund established under the European Civil Service Provident Fund Ordinance, 1934;
- (f) the income of the Asian Civil Service Provident Fund established under the Asian Civil Service Provident Fund Ordinance, 1934;
- (g) the income of any provident fund lawfully established by a local authority;
- (h) the income of any other provident fund declared by the Governor under section 19 of this Ordinance to be an approved fund;
- (i) the income of any local authority in so far as such income is not derived from a trade or business carried on by the local authority:

No. 20 of 1927.

Cap. 35.

No. 27 of 1934

No. 64 of 1934

Provided that the Governor in Council by order, subject to such conditions as he may impose and for such period as may be stated in the order, may exempt from the tax the income of any local authority derived from a trade or business if he is satisfied that the public interest is best served by such an exemption;

- (j) the income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution, or the income of trusts of a public character;
- (k) the emoluments payable to members of the permanent consular services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;
- (l) the emoluments payable from Imperial funds to members of His Majesty's Forces and to persons in the permanent service of the Imperial Government in the Colony in respect of their offices under the Imperial Government;
- (m) the emoluments payable from Dominion funds to any accredited representative in the Colony of any Dominion;
- (n) war pensions or gratuities;
- (o) any capital sum received by way of retiring or death gratuity or as consolidated compensation for death or injuries;
- (p) the income of the Post Office Savings Bank;
- (q) the income of the Land and Agricultural Bank of Kenya established under the Land and Agricultural Bank Ordinance, 1930;
- (r) the income of the Farmers Conciliation Board established under the Farmers Assistance Ordinance, 1936;
- (s) the profits of a non-resident shipowner as defined in section 41 of this Ordinance provided that the State to which such non-resident shipowner belongs extends a similar exemption to British and Colonial non-resident shipowners carrying on business in such State:

No. 3 of 1931.

No. 18 of 1936.

Provided that nothing in this section shall be construed to exempt in the hands of the recipients any dividends, interest, annuities, bonuses, salaries, wages, pensions or other profits paid wholly or in part out of the income so exempted.

9. The Governor may by proclamation published in the Gazette provide that the interest payable on any loan charged on the public revenue of the Colony shall be exempted from the tax, either generally or only in respect of interest payable to persons not resident in the Colony; and such interest shall as from the date and to the extent specified in the proclamation be exempt accordingly.

Government loans.

PART III.

ASCERTAINMENT OF CHARGEABLE INCOME

10. (1) For the purpose of ascertaining the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income, including—

Deductions allowed.

- (a) except as hereinafter provided, sums payable by such person by way of interest upon any money borrowed by him, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;
- (b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;
- (c) where any person engaged in any trade, business, profession or vocation has expended any sum in replacing any plant or machinery which was used or employed in such trade, business, profession or vocation, and which has become obsolete, an amount equivalent to the cost of the plant or machinery replaced, after deducting from that cost such sum as shall represent the total depreciation which has occurred by reason of wear and tear since the date of purchase of such plant and machinery or, in the case of such plant and machinery purchased before the first day of January, 1937, since that date, and any sum realized by the sale thereof;
- (d) any sum expended for repair of premises, plant and machinery employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed:

Provided that the Governor in Council by order, subject to such conditions as he may impose and for such period as may be stated in the order, may exempt from the tax the income of any local authority derived from a trade or business if he is satisfied that the public interest is best served by such an exemption;

- (j) the income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution, or the income of trusts of a public character;
- (k) the emoluments payable to members of the permanent consular services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;
- (l) the emoluments payable from Imperial funds to members of His Majesty's Forces and to persons in the permanent service of the Imperial Government in the Colony in respect of their offices under the Imperial Government;
- (m) the emoluments payable from Dominion funds to any accredited representative in the Colony of any Dominion;
- (n) war pensions or gratuities;
- (o) any capital sum received by way of retiring or death gratuity or as consolidated compensation for death or injuries;
- (p) the income of the Post Office Savings Bank;
- (q) the income of the Land and Agricultural Bank of Kenya established under the Land and Agricultural Bank Ordinance, 1930;
- (r) the income of the Farmers Conciliation Board established under the Farmers Assistance Ordinance, 1936;
- (s) the profits of a non-resident shipowner as defined in section 41 of this Ordinance provided that the State to which such non-resident shipowner belongs extends a similar exemption to British and Colonial non-resident shipowners carrying on business in such State:

No. 3 of 1931.

No. 18 of 1936.

Provided that nothing in this section shall be construed to exempt in the hands of the recipients any dividends, interest, annuities, bonuses, salaries, wages, pensions or other profits paid wholly or in part out of the income so exempted.

9. The Governor may by proclamation published in the Gazette provide that the interest payable on any loan charged on the public revenue of the Colony shall be exempted from the tax, either generally or only in respect of interest payable to persons not resident in the Colony; and such interest shall as from the date and to the extent specified in the proclamation be exempt accordingly.

Government loans.

PART III.

ASCERTAINMENT OF CHARGEABLE INCOME

10. (1) For the purpose of ascertaining the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income, including—

Deductions allowed.

- (a) except as hereinafter provided, sums payable by such person by way of interest upon any money borrowed by him, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;
- (b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;
- (c) where any person engaged in any trade, business, profession or vocation has expended any sum in replacing any plant or machinery which was used or employed in such trade, business, profession or vocation, and which has become obsolete, an amount equivalent to the cost of the plant or machinery replaced, after deducting from that cost such sum as shall represent the total depreciation which has occurred by reason of wear and tear since the date of purchase of such plant and machinery or, in the case of such plant and machinery purchased before the first day of January, 1937, since that date, and any sum realized by the sale thereof;
- (d) any sum expended for repair of premises, plant and machinery employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed;

Provided that no deduction shall be made for the cost of renewal of any property which has been the subject of an allowance under section 12 of this Ordinance;

(e) bad debts incurred in any trade, business, profession or vocation, proved to the satisfaction of the Commissioner to have become bad during the year immediately preceding the year of assessment, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Commissioner to have become bad during the said year notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said year, provided that all sums recovered during the said year on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as receipts of the trade, business, profession or vocation for that year;

(f) such other deductions as may be prescribed by any rule made under this Ordinance.

(2) The Governor in Council may by rules provide for the method of calculating or estimating the deductions allowed or prescribed under this section.

(3) In ascertaining the chargeable income of any person who shall have been subject to a levy on salary imposed under the Levy on Official Salaries Ordinance, 1931, the amount of salary shall be deemed to be the amount of the salary as reduced by such levy.

No. 57 of 1931.

Deductions not to be allowed.

11. For the purposes of ascertaining the chargeable income of any person no deduction shall be allowed in respect of—

- (a) domestic or private expenses;
- (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
- (c) income carried to any reserve fund or, subject to the provisions of this Ordinance, capitalized in any way;
- (d) any loss or expense which is recoverable under any insurance, contract or indemnity;

(f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;

(g) any amounts paid or payable in respect of United Kingdom income tax or surtax, Kenya income tax or Empire income tax as defined in this Ordinance.

12. In ascertaining the chargeable income of any person engaged in a trade, business, profession or vocation, there shall be allowed as a deduction a reasonable amount for the wear and tear of property owned by him, including plant and machinery, arising out of the use or employment of such property in the trade, business, profession or vocation during the year immediately preceding the year of assessment:

Allowance for wear and tear.

Provided that in no case shall any allowance be made for the depreciation of buildings, or other structures or works of a permanent nature.

13. (1) Where the amount of a loss incurred in the year preceding any year of assessment in any trade, business, profession or vocation carried on by any person either solely or in partnership is such that it cannot be wholly set off against his income from other sources for the same year, the amount of such loss shall to the extent to which it is not allowed against his income from other sources for the same year be carried forward and shall, subject as is hereinafter provided, be set off against what would otherwise have been his chargeable income for the next five years in succession:

Allowance of trade losses.

Provided that the amount of any such loss allowed to be set off in computing the chargeable income of any year shall not be set off in computing the chargeable income of any other year.

(2) For the purposes of this section any losses incurred during the years 1933, 1934 and 1935 shall, after deducting therefrom any profits made during those years, be deemed to have been a loss incurred in a year preceding the year of assessment commencing on the first day of January, 1937.

(3) Nothing in this section contained shall be construed as permitting the set-off of any loss incurred in any trade, business, profession or vocation which is carried on outside the Colony.

Deduction for dependants.

14. (1) Subject to the provisions of sub-section (3) of this section, in ascertaining the chargeable income of an individual who is resident in the Colony and who proves to the satisfaction of the Commissioner that during the year immediately preceding the year of assessment he has maintained or contributed to the maintenance of a dependent relative there shall be allowed a deduction of the sum expended on such maintenance.

(2) Where the dependent relative in respect of whom a deduction is claimed under the provisions of this section is a child in respect of whom a deduction has been allowed under the provisions of section 18 of this Ordinance, then in such case the amount that may be allowed as a deduction under the provisions of this section shall be the difference between the sum allowed in respect of such child under the provisions of section 18 of this Ordinance and the sum of one hundred pounds.

(3) No individual shall be allowed a deduction under the provisions of this section of a sum exceeding one hundred pounds.

(4) For the purposes of this section any sum paid by way of alimony or maintenance, under an order of a competent court made on the dissolution of a marriage, or under an agreement in writing made between the parties whose marriage has been dissolved, shall be deemed to be a sum expended on the maintenance of a dependent relative.

Deduction in case of residents in the Colony.

15. In ascertaining the chargeable income of an individual who is resident in the Colony there shall be allowed a deduction of three hundred and fifty pounds.

Deduction in case of non-residents.

16. In ascertaining the chargeable income of an individual who is not resident in the Colony there shall be allowed a deduction of one hundred and fifty pounds.

Deduction for wife.

17. In ascertaining the chargeable income of an individual who is resident in the Colony and who proves to the satisfaction of the Commissioner that he had during the year immediately preceding the year of assessment a wife or wives living with or wholly maintained by him there shall be allowed a deduction of one hundred and fifty pounds.

Deduction for children.

18. In ascertaining the chargeable income of an individual who is resident in the Colony and who proves to the satisfaction of the Commissioner that he had any child living at any time within the year preceding the year of assessment who was either under the age of sixteen or who if over the age of sixteen years at any time within that year was receiving full time instruction at any university, college, school, or other educational establishment, or was serving under articles or indentures with a view to qualifying in a trade or profession there shall be allowed a deduction of seventy-five pounds in respect of one such child, and a deduction of sixty pounds in respect of each subsequent such child:

Provided that the total deduction to be allowed under this section shall not exceed a total amount of two hundred and fifty-five pounds.

The expression "child" in this section includes a step-child, an illegitimate child, or an adopted child who was during the year preceding the year of assessment wholly maintained by the individual.

19. In ascertaining the chargeable income of any person who—

Deductions in respect of life insurance and contributions to Widows' and Orphans' Fund, etc.

- (a) shall have made insurance (including insurance against death by accident) on his life or on the life of his wife in any insurance company; or
- (b) shall have contributed to the Widows' and Orphans' Pension Scheme in the Colony or to an approved scheme as defined in the Widows' and Orphans' Pension Ordinance, or to the Asiatic Widows' and Orphans' Pension Fund, or to the Kenya and Uganda Railway Provident Fund, or to the European Civil Service Provident Fund, or to the Asian Civil Service Provident Fund, or to such other public or private fund as the Governor may by order declare to be an approved fund for the purposes of this section.

Cap. 34.

there shall be allowed a deduction of the annual amount of the premium paid by him for such insurance and the annual amount of such contribution as aforesaid:

Provided that no such deduction shall be allowed in respect of any such annual amount of premium and/or contribution beyond an amount equal to one-sixth part of the

assessable income: And provided further that the total deduction to be allowed under this section shall not exceed two hundred pounds in amount.

Proof of claims.

20. Every individual who claims an allowance under this Part shall make his claim on the prescribed form. Such allowance shall be granted if the claim contains such particulars and is supported by such proof as the Commissioner may require.

**PART IV.
RATE OF TAX.**

Rates of tax.

21. The tax upon the chargeable income of every person shall be charged at the following rates:—

- For every pound of the first £700: one shilling;
For every pound of the next £500: one shilling fifty cents;
For every pound of the next £1,500: two shillings;
For every pound of the remainder of the chargeable income: two shillings fifty cents:

Provided that in the case of a company the rate of tax for every pound of the chargeable income in excess of £1,200 shall be two shillings.

Deduction of tax from dividends of companies.

22. (1) Every company which is registered in the Colony shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the rate paid or payable by the company on the income out of which such dividend is paid: Provided that where the tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company.

(2) Every such company shall upon payment of a dividend whether tax is deducted therefrom or not furnish each shareholder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the company has deducted or is entitled to deduct in respect of that dividend.

Deduction of tax from debenture interest paid by company.

(3) Every company which is registered in the Colony shall upon payment of debenture interest deduct therefrom tax at the rate of two shillings on every pound of such interest and shall forthwith render an account to the Commissioner of the amount so deducted, and every such amount shall be a debt due from such company to the Government of the Colony and shall be recoverable as such.

(4) Every such company shall upon payment of such interest furnish each person to whom such payment is made with a certificate setting forth the amount of the interest paid to him and the amount of tax which the company has deducted from such interest.

(5) The account aforesaid shall be rendered by the manager or other principal officer of the company.

(6) Any such officer of a company who fails or neglects to render an account due or to furnish a certificate under this section shall be guilty of an offence against this Ordinance.

23. (1) Any tax which a company has deducted or is entitled to deduct under the last preceding section from a dividend paid to a shareholder or debenture interest paid to a debenture-holder, and any tax applicable to the share to which any person is entitled in the income of a body of persons assessed under this Ordinance, shall, when such dividend, debenture interest or share is included in the chargeable income of such shareholder, debenture-holder or person, be set off for the purposes of collection against the tax charged on that chargeable income.

Set-off in respect of tax deducted.

(2) In the year of assessment commencing on the first day of January, 1937, the chargeable income of any person from any dividend, portion of dividend or debenture interest to which section 22 of this Ordinance would have applied if this Ordinance had been in force at the time of the payment of such dividend, portion of dividend or debenture interest shall be deemed to have borne tax at the appropriate rate (in the case of debenture interest at the rate of two shillings in the pound), and such person shall be entitled to the set-off provided by this section:

Provided, however, that, in the case of the chargeable income of any person from any debenture interest, the total tax chargeable to such person for such year of assessment shall not be less than the tax which would be chargeable if such debenture interest were omitted from his chargeable income and no set-off under this section were allowed.

(3) The expression "appropriate rate" means the rate of tax determined by dividing the amount of tax paid by the company on its income by the amount of income on which such tax has been paid.

24. (1) Where any person pays mortgage interest to a person not resident in the Colony or to the agent of such person and is entitled to deduct such interest under section 10 of this Ordinance he shall upon paying the interest deduct

Deduction of tax from mortgage interest payable by individual.

therefrom tax at the rate of two shillings on every pound of such interest and shall forthwith render an account to the Commissioner of the amount so deducted and every such amount shall be a debt from him to the Government of the Colony and shall be recoverable as such.

(2) Any person who fails or neglects to render an account due under this section shall be guilty of an offence against this Ordinance.

(3) In the year of assessment commencing on the first day of January, 1937, the chargeable income of any person from any mortgage interest to which sub-section (1) of this section would have applied if this Ordinance had been in force at the time of the payment of such mortgage interest, shall be deemed to have borne tax at the rate of two shillings in the pound, and such person shall, if such mortgage interest is included in the chargeable income of such person, be entitled to set off the tax so deemed to have been paid against the tax charged on the chargeable income of such person, but so, however, that the total tax chargeable to such person for such year of assessment shall not be less than the tax which would be chargeable if such mortgage interest were omitted from his chargeable income and no set-off under this section were allowed.

Temporary residents.

25. Tax shall not be payable in respect of any income arising outside the Colony and received therein by any person who is in the Colony for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in the Colony at one or more times for a period equal in the whole to six months in the year preceding the year of assessment.

PART V.

PROVISIONS RELATING TO SPECIAL CASES.

A.—Husband and Wife.

Wife's income.

26. The income of a married woman not separated from her husband under a judicial order or written agreement shall, for the purposes of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name: Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total

income of the husband and wife may, if necessary, be collected from the wife notwithstanding that no assessment has been made upon her.

B.—Trustees, Agents, etc.

27. A receiver appointed by the court, a trustee, guardian, curator, or committee, having the direction, control or management of any property or concern on behalf of any incapacitated person shall be assessable and chargeable to tax in like manner and to the like amount as such person would be assessable and chargeable if he were not an incapacitated person.

Chargeability of trustees, etc.

28. (1) A person not resident in the Colony (hereinafter in this section referred to as a non-resident person) shall be assessable and chargeable to tax in the name of his trustee, guardian, curator, or committee, or of any attorney, factor, agent, receiver, branch, or manager, whether such factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and to the like amount as such non-resident person would be assessable and chargeable if he were resident in the Colony and in the actual receipt of such income:

Chargeability of agent of person residing out of the Colony.

Provided that in the case of any individual who is not resident in the Colony no deduction, other than the deduction allowed under section 16 of this Ordinance, shall be allowed.

A non-resident person shall be assessable and chargeable to tax in respect of any income arising whether directly or indirectly, through or from any factorship, agency, receivership, branch or management, and shall be so assessable and chargeable in the name of the factor, agent, receiver, branch or manager.

(2) Where a non-resident person carries on business with a resident person, and it appears to the Commissioner that owing to the close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

therefrom tax at the rate of two shillings on every pound of such interest and shall forthwith render an account to the Commissioner of the amount so deducted and every such amount shall be a debt from him to the Government of the Colony and shall be recoverable as such.

(2) Any person who fails or neglects to render an account due under this section shall be guilty of an offence against this Ordinance.

(3) In the year of assessment commencing on the first day of January, 1937, the chargeable income of any person from any mortgage interest to which sub-section (1) of this section would have applied if this Ordinance had been in force at the time of the payment of such mortgage interest, shall be deemed to have borne tax at the rate of two shillings in the pound, and such person shall, if such mortgage interest is included in the chargeable income of such person, be entitled to set off the tax so deemed to have been paid against the tax charged on the chargeable income of such person, but so, however, that the total tax chargeable to such person for such year of assessment shall not be less than the tax which would be chargeable if such mortgage interest were omitted from his chargeable income and no set-off under this section were allowed.

Temporary residents.

25. Tax shall not be payable in respect of any income arising outside the Colony and received therein by any person who is in the Colony for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in the Colony at one or more times for a period equal in the whole to six months in the year preceding the year of assessment.

PART V.

PROVISIONS RELATING TO SPECIAL CASES.

A.—Husband and Wife.

Wife's income.

26. The income of a married woman not separated from her husband under a judicial order or written agreement shall, for the purposes of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name: Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total

income of the husband and wife may, if necessary, be collected from the wife notwithstanding that no assessment has been made upon her.

B.—Trustees, Agents, etc.

27. A receiver appointed by the court, a trustee, guardian, curator, or committee, having the direction, control or management of any property or concern on behalf of any incapacitated person shall be assessable and chargeable to tax in like manner and to the like amount as such person would be assessable and chargeable if he were not an incapacitated person.

Chargeability of trustees, etc.

28. (1) A person not resident in the Colony (hereinafter in this section referred to as a non-resident person) shall be assessable and chargeable to tax in the name of his trustee, guardian, curator, or committee, or of any attorney, factor, agent, receiver, branch, or manager, whether such factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and to the like amount as such non-resident person would be assessable and chargeable if he were resident in the Colony and in the actual receipt of such income:

Chargeability of agent of person residing out of the Colony.

Provided that in the case of any individual who is not resident in the Colony no deduction, other than the deduction allowed under section 16 of this Ordinance, shall be allowed.

A non-resident person shall be assessable and chargeable to tax in respect of any income arising whether directly or indirectly, through or from any factorship, agency, receivership, branch or management, and shall be so assessable and chargeable in the name of the factor, agent, receiver, branch or manager.

(2) Where a non-resident person carries on business with a resident person, and it appears to the Commissioner that owing to the close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(3) Where it appears to the Commissioner by whom the assessment is made, or to the judge or local committee by whom an appeal is heard, that the true amount of the gains or profits of any non-resident person assessable and chargeable to tax in the name of a resident person cannot in any case be readily ascertained, the Commissioner or judge if he, or a local committee if it, thinks fit, may assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is assessable and chargeable as aforesaid, and in such case the provisions of this Ordinance relating to the delivery of returns or particulars by person acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons of income to be charged:

Provided that the amount of the percentage shall in each case be determined having regard to the nature of the business; and shall, when determined by the Commissioner, be subject to an appeal as provided by Part VIII of this Ordinance.

(4) Nothing in this section shall render a non-resident person assessable or chargeable in the name of a broker or general commission agent or other agent where such broker, general commission agent or agent is not an authorized person carrying on the regular agency of the non-resident person, or a person assessable and chargeable as if he were an agent in pursuance of sub-sections (2) and (3) of this section, in respect of gains or profits arising from sales or transactions carried out through such a broker or agent.

(5) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him assessable and chargeable in pursuance of sub-sections (2) and (3) of this section in the name of a resident person shall not of itself make him assessable or chargeable in respect of gains or profits arising from those sales or transactions.

(6) Where a non-resident person is assessable and chargeable to tax in the name of any attorney, factor, agent, receiver, branch or manager, in respect of any gains or profits arising

from the sale of goods or produce manufactured or produced out of the Colony by the non-resident person, the person in whose name the non-resident person is so assessable and chargeable may, if he thinks fit, apply to the Commissioner or, in the case of an appeal to a local committee or the judge, to have the assessment to tax in respect of those gains or profits made or amended on the basis of profits which might reasonably be expected to have been earned by a merchant, or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and on proof to the satisfaction of the Commissioner, local committee or judge of the amount of the profits on the basis aforesaid the assessment shall be made or amended accordingly.

29. The person who is assessable and chargeable in respect of an incapacitated person or in whose name a non-resident is assessable and chargeable, shall be answerable for all matters required to be done by virtue of this Ordinance for the assessment of the income of any person for whom he acts and for paying the tax chargeable thereon.

Acts, etc., to be done by trustees.

30. Every person who in whatever capacity is in receipt of any money or value being income arising from any of the sources mentioned in this Ordinance or belonging to any other person who is assessable and chargeable in respect thereof, or who would be so assessable and chargeable if he were resident in the Colony and not an incapacitated person, shall, whenever required to do so by any notice from the Commissioner, prepare and deliver within the period mentioned in such notice a list in the prescribed form, signed by him, containing—

Lists to be prepared by representative or agent.

(a) a true and correct statement of all such income;

(b) the name and address of every person to whom the same shall belong.

and the provisions of this Ordinance with respect to the failure to deliver lists or particulars in accordance with a notice from the Commissioner shall apply to any such list or particulars.

31. The manager or other principal officer of every corporate body of persons shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this Ordinance for the assessment of such body and payment of the tax.

Manager of corporate bodies of persons.

Indemnification of representative.

32. Every person answerable under this Ordinance for the payment of tax on behalf of another person may retain out of any money coming to his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax; and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Ordinance.

Deceased persons.

33. When any person dies during the year preceding the year of assessment and such person would but for his death have been assessable and chargeable to tax for the year of assessment or when any person dies during the year of assessment or within two years after the expiration thereof and no assessment has been made upon him for that year of assessment the personal representative of such person shall, to the extent to which the assets of such person are acquired by him in the due and proper administration of the estate of such person, be assessable and chargeable to the tax to which such person would have been assessable and chargeable, and shall be answerable for doing all such acts, matters and things as such person, if he were alive, would be liable to do under this Ordinance:

Provided that in the case of a person dying during the year preceding the year of assessment if his personal representative distributes his estate before the commencement of the year of assessment such personal representative shall pay the tax at the rate or rates in force at the date of distribution of the estate.

Joint trustees.

34. Where two or more persons act in the capacity of trustees of a trust they may be charged jointly or severally with the tax with which they are chargeable, in that capacity, and shall be jointly and severally liable for payment of the same.

C.—Partnership.

Partnerships.

35. Where a trade, business, profession or vocation is carried on by two or more persons jointly—

- (1) the income of any partner from the partnership shall be deemed to be the share to which he was entitled during the year preceding the year of assessment in the income of the partnership (such income being ascertained in accordance with the provisions of this Ordinance) and shall be included in the return of income to be made by such partner under the provisions of this Ordinance;

(2) (a) the precedent partner, that is to say, the partner who of the partners resident in the Colony—

- (i) is first named in the agreement of partnership; or
(ii) if there be no agreement, is specified by name or initials singly or with precedence to the other partners, in the usual name of the partnership; or

(iii) is first named in the statement made under section 5 of the Registration of Business Names Ordinance; or

(iv) is the precedent acting partner if the partner named with precedence is not an acting partner,

shall, when required by the Commissioner, make and deliver a return of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Ordinance, and declare therein the names and addresses of the other partners in the firm together with the amount of the share of the said income to which each partner was entitled for that year;

(b) where no partner is resident in the Colony the return shall be made and delivered by the attorney, agent, manager or factor of the partnership resident in the Colony;

(c) the provisions of this Ordinance with respect to the failure to deliver returns or particulars in accordance with a notice from the Commissioner shall apply to any return required under this section;

- (3) The income of any non-resident partner or partners from the partnership shall be assessable in the name of the partnership or of any resident partner or of any agent of the partnership in the Colony, and the tax charged thereon shall be recoverable by all means provided in this Ordinance out of the assets of the partnership or from any partner or from any such agent.

D.—Agriculture.

36. (1) In this section—

“permanent cultivation” means the cultivation of land for the purpose of producing coco-nuts, tea, coffee, and other products from palms, trees or bushes of a more or less permanent character, all of which are hereinafter referred to as trees;

Ascertainment of profits from certain agricultural undertakings

"estate" means any area of land used mainly for the purpose of permanent cultivation:

"immature area" means an estate or part of an estate, first planted in any one year, in which the trees planted in that year are not fully mature, or not in full bearing.

(2) For the purpose of ascertaining the profits from an estate the provisions of this section shall apply in addition to, and shall be read with, sections 10, 11 and 13 of this Ordinance.

(3) The income and expenditure in connection with any immature area shall be separately considered and it shall be lawful for the Commissioner to require production of such particulars as may be necessary for that purpose.

(4) Where for any accounting period the expenditure other than capital expenditure incurred by any person on any immature area exceeds the receipts therefrom, and such excess is mainly due to the fact that the trees in that area, or a substantial proportion thereof, are not yet in bearing, the amount of such excess shall be allowed as a deduction from the profits for the same period of that person from the estate on which such immature area exists:

Provided that the initial cost of clearing and/or planting any such immature area shall be deemed to be capital expenditure.

37. In ascertaining the chargeable income of a farmer there shall, in addition to any other deductions to which the farmer may be entitled under the provisions of this Ordinance, be allowed a deduction of any sum expended on his farm during a year preceding a year of assessment on the provision of—

- (a) dipping tanks;
- (b) new fencing;
- (c) rotation replanting of sisal;
- (d) measures for the prevention of soil erosion.

For the purposes of this section the word "farmer" has the meaning assigned to it in section 38 of this Ordinance.

38. (1) Notwithstanding anything in this Ordinance contained, the provisions of this section shall apply to the determination of the chargeable income derived by any person from pastoral, agricultural or other similar operations (hereinafter referred to as a farmer).

Special deductions allowed to farmers.

Option to farmers.

(2) Every farmer shall be entitled to the exercise of an option whether the values of live stock and produce held by him and not disposed of at the beginning and end of each year preceding a year of assessment shall or shall not be taken into account in the determination of the chargeable income derived by him from such operations.

(3) Subject to such adjustment as to the Commissioner may seem to be fair and reasonable in respect of the value of any live stock or produce held by any farmer on the first day of January, 1936, or the date upon which he commenced farming operations, whichever date is the later, every farmer who elects not to take into account the values of such live stock and produce shall be chargeable in each year of assessment in respect of all amounts whatsoever for which live stock or produce have been disposed of by him or on his behalf during the year preceding a year of assessment.

(4) Every farmer making his election as in sub-section (3) of this section provided shall furnish to the Commissioner at any time when the Commissioner so requires a statement setting out to the best of his knowledge and belief the value of the live stock and produce held by him on the date specified in that sub-section which is applicable to his case.

(5) The decision as to the basis upon which a farmer elects to be assessed shall be notified by him in writing to the Commissioner when rendering his first return subsequent to the first day of January, 1937, under this Ordinance, and the decision so notified shall be binding upon him in respect of all subsequent returns: Provided that the Commissioner may for good and sufficient reasons and upon such terms as he may consider necessary for the protection of revenue permit any farmer who has so notified his election to adopt the alternative method in respect of any years of assessment subsequent to the year of assessment commencing on the first day of January, 1937.

(6) Every farmer who elects to continue to take into account the value of his live stock and produce shall include in the return rendered by him for income tax purposes the values of all live stock and produce held by him and not disposed of at the beginning and end of each year preceding a year of assessment.

(7) The value to be placed upon such live stock (other than live stock acquired by purchase for stud purposes) shall be—

- (a) in the case of live stock acquired by the farmer by purchase, either the purchase price paid or such standard value as is applicable to such live stock; and
- (b) in the case of live stock acquired by the farmer otherwise than by purchase, the standard value applicable to such live stock.

(8) The standard value applicable to any class of live stock shall be such as may be prescribed by rules under this Ordinance.

(9) The value to be placed upon live stock acquired by purchase for stud purposes shall be the purchase price paid for that live stock.

(10) The value to be placed upon produce included in any return shall be such fair and reasonable value as the Commissioner may fix.

39. Where a non-resident person carries on in the Colony an agricultural, manufacturing or other productive undertaking and sells any product of such undertaking outside the Colony or for delivery outside the Colony, whether the contract is made within or without the Colony, the full profit arising from the sale in a wholesale market shall be deemed to be income arising in or derived from the Colony:

Provided that if it is shown that the profit has been increased through treatment of the product outside the Colony other than handling, grading, blending, sorting, packing and disposal, such increase of profit shall not be deemed to be income arising in or derived from the Colony. Where any such produce is not sold in a wholesale market, the profit arising in the Colony shall be deemed to be not less than the profit which might have been obtained if such person had sold such produce wholesale to the best advantage.

E.—Insurance Companies.

40. Notwithstanding anything to the contrary contained in this Ordinance, it is hereby provided that—

- (a) in the case of an insurance company (other than a life insurance company) where the gains or profits accrue in part outside the Colony the gains or

Profits of non-resident persons from sale of exported produce.

Special provision as to certain companies and businesses. Insurance companies other than life insurance companies.

profits on which tax is payable shall be ascertained by taking the gross premiums and interest and other income received or receivable in the Colony (less any premiums returned to the insured and premiums paid on re-insurance), and deducting from the balance so arrived at a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the year preceding the year of assessment and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of the said year and from the net amount so arrived at deducting the actual claims paid or outstanding (less the amount recovered in respect thereof under re-insurance), the agency expenses in the Colony and a fair proportion of the expenses of the head office of the company;

- (b) in the case of a life insurance company, whether mutual or proprietary, the gains or profits on which tax is payable shall be the investment income less the management expenses (including commission): Provided that where such a company received premiums outside the Colony the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in the Colony bore to the total premiums received after deducting from the amount so arrived at the agency expenses in the Colony and a fair proportion of the expenses of the head office of the company.

Life insurance companies.

F.—Shipping.

41. (1) Subject to the provisions of paragraph (c) of section 8 of this Ordinance, where a non-resident person carries on the business of shipowner or charterer and any ship owned or chartered by him calls at a port in the Colony, his full profits arising from the carriage of passengers, mails, live stock or goods shipped in the Colony shall be deemed to arise in the Colony:

Profits of non-resident shipowners.

Provided that this section shall not apply to goods which are brought to the Colony solely for transshipment.

(2) Where for any accounting period such person produces the certificate mentioned in sub-section (3) of this section, the profits arising in the Colony from his shipping

business for such period, before deducting any allowance for depreciation, shall be a sum bearing the same ratio to the sums receivable in respect of the carriage of passengers, mails, live stock and goods shipped in the Colony as the ratio for the said period shown by that certificate of the total profits to the total sum receivable by him in respect of the carriage of passengers, mails, live stock and goods.

(3) The certificate shall be one issued by or on behalf of any income tax authority with regard to which the Commissioner is satisfied that it computes and assesses the full profits of the non-resident person from his shipping business, on a basis not materially different from that prescribed by this Ordinance, and shall certify for any accounting period as regards such business—

- (a) the ratio of the profits, or, where there are no profits, of the loss, as computed for the purposes of income tax by that authority, without making any allowance by way of depreciation, to the total sums receivable in respect of carriage of passengers, mails, live stock or goods; and
- (b) the ratio of the allowance for depreciation as computed by that authority to the said total sums receivable in respect of the carriage of passengers, mails, live stock and goods.

(4) Where at the time of assessment the provisions of sub-section (2) of this section cannot for any reason be satisfactorily applied, the profits arising in the Colony may be computed on a fair percentage of the full sum receivable on account of the carriage of passengers, mails, live stock and goods shipped in the Colony:

Provided that where any person has been assessed for any year of assessment by reference to such percentage, he shall be entitled to claim at any time within six years after the end of such year of assessment that his liability to tax for that year be recomputed on the basis provided by sub-section (2) of this section.

(5) Where the Commissioner decides that the call of a ship belonging to a particular non-resident shipowner or charterer at a port in the Colony is casual and that further calls by that ship or others in the same ownership are improbable, the provisions of this section shall not apply to the profits of such ship and no tax shall be chargeable thereon.

(6) The master of any ship owned or chartered by a non-resident person who is chargeable under the provisions of this section shall (though not to the exclusion of any other agent) be deemed the agent of such non-resident person for all the purposes of this Ordinance.

Master of ship to be an agent.

42. (1) In addition to any other powers of collection and recovery provided in this Ordinance, the Commissioner may, where the tax charged on the income of any person who carries on the business of shipowner or charterer has been in default for more than three months (whether such person is assessed directly or in the name of some other person), issue to the Commissioner of Customs or other authority by whom clearance may be granted a certificate containing the name or names of the said person and particulars of the tax in default. On receipt of such certificate, the Commissioner of Customs or other authority shall be empowered and is hereby required to refuse clearance from any port in the Colony to any ship owned wholly or partly or chartered by such person until the said tax has been paid.

Refusal of clearance where tax is in arrear.

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

43. Where a non-resident person carries on the business of air transport or the business of the transmission of messages by cable or by wireless telegraphy he shall be assessable to tax as if he were a non-resident shipowner as defined in section 41 of this Ordinance and the provisions of the said section shall apply *mutatis mutandis* to the computation of the profits or gains of such business.

Profits of non-resident air transport, cable, etc., undertakings.

G.—Relief in Cases of Double Taxation

44. (1) Any person who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income and who proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, income tax in the United Kingdom for that year in respect of the same part of his income, shall be entitled to relief from tax under this Ordinance paid or payable by him on that part of his income at a rate equal to the amount by which the rate of tax

Relief in respect of United Kingdom income tax.

appropriate to his case under this Ordinance exceeds half the appropriate rate of United Kingdom tax. If, however, the rate of tax appropriate to his case under this Ordinance exceeds the appropriate rate of United Kingdom tax he shall be entitled only to relief at a rate equal to half the appropriate rate of United Kingdom tax.

(2) For the purposes of this section, a certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom shall be receivable in evidence to show what is the appropriate rate of United Kingdom tax in any particular case.

(3) For the purposes of this section, the expression "rate of tax" when applied to tax paid or payable under this Ordinance means the rate determined by dividing the amount of the tax paid or payable for the year (before the deduction of the relief granted under this section) by the amount of the income in respect of which the tax paid or payable under this Ordinance has been charged for that year except that where the income which is the subject of a claim to relief under this section is computed by reference to the provisions of section 28 of this Ordinance on an amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Commissioner.

45. (1) If any person resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income, proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year in respect of the same part of his income, he shall be entitled to relief from tax in the Colony paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

- (a) If the Empire rate of tax does not exceed one-half of the rate of tax appropriate to his case under this Ordinance in the Colony, the rate at which relief is to be given shall be the Empire rate of tax.
- (b) In any other case the rate at which relief is to be given shall be half the rate of tax appropriate to his case under this Ordinance.

(2) If any person not resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his

Relief in
respect of
Empire
income tax.

income proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year of assessment in respect of the same part of his income, he shall be entitled to relief from tax paid or payable by him under this Ordinance on that part of his income at a rate thereon to be determined as follows:—

- (a) If the Empire rate of tax appropriate to his case does not exceed the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be one-half of the Empire rate of tax.
- (b) If the Empire rate of tax appropriate to his case exceeds the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds one-half of the Empire rate of tax.

(3) For the purposes of this section, Empire income tax means any income tax charged under any law in force in any part of His Majesty's Dominions (other than the United Kingdom or this Colony), or in any place under His Majesty's protection or in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom: Provided that the legislature of that part or place has provided for relief in respect of tax charged on income both in that part or place and this Colony in a manner similar to that provided in this section.

(4) For the purposes of this section, the rate of tax under this Ordinance shall be computed in the manner provided by sub-section (3) of the last preceding section of this Ordinance and the Empire rate of tax shall be computed in a similar manner.

(5) Where a person is for any year of assessment resident both in the Colony and in a part or place in which Empire income tax is charged, he shall for the purposes of this section be deemed to be resident where during that year he resides for the longer period.

Income from certain dividends to include tax thereon.

46. The income of a person arising from a dividend paid by a company liable to Kenya tax, United Kingdom income tax, or Empire income tax within the meaning of section 45 of this Ordinance shall, where any such tax has been deducted therefrom, be the gross amount before making such deduction; where no such deduction has been made, the income arising shall be the amount of the dividend increased by an amount on account of such taxes corresponding to the extent to which the profits out of which the said dividend has been paid have been charged with such taxes.

How certain receipts from insurance to be treated.

47. Any sum realized under any insurance against a loss of profits shall be taken into account in the ascertainment of any profits or income.

Ascertainment of income of clubs, trade associations, etc.

48. (1) Where a body of persons, whether corporate or unincorporate, carries on a club or similar institution and receives from its members not less than three-fourths of its gross receipts on revenue account (including entrance fees and subscriptions), it shall not be deemed to carry on a business; but where less than three-fourths of its gross receipts are received from members, the whole of the income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and the body of persons shall be chargeable either in respect of the profits therefrom, or in respect of the income which would be assessable if it were not deemed to carry on a business, whichever is the greater.

(2) In this section, "members" in relation to a body of persons means those persons who are entitled to vote at a general meeting of the body at which effective control is exercised over its affairs.

(3) Nothing in this section shall operate to annul or reduce any exemption granted in section 8 of this Ordinance.

Certain undistributed profits to be treated as distributed and certain transactions and dispositions to be disregarded.

49. (1) Where it appears to the Commissioner that with a view to the avoidance or reduction of tax a private company controlled by not more than five persons has not distributed to its shareholders as dividend profits made in any period ending after the first day of January, 1936, which could be distributed without detriment to the company's existing business, he may treat any such undistributed profits as distributed, and the persons concerned shall be assessable accordingly.

50. (1) Where the Commissioner is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the persons concerned shall be assessable accordingly.

In this section "disposition" includes any trust, grant, covenant, agreement or arrangement.

(2) Nothing in this section or in section 49 contained shall prevent the decision of the Commissioner in the exercise of any discretion given to him by this section from being questioned in an appeal against an assessment in accordance with Part VIII.

PART VI

GENERAL POWERS OF COMMISSIONER

51. (1) It shall be the duty of every person chargeable with tax to give notice to the Commissioner within three months after the commencement of any year of assessment that he is so chargeable:

Notice of chargeability and returns.

Provided that for the year of assessment commencing on the first day of January, 1937, such notice shall be given on or before the thirtieth day of June, 1937.

(2) The Commissioner may by notice in writing require any person to furnish him within a reasonable time with a return of income and such particulars as may be required for the purposes of this Ordinance with respect to the income for which such person is chargeable.

(3) Any person who fails or neglects to comply with any of the provisions of this section shall be guilty of an offence against this Ordinance.

(4) Where any person leaves the Colony before the thirty-first day of March in any year of assessment, or, in the case of the year of assessment commencing on the first day of January, 1937, before the thirtieth day of June, 1937, and has not given to the Commissioner the notice required by this section, such person shall give such notice within thirty days after the date of the return of such person to the Colony.

52. The Commissioner may give notice in writing to any person when and as often as he thinks necessary requiring him to furnish within the time limited by such notice fuller or further returns respecting any matter of which a return is required or prescribed by this Ordinance.

Commissioner may call for further returns.

Power to call for returns, books, etc.

58. For the purpose of obtaining full information in respect of any person's income the Commissioner may give notice to such person requiring him within the time limited by such notice, which time shall not be less than thirty days from the date of such notice, to complete and deliver to the Commissioner a prescribed return and/or to attend personally before him and to produce for examination any books, documents, accounts, and returns which the Commissioner may deem necessary.

Returns to be deemed to be furnished by due authority.

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

Books of account.

55. (1) If a person chargeable with tax fails or refuses to keep books or accounts which, in the opinion of the Commissioner, are adequate for the purposes of income tax, the Commissioner may by notice in writing require him to keep such records, books and accounts in such language as he may in the said notice prescribe.

(2) Any person who after receipt of a notice under subsection (1) of this section fails to comply with its provisions shall be guilty of an offence against this Ordinance.

Official information and official secrecy.

56. The Commissioner may require any officer in the employment of the Government of the Colony, or the Kenya and Uganda Railways and Harbours Services, or any local authority or other public body to supply such particulars as may be required for the purposes of this Ordinance and which may be in the possession of such officer:

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

Obligations of employers.

57. (1) Every employer when required to do so by notice from the Commissioner shall, within the time limited by the notice, prepare and deliver for any year a return containing—

- (a) the names and places of residence of all persons employed by him; and

- (b) the payments and allowances made to those persons in respect of that employment,

and the provisions of this Ordinance with respect to the failure to deliver returns or particulars in accordance with a notice from the Commissioner shall apply to any such return.

(2) Where the employer is a body of persons the manager or other principal officer shall be deemed to be the employer for the purposes of this section, and any director of a company or person engaged in the management of a company shall be deemed to be a person employed.

Returns to be furnished of income received on account of, or paid to, other persons.

58. Where any person in any capacity whatever—

- (a) receives any profits or income to which this Ordinance applies which belongs to some other person, or
(b) pays to some other person, or to his order, any such profits or income,

the Commissioner may give notice to such first-named person requiring him to furnish within the time limited by such notice a return containing—

- (i) a true and correct statement of all such profits and income; and
(ii) the name and address of every person to whom the same belongs.

59. The Commissioner may give notice in writing to any person who is the occupier of any land and improvements thereon requiring him to furnish within the time limited by such notice a return containing—

Occupiers to furnish returns of rent payable.

- (a) the name and address of the owner of such land and improvements; and
(b) a true and correct statement of the rent payable and any other consideration passing therefor.

60. The Commissioner may give notice in writing to any person requiring him within the time limited by such notice to furnish a return containing the name of every lodger or inmate who is at the date of the notice resident in his house, hotel, or institution, and has been so resident, except for temporary absences, throughout the preceding three months.

Return of lodgers and inmates.

Signature
of notices.

61. (1) Every notice to be given by the Commissioner under this Ordinance shall be signed by the Commissioner or by some person or persons from time to time appointed by him for that purpose, and every such notice shall be valid if the signature of the Commissioner or of such person or persons as duly printed, stamped or written thereon, provided that any notice in writing under this Ordinance to any person requiring him to furnish particulars to the Commissioner, or any notice under this Ordinance requiring the attendance of any person or witness before the Commissioner, shall be personally signed by the Commissioner or by any person duly authorized by him.

(2) A signature attached to any notice and purporting to be the signature of any person so appointed shall be taken to be the signature of that person until the contrary be shown.

Service
of notices.

62. Notice may be served on a person either personally or by being sent through registered post to his last known business or private address, and shall in the latter case be deemed to have been served not later than the seventh day succeeding the day on which the notice would have been received in the ordinary course by post, and in proving such notice it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

PART VII.

ASSESSMENTS.

Commissioner
to make
assessment.

63. (1) The Commissioner shall proceed to assess every person chargeable with tax as soon as may be after the expiration of the time allowed to such person for the delivery of his return.

(2) Where a person has delivered a return, the Commissioner may—

- (a) accept the return and make an assessment accordingly; or
- (b) if he has reasonable grounds for thinking that the return is not a true and correct return, refuse to accept the return and, to the best of his judgment, determine the amount of the chargeable income of the person and assess him accordingly.

(3) Where a person has not delivered a return and the Commissioner is of the opinion that such person is liable to tax, he may, according to the best of his judgment, determine

the amount of the chargeable income of such person, and assess him accordingly, but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

64. Where it appears to the Commissioner that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Commissioner may, within the year of assessment or within six years after the expiration thereof assess such person at such amount or additional amount as, according to his judgment, ought to have been charged, and the provisions of this Ordinance as to notice of assessment, appeal and other proceedings under this Ordinance shall apply to such assessment or additional assessment and to the tax charged thereunder.

Additional
assessments.

65. (1) The Commissioner shall as soon as possible prepare lists of persons assessed to tax.

Lists of
persons
assessed.

(2) Such lists (herein called the assessment lists) shall contain the names and addresses of the persons assessed to tax, the amount of the chargeable income of each person, the amount of tax payable by him, and such other particulars as may be prescribed.

66. (1) The Commissioner shall cause to be served personally on or sent by registered post to each person whose name appears on the assessment lists a notice addressed to him at his usual place of abode or business stating the amount of his chargeable income and the amount of tax payable by him, and informing him of his rights under the next subsection.

Power of
Commissioner
to revise
assessment
in case of
objection.

(2) If any person disputes the assessment he may apply to the Commissioner, by notice of objection in writing, to review and to revise the assessment made upon him. Such application shall state precisely the grounds of his objection to the assessment and shall be made within thirty days from the date of the service of the notice of assessment: Provided that the Commissioner, upon being satisfied that owing to absence from the Colony, sickness or other reasonable cause, the person disputing the assessment was prevented from making the application within such period, shall extend the period as may be reasonable in the circumstances.

(3) On receipt of the notice of objection referred to in sub-section (2) of this section, the Commissioner may require the person giving the notice of objection to furnish such particulars as the Commissioner may deem necessary with respect to the income of the person assessed and to produce all books or other documents in his custody or under his control relating to such income, and may summon any person who, he thinks, is able to give evidence respecting the assessment to attend before him, and may examine such person (except the clerk, agent, servant or other person confidentially employed in the affairs of the person to be charged) on oath or otherwise.

(4) In the event of any person assessed, who has objected to an assessment made upon him, agreeing with the Commissioner as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such person:

Provided always that in the event of any person who, under sub-section (2) of this section, has applied to the Commissioner for a revision of the assessment made upon him failing to agree with the Commissioner as to the amount at which he is liable to be assessed his right of appeal under the provisions of this Ordinance, against the assessment made upon him, shall remain unimpaired.

67. (1) No assessment, warrant or other proceedings purporting to be made in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance or any Ordinance amending the same, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected—

- (a) by reason of a mistake therein as to—
 - (i) the name or surname of a person liable; or
 - (ii) the description of any income; or
 - (iii) the amount of tax charged;
- (b) by reason of any variance between the assessment and the notice thereof;

Provided that in case of assessment the notice thereof shall be duly served on the person intended to be charged and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

Errors, etc.,
in assessment
and notices.

PART VIII.

APPEALS.

68. (1) The Governor may, by notice in the Gazette, appoint for any area specified in such notice a local committee consisting of a president and not more than three other persons, selected by the Governor, for the purpose of hearing and determining appeals in accordance with the provisions of section 69 of this Ordinance.

Establishment of local committees.

(2) Every member of a local committee shall hold office during the Governor's pleasure.

(3) The Governor may, without assigning any reason, revoke the appointment of any member of a local committee, and he may appoint new members whenever necessary.

(4) Three members of a local committee shall form a quorum for the purpose of carrying out all or any of the powers conferred upon a local committee by this Ordinance or by any rules made thereunder.

(5) In the unavoidable absence of the president from any meeting the members present shall elect a president for the meeting.

(6) The members of a local committee shall be entitled to receive such subsistence and travelling allowances as the Governor may determine.

(7) The members of a local committee shall not be personally liable for any act or default of such local committee, done or omitted to be done in good faith in the course of the operations of the committee.

(8) The Governor in Council may make rules governing appeals to a local committee, and, without prejudice to the generality of the foregoing, may make rules—

- (a) prescribing the manner in which an appeal shall be made to a local committee and the fees to be paid in respect of any such appeal;
- (b) prescribing the procedure to be adopted by a local committee in hearing an appeal and the records to be kept by such committee;
- (c) prescribing the manner in which any such committee shall be convened and the places where and the times at which a local committee shall hold sittings; and
- (d) generally for the better carrying out of the provisions of this Part relating to local committees.

Appeals to
local
committees.

69. (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioner in the manner provided in sub-section (4) of section 66 of this Ordinance may, upon giving notice in writing to the Commissioner within thirty days after the date of service upon him of notice of the refusal of the Commissioner to amend the assessment as desired, appeal against such assessment to a local committee appointed for the area in which he resides:

Provided that, notwithstanding the lapse of such period of thirty days, any person may appeal against the said assessment if he shows to the satisfaction of the local committee that, owing to absence from the Colony, sickness or other reasonable cause he was prevented from giving notice of appeal within such period, and that there has been no unreasonable delay on his part.

(2) Any person appealing may appear before the local committee either in person or by agent.

Appeals to
Supreme Court.

70. (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioner in the manner provided in sub-section (4) of section 66 of this Ordinance, or, having appealed to a local committee, is aggrieved by the decision of such committee, may appeal against the assessment to a judge upon giving notice in writing to the Commissioner within thirty days after the date of service upon him of notice of the refusal of the Commissioner to amend the assessment as desired or within thirty days after the date of the decision of the local committee as the case may be.

Provided that, notwithstanding the lapse of such period of thirty days, any person may appeal against the said assessment if he shows to the satisfaction of the judge that, owing to absence from the Colony, sickness or other reasonable cause he was prevented from giving notice of appeal within such period, and that there has been no unreasonable delay on his part.

(2) Every person appealing shall appear before the judge either in person or by advocate on the day and at the time fixed for the hearing of the appeal:

Provided always that if it be proved to the satisfaction of the judge that owing to absence from the Colony, sickness or other reasonable cause, any person is prevented from attending

at the hearing of his appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of such appeal for such reasonable time as he thinks necessary for the attendance of the appellant.

(3) Seven clear days' notice shall, unless rules made hereunder otherwise provide, be given to the Commissioner of the date fixed for the hearing of the appeal.

(4) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(5) If the judge is satisfied that the appellant is overcharged he may reduce the amount of the assessment by the amount of the overcharge, and if he is satisfied that the appellant is undercharged he may increase the amount of the assessment by the amount of the undercharge.

(6) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by the Commissioner upon the appellant.

(7) All appeals shall be heard *in camera*, unless the judge shall, on the application of the appellant, otherwise direct.

(8) The costs of the appeal shall be in the discretion of the judge hearing the appeal and shall be a sum fixed by the Registrar of the Supreme Court.

(9) No appeal shall lie from the decision of a judge except on a question of law or of mixed law and fact.

(10) Notwithstanding that an appeal from the decision of the judge has been lodged, tax shall be assessed in accordance with the decision of the judge: Provided that if the amount of the assessment is altered by the order or judgment of the Court of Appeal or Privy Council, then—

- (a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the court of appeal may order; or
- (b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax, except that no penalty shall be due on such arrears under section 76 of this Ordinance.

(11) The Commissioner may, if he is dissatisfied with the decision of a local committee, appeal against the decision to a judge upon giving notice in writing to the other party to the first appeal within thirty days after the date of such

decision and the provisions of this section so far as they are applicable shall apply to any such appeal by the Commissioner.

Assessments or amended assessments to be final.

71. Where no valid objection or appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the chargeable income assessed thereby, or where the amount of the chargeable income has been agreed to under sub-section (4) of section 66 of this Ordinance, or where the amount of such chargeable income has been determined on objection or appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such chargeable income:

Provided that nothing in this Part shall prevent the Commissioner from making any refund under the provisions of section 80 of this Ordinance or any assessment or additional assessment for any year of assessment which does not involve reopening any matter which has been determined on appeal for the year.

Power to make rules. No. 3 of 1924.

72. The Rules Committee established under section 83 of the Civil Procedure Ordinance, 1924, may make rules governing appeals under this Part (other than appeals to a local committee) and providing for the method of tendering evidence and appointing places for the hearing of such appeals and prescribing the fees to be paid on such appeals.

PART IX

SPECIAL PROVISIONS RELATING TO PERSONS ABOUT TO LEAVE THE COLONY PERMANENTLY

73. (1) If in any particular case the Commissioner has reason to believe that a person who has been assessed to tax may leave the Colony permanently before such tax becomes payable under the provisions of section 75 or section 77 of this Ordinance without having paid such tax he may by notice in writing to such person demand payment of such tax within a time to be limited in such notice. Such tax shall thereupon be payable at the expiration of the time so limited and shall in default of payment unless security for payment thereof be given to the satisfaction of the Commissioner be recoverable forthwith in the manner prescribed by section 79 of this Ordinance.

(2) If in any particular case the Commissioner has reason to believe that tax upon any chargeable income may not eventually be recovered he may at any time and as the case may require—

- (a) forthwith by notice in writing require any person to make a return and to furnish particulars of any such income within a time to be specified in such notice;
- (b) make an assessment upon such person in the amount of the income returned or if default is made in making such return or the Commissioner is dissatisfied with such return in such amount as the Commissioner may think reasonable;
- (c) by notice in writing to the person assessed require that security for the payment of the tax assessed be forthwith given to his satisfaction.

(4) Notice of any assessment made in accordance with the provisions of sub-section (2) of this section shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of sub-section (2) of this section) shall be payable on demand made in writing under the hand of the Commissioner and shall in default of payment unless security for the payment thereof be given to the satisfaction of the Commissioner be recoverable forthwith in the manner prescribed by section 79 of this Ordinance.

Any person who has paid the tax in accordance with a demand made by the Commissioner or who has given security for such payment under sub-section (2) of this section shall have the rights of objection and appeal conferred by sections 66, 69 and 79 of this Ordinance and the amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.

(5) The provisions of sub-section (2) of this section shall not affect the power conferred upon the Commissioner by section 64 of this Ordinance.

PART X

PAYMENT OF TAX

74. Collection of tax shall in cases where notice of an objection or an appeal has been given remain in abeyance until such objection or appeal is determined:

Provided that the Commissioner may in any such case enforce payment of that portion of the tax (if any) which is not in dispute.

Procedure in cases where objection or appeal is pending.

Time within which payment is to be made.

75. (1) Subject to the provisions of sub-section (2) of this section tax shall be payable within ninety days after the service of a notice of assessment under section 66 of this Ordinance or by the thirtieth day of September in the year of assessment whichever date is the later.

(2) (a) Any person who leaves the Colony before the thirtieth day of September in any year of assessment and who at the time of his departure has not been assessed for that year of assessment shall pay the tax for that year of assessment within ninety days after the date of his return to the Colony or within ninety days after the date of the service of a notice of assessment under section 66 of this Ordinance whichever date is the later.

(b) Any person who leaves the Colony before the thirtieth day of September in any year of assessment and who at the time of his departure has been assessed for that year of assessment but has not paid the tax for that year of assessment shall pay the tax for that year of assessment within ninety days after the date of his return to the Colony.

(3) For the year of assessment commencing on the first day of January, 1937, sub-section (1) and sub-section (2) of this section shall be read as if the word "November" were substituted for the word "September".

Penalty for non-payment of tax; and enforcement of payment.

76. (1) Subject to the provisions of sub-section (2) of this section if any tax is not paid within the period prescribed in section 75 of this Ordinance—

- (a) a sum equal to twenty per centum of the amount of the tax payable shall be added thereto, and the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
- (b) the Commissioner shall serve a demand note upon the person assessed, and if payment is not made within thirty days from the date of the service of such demand note, the Commissioner may proceed to enforce payment as hereafter provided;
- (c) a penalty, imposed under this section shall not be deemed to be part of the tax paid for the purposes of claiming relief under any of the provisions of this Ordinance.

(2) The Commissioner may remit the whole or any part of the penalty under sub-section (1) of this section where he is satisfied that the imposition thereof would in the circumstances cause hardship or be inequitable, or for any other good cause shown.

77. Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of an appeal, the tax outstanding under the assessment as determined on such objection or appeal, as the case may be, shall be payable within the time specified in section 75 of this Ordinance or within thirty days from the service on the person assessed of the notification of the tax payable, whichever date is the later, and if such tax is not paid within such period the provisions of the last preceding section shall apply.

78. (1) Where any individual chargeable with tax for any year of assessment has paid hut tax or poll tax under the Native Hut and Poll Tax Ordinance, 1934, Northern Frontier poll tax under the Northern Frontier Poll Tax Ordinance, 1930, or non-native poll tax under the Non-Native Poll Tax Ordinance, 1936, for the same year of assessment, a deduction shall be made from the tax payable by him under this Ordinance for the same year of assessment of the amount so paid as hut tax, poll tax, Northern Frontier poll tax or non-native poll tax, as the case may be: Provided that no such deduction shall be allowed unless the receipt for the hut tax, poll tax, Northern Frontier poll tax or non-native poll tax is surrendered at the time of payment of the tax due under this Ordinance.

(2) No deduction in respect of payment of non-native poll tax shall be allowed under this section to an amount in excess of the amount of non-native poll tax fixed in section 3 of the Non-Native Poll Tax Ordinance, 1936.

(3) The receipt of the Commissioner showing that non-native poll tax has been deducted from a payment of tax due under this Ordinance shall be deemed to be a receipt for payment of non-native poll tax for the purposes of section 12 of the Non-Native Poll Tax Ordinance, 1936.

79. (1) Tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner in his official name with full costs of suit from the person charged therewith as a debt due to the Government of the Colony.

(2) The Commissioner may appear personally or by an advocate in any suit instituted under this section or on any appeal under this Ordinance.

Collection of tax after determination of objection or appeal.

Set-off of poll tax against tax due.
No. 40 of 1934.
No. 53 of 1930.
No. 50 of 1936.

No. 50 of 1936.

No. 50 of 1936.
Suit for tax by Commissioner.

Repayment
of tax.

80. (1) If it be proved to the satisfaction of the Commissioner that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within six years from the end of the year of assessment to which the claim relates. The Commissioner shall give a certificate of the amount to be repaid, and upon the receipt of the certificate the Treasurer shall cause repayment to be made in conformity therewith.

(2) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any year of assessment as regards which that person has failed or neglected to deliver a return or has been assessed in a sum in excess of the amount contained in his return, provided that he has received notice of the assessment made upon him for that year, unless it is proved to the satisfaction of the Commissioner that such failure or neglect to deliver a true and correct return did not proceed from any fraud or wilful act or omission on the part of that person.

(3) Any person who is aggrieved by the decision of the Commissioner as to the amount to be repaid under this section shall have the same right to appeal against such decision as if he were aggrieved by an assessment made upon him.

Free postage.

81. All returns, additional information and resulting correspondence, and payment of tax under the provisions of this Ordinance may be sent free of postage to the Commissioner in envelopes marked "Income Tax".

PART XI OFFENCES AND PENALTIES

Penalties for
offences.

82. Any person guilty of an offence against this Ordinance or any person who contravenes or fails to comply with any of the provisions of this Ordinance or of any rules made thereunder, for which no other penalty is specifically provided, shall be liable on summary conviction before a magistrate of the first or second class to a fine not exceeding fifty pounds, and in default of payment to imprisonment for any term not exceeding three months.

Penalty for
failure to
attend on
summons, etc.

83. Every person who—
- fails to comply with the requirements of a notice given to him under this Ordinance; or
 - without sufficient cause fails to attend in answer to a notice or summons issued to him under this Ordinance or having attended fails to answer any question lawfully put to him,

shall be guilty of an offence and shall be liable on summary conviction before a magistrate of the first or second class to a fine not exceeding fifty pounds, and in default of payment to imprisonment for a term not exceeding three months.

84. (1) Every person who without reasonable excuse—
- makes an incorrect return by omitting or understating any income of which he is required by this Ordinance to make a return; or
 - gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership,

Penalty for
making
incorrect
returns, etc.

shall be guilty of an offence and shall on summary conviction by a magistrate of the first or second class be liable to a fine not exceeding one hundred pounds and double the amount of tax which has been undercharged in consequence of such incorrect return, or information, or would have been so undercharged if the return or information had been accepted as correct.

(2) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made in the year of assessment in respect of or during which the offence was committed or within three years after the expiration thereof.

(3) The Commissioner may compound any offence under this section, and may before judgment stay or compound any proceedings thereunder.

85. (1) Any person who wilfully with intent to evade or to assist any other person to evade tax—

Penal
provisions
relating to
fraud, etc.

- omits from a return made under this Ordinance any income which should be included; or
- makes any false statement or entry in any return made under this Ordinance; or

- (c) gives any false answer whether verbally or in writing to any question or request for information asked or made in accordance with the provisions of this Ordinance; or
- (d) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or records; or
- (e) makes use of any fraud, art, or contrivance, whatsoever or authorizes the use of any such fraud, art or contrivance.

shall be guilty of an offence, and shall for each such offence be liable on summary conviction by a magistrate of the first or second class to a fine not exceeding two hundred pounds and treble the amount of tax for which he is liable under this Ordinance for the year of assessment in respect of or during which the offence was committed, or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

(2) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder.

86. The institution of proceedings for, or the imposition of a penalty, fine, or term of imprisonment under this Ordinance shall not relieve any person from liability to payment of any tax for which he is or may be liable.

87. No prosecution in respect of an offence under section 82, section 83, section 84 or section 85 of this Ordinance may be commenced except at the instance of or with the sanction of the Commissioner.

88. The provisions of this Ordinance shall not affect any criminal proceedings under any other Ordinance or law for the time being in force in the Colony.

89. The Governor in Council may from time to time make rules generally for carrying out the provisions of this Ordinance and may, in particular, by those rules provide—

- (a) for the form of returns, claims, statements and notices under this Ordinance;

Tax to be payable notwithstanding any proceedings for penalties, etc.

Prosecution to be with the sanction of the Commissioner.

Savings for criminal proceedings.

Rules.

- (b) for the deduction and payment of tax at the source in respect of emoluments and pensions payable out of the revenue of the Colony or from the funds of the Kenya and Uganda Railways and Harbours Services;
- (c) for assessing the amount to be taken as the annual value of land and improvements thereon occupied rent free by persons in the public service of the Colony or of the Kenya and Uganda Railways and Harbours Services;
- (d) for any such matters as are authorized by this Ordinance to be prescribed.

OBJECTS AND REASONS.

The object of this Bill is to provide for the payment and collection of a tax on incomes.

2. Under the Bill, income tax is charged only on income accruing in, derived from, or received in the Colony in respect of—

- (a) gains or profits from any trade, business or profession;
- (b) gains or profits from employment, including the value of quarters, board or other allowances, including passage allowances;
- (c) the annual value of land and improvements thereon used or occupied for the purpose of residence or enjoyment and not for the purpose of gain or profit. Farm houses, occupied solely for the purpose of carrying out farming operations, are exempt;
- (d) dividends, interest or discounts;
- (e) any pension, charge or annuity;
- (f) rents and other profits arising from property.

Tax is assessable and payable in any year on the chargeable income of the preceding year. Thus the tax payable in 1937 will be assessed on the income of 1936.

3. Clause 8 sets out the incomes which are exempted from income tax.

4. Clause 9 empowers the Governor to exempt from income tax interest payable on any of the Colony loans.

5. Clauses 10 and 11 show what deductions will and will not be allowed from gross income in calculating chargeable income. Special provision has been made for farmers.

who will be allowed to deduct expenditure incurred on fencing, soil erosion measures, the provision of dipping tanks, and, in the case of sisal growers, rotation replanting (clause 37).

6. Clauses 12 and 13 provide for allowances for wear and tear and for trade losses.

7. Clauses 14 to 19 make provision for deductions in respect of—

- (a) a personal allowance of £350 for a resident;
- (b) a personal allowance of £150 for a non-resident;
- (c) an allowance of £150 for a wife living with or wholly maintained by the person chargeable to tax;
- (d) an allowance for children who are either under the age of sixteen, or who, if over that age, are receiving full-time instruction, of £75 for the first child and £60 for each other child, with a maximum allowance of £255;
- (e) an allowance in respect of life insurance to the extent of one-sixth of assessable income, with a maximum of £200;
- (f) an allowance for dependent relatives, with a maximum of £100.

8. Clause 21 imposes income tax on chargeable income at the following rates:—

- For every pound of the first £700: One shilling.
- For every pound of the next £500: One shilling fifty cents.
- For every pound of the next £1,500: Two shillings.
- For every pound of the remainder of the chargeable income: Two shillings fifty cents.

9. Companies will be charged at the same rate as individuals, except that the maximum will be two shillings in the pound.

10. Clause 78 allows as a set-off against tax due the amount of poll tax paid in the year in which income tax is due.

11. Clause 22 entitles a company to deduct tax from dividends, or from debenture interest, and clause 23 gives the recipient of such dividends or debenture interest a set-off of the amounts so deducted against the tax chargeable on his income.

12. Clause 24 provides that, where mortgage interest is payable to a person who is not resident in the Colony, the person paying such interest shall deduct income tax from such interest at the rate of Sh. 2 in the pound.

13. Clause 25 exempts from tax income arising out of the Colony and received in the Colony by persons on a temporary visit to the Colony, i.e. a visit not exceeding six months in all in that year preceding the year of assessment.

14. Clauses 26 to 35 deal with the special cases of husband and wife, trustees and agents, deceased persons, joint trustees and partnerships. By clause 26 the income of a wife not separated from her husband is deemed to be the income of the husband for income tax purposes, but a proportion of the tax due may be recovered from the wife if it is not paid by the husband.

15. Clause 36 provides that a deduction from profits may be allowed where a person engaged in permanent cultivation, i.e. the cultivation of such crops as tea, coffee, or coco-nuts, has incurred expenditure in bringing new areas of land under cultivation.

Clause 38 provides that a farmer shall have the right to exercise an option whether the value of live stock and produce on hand at the beginning and end of each year shall or shall not be taken into account in the determination of his chargeable income.

16. Clauses 40 to 42 and 48 make special provision regarding insurance companies, shipping companies and clubs.

17. Clause 44 gives relief from double taxation in respect of United Kingdom income tax, and clause 45 in respect of income tax in any other part of the British Empire.

18. Part VI—clauses 51 to 62—deals with the general powers of the Commissioner. Every taxpayer is under an obligation to send in a return of income, and the Commissioner may call for further returns and require the production of books. He may also require a taxpayer to keep books in a prescribed form and in a prescribed language. Officials of Government, local authorities and other public bodies, employers, recipients of income on behalf of another person, occupiers of land leased by them to another, hotel-keepers and bankers are placed under an obligation to render returns and give information which may be called for.

19. Clause 62 provides that a notice sent by post shall be deemed to have been served not later than seven days after the day on which it would have been received by the addressee in ordinary course of post.

20. Clauses 63 to 67 deal with assessment. It is the duty of the Commissioner to assess every person chargeable with tax and prepare assessment lists. He may make an additional assessment at any time within six years after the year of assessment, and may, in case of objection, revise an assessment.

21. Part VIII deals with the subject of appeals from assessment. The appeal is in the first instance to a local committee and then to a judge of the Supreme Court.

An appeal lies from the judge on a point of law or mixed law and fact.

22. Clause 71 provides that, where no valid objection or appeal has been lodged or where on objection or appeal the amount of chargeable income has been determined, the assessment shall be final, subject to the Commissioner's right to refund or to make an additional assessment.

23. Part X prescribes the time for payment of tax, penalties for non-payment, and the method of recovery of tax due. Tax is due and payable within ninety days after service of a notice of assessment, or the 30th September, whichever date is the later, and if tax is not paid within such period a penalty of 20 per cent of the amount due is added.

For the year 1937 the tax will be payable by the 30th November. Special provision has been made to cover the case of a person who leaves the Colony before paying the tax and subsequently returns.

If too much tax is paid the payor is entitled to a refund if he claims within six years after the end of the year of assessment.

24. Clause 81 provides for free postage of all communications regarding income tax.

25. Part XI deals with offences against the Ordinance and penalties therefor. No prosecution for an offence against the Ordinance may be commenced except at the instance of or with the sanction of the Commissioner.

26. The additional expenditure of public moneys involved if the provisions of this Bill become law is estimated to be approximately £3,000 per annum.

NAIROBI,
13th February, 1937.

Sir,

REPORT OF THE COMMITTEE APPOINTED TO
DRAFT AN INCOME TAX BILL

We were appointed a Committee early in January, 1937, to draft a Bill imposing an income tax for the purpose of raising revenue to the extent of £43,500, the scales and allowances to be on the lines of those contained in the Income Tax law of Southern Rhodesia.

GENERAL

2. Notices were published in the various newspapers circulating throughout the Colony asking interested persons to attend and give evidence or to submit their views in writing. Eighteen witnesses attended ^{and} a considerable number of written representations were received. We held, in all, twelve meetings but, owing to the unfortunate illness of two of our members and pressure of other work, our deliberations took longer than we had anticipated, and it was only on the 9th instant that we reached finality on the draft. It is perhaps to be regretted that, since then, we have not had more time to consider the printed redraft of the Bill, but it will be understood that time does not permit of such a course. Mr. Pandya sailed for India on the 27th January, but the scales of allowances and rates of tax had been agreed before he left and our other proposals are known to be in accordance with his views.

3. We used, as a basis for our draft, the Bill which was published in the Official Gazette of October 3rd, 1936, for two reasons. Firstly, most of the criticisms and

THE HONOURABLE,
THE COLONIAL SECRETARY,

suggestions which we received were founded on that Bill; secondly, because the Bill was based on a model which had been carefully drafted in the Colonial Office and had received a considerable amount of revision by Sir Alasdair (then Mr.) MacGregor, the ex-Attorney General, and Mr. Surfleet, the Income Tax Adviser.

4. At a very early stage of our deliberations it was impressed upon us that, in framing our proposals, we should pay regard to the fact that the Colony was only just emerging from the worst depression in its history and that such provisions should be made as would permit both the farming and the trading communities to rehabilitate themselves financially. Various suggestions as to the form which this relief should take were made, some advocating that undistributed profits of Companies should not be taxed, others pressing for an increase in the amount of expenditure from income which should be allowed as a deduction. The provisions of the original Bill under which the value of stocks on hand had to be taken into account at the beginning and at the end of each year were deprecated by the farming community. The Sisal Companies particularly urged that some provision should be made whereby they could devote part of their income, free from tax, to remedy the deficiencies in development and maintenance which had resulted from the depression. The published scales of allowances and rates were subject to criticisms from all sections of the community.

INDIVIDUALS

5. In drafting the Bill we have endeavoured to be as fair as possible to all sections of the community, and, so far as the tax on individuals was concerned, we decided that the matter would best be dealt with by increasing the deductible allowances so as to exclude from tax incomes under a certain

figure. Various schedules were compiled which set out different scales of allowances and their effect on the potential yield of tax. We finally agreed on a scale of allowances which will ensure that the unit taxpayer, that is to say, the married man with one child and who is paying 5% of his income for insurance, will not pay tax on any income below £647 per year.

The following are the allowances and rates of tax -

Allowances (Clauses 14 to 19)

	£
(a) Personal allowance	350
(b) Allowance for wife	150
(c) " " dependants	100 maximum
(d) " " children	255 "
(e) " " insurance, one sixth of assessable income	200 "

Rates of Tax (Clause 21)

	Sh.	Gts.
(a) For every pound of the first £700	1:	00
(b) For every pound of the next £500	1:	50
(c) " " " " " £1,500	2:	00
(d) " " " " " remainder	2:	50

4. We have made it clear that passage allowances are to be taken into account as income. We can see no reason for differentiating between an individual who, as part of his emoluments, receives a passage allowance and an individual who, if he goes on leave, must pay his own.

A passage on first appointment or on termination of appointment will not be assessed. (Clause 5(b)).

7. With regard to allowances for children we have allowed a deduction of £75 for a first child, and £60 for

each subsequent child, but the total relief under this Clause will be £255, that is to say, for the first four children. (Clause 18).

It will be observed that we have extended this Clause so as to allow a deduction in respect of such children as are being maintained while they are learning a trade or qualifying for a profession under articles or indentures. Dependants have also been provided for. (Clause 14).

8. These allowances are solely for resident taxpayers. Non-residents will be allowed a total deduction of £150. (Clause 16). We consider this a less complicated scheme than making provision for the aggregation of incomes of non-resident persons, which would otherwise be necessary.

COMPANIES

9. With regard to Companies it was ascertained that the great majority of the Companies registered in this Colony were private ones, in many cases being either family concerns or combinations of three or four persons who had formed themselves into Companies for the purpose of obtaining the protection afforded by the Companies Ordinance. It was submitted to us by a number of witnesses that, if the undistributed profits of these Companies were taxed at a flat rate, it would cause hardship and would deter such Companies from making proper and adequate provision for reserves.

10. After considering various suggestions as to the way in which relief, if any, should be given, we came to the conclusion that the best method, and the one which would be acceptable to all sections of the community, would be to tax Companies at the same rate as individuals, except that the maximum rate of tax on Companies should be Sh. 2/-.

We consider that, by the adoption of this scale, the amount of revenue lost will be negligible, and although

each subsequent child, but the total relief under this Clause will be £255, that is to say, for the first four children. (Clause 18).

It will be observed that we have extended this Clause so as to allow a deduction in respect of such children as are being maintained while they are learning a trade or qualifying for a profession under articles or indentures. Dependants have also been provided for. (Clause 14).

8. These allowances are solely for resident taxpayers. Non-residents will be allowed a total deduction of £150. (Clause 16). We consider this a less complicated scheme than making provision for the aggregation of incomes of non-resident persons, which would otherwise be necessary.

COMPANIES

9. With regard to Companies it was ascertained that the great majority of the Companies registered in this Colony were private ones, in many cases being either family concerns or combinations of three or four persons who had formed themselves into Companies for the purpose of obtaining the protection afforded by the Companies Ordinance. It was submitted to us by a number of witnesses that, if the undistributed profits of these Companies were taxed at a flat rate, it would cause hardship and would deter such Companies from making proper and adequate provision for reserves.

10. After considering various suggestions as to the way in which relief, if any, should be given, we came to the conclusion that the best method, and the one which would be acceptable to all sections of the community, would be to tax Companies at the same rate as individuals, except that the maximum rate of tax on Companies should be Sh.2/-.

We consider that, by the adoption of this scale, the amount of revenue lost will be negligible, and although

our estimates are purely conjectural we have no reason to believe that the estimate of revenue from Companies will not be attained. It may be argued that no ground exists for limiting the maximum tax in the case of Companies to Sh. 2/- as against Sh. 2/50 for individuals, but it is submitted that a case for differentiation does exist, inasmuch as a Company does not obtain the benefit of the allowances deductible by an individual. Only those Companies which make a profit of less than £2,700 will pay a rate lower than Sh. 2/-: the bigger Companies will be relieved only to the extent of the first £2,700 of income.

11. In the published Bill taxpayers were allowed to carry forward any loss incurred in a year preceding the year of assessment against the profits of the next five years, up to 50% of their annual profits. We can see no reason for limiting this "carry-forward" to one half of the profits, nor is it consonant with general practice. We have therefore allowed such losses to be set off against the full profits of the Company for the next five years. It will, we think, be obvious that, were this provision confined to losses incurred during 1936, it would be of little practical benefit to the farming and trading communities. Last year was a fairly good year both for farmers and for traders. But the years immediately preceding were admittedly bad. For this reason we have considered it advisable to provide that any losses incurred during 1933, 1934 and 1935 may be carried forward as if they were losses incurred during 1936. In our opinion this will give both traders and farmers much needed relief. (Clause 13).

FARMERS

12. With regard to the taxation of farmers we feel that the best way out of the difficulty regarding the assessment of the values of stocks on hand will be to give them the option of being taxed on a "cash basis", that is to say, solely on their financial transactions during the year, without taking into account stocks on hand at the beginning and end of each year. A similar provision exists in the Nyasaland Ordinance, and several witnesses representing farming interests were of the opinion that it would meet their case. (Clause 38).

13. We have also considered it desirable to allow farmers to debit against their profits the cost of certain expenditure which is vitally necessary to the well-being of the industry, such as the cost of preventing soil erosion, the cost of fencing and dipping tanks, and in the case of Sisal Companies, the cost of rotation replanting. (Clause 37).

14. These reliefs are in addition to those afforded by Clause 36. In the original Bill a farmer was allowed to deduct 15% of his profits for expenditure on immature areas where the income from such areas was less than the expenditure. There does not appear to be any good reason for limiting this allowance to 15%, and under the Bill as now drafted a farmer can expend the whole of his profits on the maintenance and development of immature areas. The initial cost of planting and clearing are not, however, deductible.

15. We have also specifically excluded from taxation farm houses bona fide used for the purpose of carrying on farming operations. (Proviso to Clause 5).

DEPRECIATION

16. With regard to depreciation. Under the provisions of the published Bill, if a machine were replaced the

purchaser would be allowed to deduct the difference between the cost of the new machine and the original cost of the old machine less periodical depreciation and the price realised on sale. While we have retained this provision in so far as the future acquisition of machinery is concerned, we are of the opinion that machinery purchased before the introduction of this Ordinance should only be depreciated for this purpose from the 1st of January, 1937. (Clause 10(3)).

APPEALS

17. With regard to the machinery for appeals from assessment, we found a very prevalent desire for the establishment of bodies which would act as courts of appeal without the necessity of going to the Supreme Court. We have therefore made provision for the establishment of Local Committees in different districts to whom an appeal from the Commissioner may be made. The existence of these Committees will not prevent an appellant from taking his case direct to the Supreme Court. We consider three Committees would, in the first place, suffice, one at Nairobi, one at Mombasa and one at Nakuru. At a later date it might be necessary to establish a further Committee at Eldoret or Kisumu. These Committees would consist of local persons appointed by the Governor, and would, so far as possible, fulfil the functions of the General Commissioners in England. The details of their working will form the subject of Rules.

MISCELLANEOUS

18. No provision existed in the previous Bill to cover the case of people going on leave without having paid their tax. We have made the necessary provision. (Clause 75). Normally the tax will be payable by the 30th of

September or within ninety days after assessment whichever date is the later. In the case of the present year the date will be the 30th November.

19. With regard to those taxpayers whose tax is deducted at source it will be appreciated that, unless some specific provision were made in respect of 1937, they would have to pay ^{tax} this year on last year's income and at the same time their incomes would be subject to the deduction of tax at source during the current year. In other words they would be called upon to pay tax twice during the current year. We have therefore provided, in effect, that, in so far as the tax for 1937 is concerned, such income shall be deemed to have borne tax at the appropriate rate. (Clauses 23(2) and 24(3).

20. Many other alterations have been made, but they are principally matters of detail and call for no specific comment in this report.

21. We wish to place on record our appreciation of the expeditious and able manner in which the Secretary has carried out his duties in connection with this Bill.

We have the honour to be,

Sir,

Your obedient servants,

- SD. W. HARRAGIN (CHAIRMAN)
- SD. G. WALSH (MEMBER)
- SD. H. E. SCHWARTZE (MEMBER)
- SD. F. W. CAVENDISH-BENTINCK (MEMBER)

SD. H. E. STACEY
SECRETARY

POSTSCRIPT

We desire to place on record our grateful appreciation of the ability with which our Chairman has conducted the deliberations of the Committee, and of the tactful and helpful manner in which he guided discussions.

SD. G. WALSH
SD. H. E. SCHWARTZE
SD. F. W. CAVENDISH-BENTINCK

38054/137

C. O.

Mr. *Swanwick* 23/2

Mr. *Roskin* 23/2

Mr. *Flood* 23/2

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

23 February, 1951

DRAFT.

The Secretary
J.E.A.B.

Makan. So

④ I am able to acknowledge the receipt of your letter of the 12th of February regarding the proposed introduction of Income Tax legislation in Kenya, and to state that the Joint East African Board will no doubt have seen the report in the "Times" newspaper of the 20th of February in which it was stated that the new draft Income Tax bill had been published in the Official Gazette of the Colony and would be introduced into the Legislative Council on the 2nd of March.

FURTHER ACTION.

2

Accordingly

It would appear that all sections of the community in Kenya are, in fact, being afforded a reasonable period in which to study the Bill before it is introduced into the Legislative Council, and Mr Ominy-fore has no doubt that the Govt of Kenya will be prepared to consider any representations which the Association of Chambers of Commerce of Eastern Africa, or any other interested body, may wish to make.

~~Adm etc~~

3. I am to point out that the proposal to introduce Income Tax legislation in Kenya was made public as long ago as the 3rd of October so that ~~therefore~~ it has been known to the community for a considerable time.

(Signed) J. E. W. FLOON

The Times 20th February 1957

KENYA INCOME-TAX BILL

ORIGINAL RATES HALVED

FROM OUR CORRESPONDENT
NAIROBI, Feb. 19

A new draft Income Tax Bill, following the recent compromise, has been passed and will be introduced in the Legislature on March 2. The rates are approximately half those proposed in the original measure, and special provisions to meet the conditions of agriculture include permission to make deductions for certain development expenditure derived from income, such as fencing, the construction of cattle dips, and the rotation planting of land.

The scale of tax, after the usual deductions, is 1s. in the pound on the first £700, 1s. 6d. on the next £500, 2s. on the next £1,500, and 2s. 6d. on the rest. The deductions permitted are a personal allowance of £350 for residents and £150 for non-residents; £150 for a wife; £75 for the first child and £60 each for the others, with a maximum of £255; up to a maximum of £250 for life insurance; and up to a maximum of £100 for dependent relatives. The company tax will be at the same rate as for individuals, with a flat rate of 2s. in the pound after the chargeable income reaches £1,200.

As before, the Bill embraces pensioners, shipping companies, banks, insurance companies, and so on. The Governor is empowered to exempt public loans.

172
4
JOINT EAST AFRICAN BOARD.

TELEPHONE
WHITEHALL 9369.

CABLES
"JOINTBOARD." LONDON.

GRAND BUILDINGS

TRAFALGAR SQUARE

LONDON, W.C.2.

12th February 1937.

The Under Secretary of State,
Colonial Office,
Downing Street,
S.W. 1.

Sir,

Answer - 6
I am directed to inform you that the Board has received a letter from the Association of Chambers of Commerce of Eastern Africa, expressing alarm at the introduction of the Income Tax Ordinance, and asking the Board to make representations with a view to ensuring that time may be given for all sections of the community in Kenya to study the Ordinance before enactment.

I am to refer to the fact that the Association represents commercial interests throughout the Colony, which naturally desire to consider carefully the bearing of the Income Tax proposals on their trade and business.

The Board would be most grateful therefore if it were possible for you to give some assurance on this point, and if the Board might be allowed to convey the terms of such an assurance to the Association.

I am, Sir,

Your obedient servant,

R. B. Harvey

SECRETARY.

20084/1/37

C. O.

- Mr. J. Ross Smith 11/2/37
- Mr. Parkin 12/2
- Mr. Flood 12
- Sir G. Bunde 12
- Sir C. Parkinson
- Sir G. Tomlinson
- Sir C. Bottomley
- Sir J. Shuckburgh
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State

MAIL

15 February, 1937

DRAFT.

Kenya
No 138
O.P.E.

with the enclosure hereto

Sir,
I have the honor to ack. for your communication, a copy of a letter from the Board of Inland Revenue, on the subject of representations made by the Life Offices Association in regard to the provision of the Kenya Income Tax Bill as originally published in the Official Gazette of the 3rd of October last.

I enclose, for your information, a copy of my despatch No. 631 of 31st of Dec. 36 in connection with the facts of Northern Rhodesia regarding representations made by the South African Mutual Life Assurance Society against the method.

Classy Paragraph 35(4)

From B.I.R. 27/2/37 (1)
all copy of and to
copy to Mr. Parkin
copy to Mr. Flood
copy to Mr. Ross Smith
copy to Mr. Bunde
copy to Mr. Parkinson
copy to Mr. Tomlinson
copy to Mr. Bottomley
copy to Mr. Shuckburgh
copy to Mr. Permt. U.S. of S.
copy to Mr. Parly. U.S. of S.

FURTHER ACTION

To Mr. Ross Smith
(without enc.)

Copy to: B.I.R. (1/2/37)
R.G.S/R. 1/2

of

assessment of assessing Companies
in Northern Rhodesia to
Income Tax.

I have the

in vol. I informed him that I had
no objection to the amendment
of the ~~Income Tax Ordinance~~ Income Tax Ordinance, so
as to allow the substitution of
the proposed alternative basis of
assessment in suitable cases.

I have not yet been
informed whether it is proposed
to amend the Income Tax Ordinance of the
N. Rhodesian Ordinance, but it
will be reserved for para 6
of the letter of the 16th of Dec. 1936
from the B: of Island Revenue, that
there is no ^{particular} reason ~~why~~ why the
decision ^{to be} taken in Kenya shd. be
affected by the decision taken in
Northern Rhodesia.

(Signed) W. ORMSBY GORE.

Any further communication
should be addressed to:—

THE SECRETARY,

30.



INLAND REVENUE,

SOMERSET HOUSE,

LONDON, W.C.2.



Taxes

INLAND REVENUE,
SOMERSET HOUSE, LONDON, W.C.2.

quoting the following reference:—

T.201/37

5th February, 1937.

Sir,

I am directed by the Board of Inland Revenue to transmit copies of a letter received from the Board of Trade, and of the letter, therein mentioned, from the Life Offices Association in regard to the provisions of the Kenya Income Tax Bill relating to the assessment of Life Insurance Companies.

2. Clause 38 (b) of the Bill which contains the provision in question is based upon Section 19 (2) of the Model Income Tax Ordinance framed by the Inter-departmental Committee in 1922 (Cmd 1788) and the Life Offices Association suggest that a fairer basis of assessment would be to apportion the total investment income by reference to the ratio of liabilities, actuarially calculated, in respect of Kenya business to the liabilities in respect of the company's whole business. The provision of an alternative basis of assessment on these lines was considered in connection with a similar proposal put forward by the South African Mutual Life Assurance Society in relation to the Income Tax Ordinance of Northern Rhodesia. The proposal was fully examined in the Board's letter of 16th October last of which a copy is enclosed and the considerations put forward in that letter are applicable to the present proposal.

3. The Life Offices Association put forward a further proposal, namely, that in determining what is a "fair proportion" of the expenses of the head office of the company to be deducted in arriving at liability to Income Tax in Kenya the apportionment should be made, on the lines adopted for the apportionment of the investment income, by reference to the ratio of the liabilities actually calculated, in respect of Kenya business, to the liabilities, similarly calculated, in respect of the business as a whole.

The premium basis is, in the Board's view, more likely to give an accurate indication of the volume of business by reference to which the head office expenses should be apportioned but it would not be reasonable

to/

Copy to Treasury 12

to refuse to adopt the basis suggested by the Association in cases where it is applied to the apportionment of the investment income. It should however be understood that the head office expenses so to be apportioned should be ~~the~~ overhead and managerial expenses and would not include items of the nature, e.g. commission, already allowed in the deduction made for actual agency expenses in the Colony.

A copy of this letter has been sent to the Board of Trade.

I am, Sir,

Your obedient Servant,

Emmott

The Under-Secretary of State,
Colonial Office,
S.W.1.

Kealy

176

The Comptroller.

278/57

Board of Trade,

(Companies Department),

4, Central Buildings,

Matthew Parker Street,

London, S.W.1.

20th January, 1937.

Sir,

I am directed by the Comptroller of the Companies Department to transmit a copy of a letter which the Board of Trade have received relative to Income Tax in Kenya and to say that the Board would be glad to have your observations on the matter.

I am, Sir,

Your obedient Servant,

(sgd.) H. A. COLLS.

The Secretary,
Inland Revenue,
Somerset House,
W.C.2.

12th January, 1937.

The Assistant Secretary,
Commercial Relations & Treaties Department,
Board of Trade,
Great George Street,
S.W. 1.

Dear Sir,

Income Tax in Kenya

The attention of the Federated Associations has been drawn to the Bill to impose a tax upon income and to regulate the collection thereof, dated at Nairobi the 3rd October, 1936 (cited as the Income Tax Ordinance 1936), and in particular to para. 38(b) of that Bill in which provision is made for tax on the gains or profits of a Life Insurance Company.

While raising no objection to the assessment for Income Tax of gains or profits, it is felt that it would be a more accurate basis to arrive at such gains or profits by taking the proportion of the total investment income of the Company which the actuarial reserves in respect of Policies effected in the Colony bear to the total actuarial reserves of the Company, i.e. it is felt that the apportionment of the total investment income should be made on the basis of actuarial reserves rather than on the basis of premiums received as is suggested in the Bill. Furthermore, it is felt that in deducting the agency expenses in the Colony and a fair proportion of the expenses of the Head Office of the Company such proportion should be the same as that used for the apportionment of the investment income of the Company, i.e. the ratio of the actuarial reserves in respect of policies effected in the Colony to the total actuarial reserves.

It is hoped that you may find it possible to make representations to the Colonial Office in regard to this matter.

I am,

Yours faithfully,

(sgd.) H. E. MELVILLE.

Chairman.

Any further communication
should be addressed to:—

THE SECRETARY,

Taxes

INLAND REVENUE,
SOMERSET HOUSE, LONDON, W.C.2.

quoting the following reference:—

T.2015/10/36

INLAND REVENUE,

SOMERSET HOUSE,

LONDON, W.C.2.

16th October, 1936.

Sir,

I am directed by the Board of Inland Revenue to refer to your letter of the 16th July last (45005/2/36) enclosing a copy of a despatch from the Governor of Northern Rhodesia on the subject of the assessment to income tax in Northern Rhodesia of the South African Mutual Life Assurance Society.

2. The Board note that the Governor is opposed to the grant of complete exemption from income tax in Northern Rhodesia to mutual life assurance companies which carry on business there and no less to a reduction of the general rate of income tax for the benefit of life assurance companies generally. There remains for consideration the proposal put forward by the Society for an alteration in the existing basis of assessment.

3. Life insurance companies operating in Northern Rhodesia are assessed to Income Tax there upon a proportion of their total investment income in the ratio of premiums received in Northern Rhodesia to total premiums. This is the basis recommended by the Departmental Committee on Colonial Income Tax in 1922 and incorporated in the Model Income Tax ordinance. The South African Mutual Life Assurance Society maintains that under this method too high a proportion of investment income may be attributed to the business in Northern Rhodesia and suggests that a fairer basis would be to apportion the total investment income by reference to the ratio of the liabilities, actuarially calculated, in respect of Northern Rhodesia business to the liabilities in respect of the Society's whole business. In this connection the Society refers to the corresponding provision in the Income Tax Acts in the United Kingdom which authorises the adoption of an alternative basis of assessment in certain cases.

4. The general rule for the assessment to United Kingdom Income Tax of overseas life assurance companies carrying on business in this country is similar in principle to the basis of the Income Tax ordinance in Northern Rhodesia, namely, to charge the income from the investments of the life assurance fund in proportion to the amount of premiums received in respect of business in the United Kingdom. (Rule 3(2) of Rules applicable to Case III of Schedule D of Income Tax Act, 1918, of which a copy is enclosed). But in the case of an assurance company which has its head office in a British possession, the Commissioners of Inland Revenue may by regulation substitute some other basis for the purpose of ascertaining the portion of the income from investments to be so charged. Little use has been in practice made of this provision, but in the few cases in which regulations have been made the substituted basis has been on the lines advocated by the Society, that is to say the apportionment has been made by reference to the ratio of the liabilities, actuarially calculated, in respect of the United Kingdom business to the liabilities in respect of the company's whole business calculated on the same valuation basis, such liabilities being estimated in the same manner as they are estimated for the purpose of the periodical returns rendered by the Board of Trade under the Assurance Companies Acts 1909.

5. This alternative method is in principle sound and may indeed be fairer than the premium basis to a company whose business in the Colony is on the average of less duration than the business of the company as a whole; and, provided that it were consistently adopted in the particular case, it would not be unfair to the Revenue. It is not however suitable for adoption as a general rule since it requires an actuarial calculation to be made each year of the liabilities attributable to particular branches of a company's activities. Such valuations are not in general made by insurance companies and a basis of assessment which required them would be likely to encounter opposition from the companies concerned. This consideration does not arise in the present case since the proposal originates from the Society which, it appears, is ready to furnish the

140

necessary valuations. But as the Commissioner of Income Tax recognises, companies may prefer to be assessed upon the 'premiums' basis and as a general rule it is likely that this basis is the more convenient. If, therefore, the Society's proposal is accepted the Board would suggest that the existing provisions of the Income Tax ordinance need not be disturbed and that it would be sufficient to add a proviso, on the lines of the United Kingdom proviso, authorising the Commissioner to substitute some other basis of assessment. A further objection is that the Revenue is dependent upon the companies for the necessary valuation and has no means of checking them. But in the Board's view such a difficulty is not a sufficient ground for rejecting the proposal.

6. As the Governor points out in his despatch, the Departmental Committee on Colonial Income Tax considered the questions raised by the assessment of life assurance companies and did not recommend the adoption of alternative basis of assessment. The reason for this was primarily that it was represented to the Committee that it was desirable that persons doing business in more than one Colony should be charged upon the same basis in each Colony (paragraph 12 of the report) and it is understood that the Committee were impressed with the importance of avoiding alternative bases of assessment. This aspect of the question is perhaps not within the Board's province but they would be inclined to doubt whether, having regard to the law and practice of income tax in the United Kingdom and to the fact that no objection can be taken to the Society's proposal on grounds of principle, a consideration of this kind can be pressed in the circumstances in which the question has arisen.

7. It will be observed that the substitution of the alternative basis advocated by the Society is limited, as regards United Kingdom Income Tax, to life assurance companies having a head office in a British possession. The proviso to Rule 3 (2) was enacted in 1915 in response to representations that apportionment by reference to liabilities had been accepted for Income Tax purposes in the Union of South Africa and that it was desirable that provision should be made for the adoption of a similar basis in the United Kingdom. There appears to have been no special
ground/

ground for the limitation to companies having their head office in a British possession unless perhaps it was felt that greater reliance could be placed on the certificate given by the actuaries of such companies and that in the absence of any experience of the alternative basis it was desired to limit the field of its operation in the first instance. The limitation has not in practice given rise to difficulties with foreign concerns for the amount of life insurance business carried on by foreign companies in the United Kingdom is not considerable. They would however suggest that, unless there are circumstances of which they are not aware, any amendment of the Northern Rhodesian Income Tax ordinance in the direction indicated should not be limited to companies with their head office in a British possession.

I am, etc.

The Under Secretary of State,
Colonial Office,
S.W.1.