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COLONY AND PROTECTORATE
OF
KENYA.
(SPECIAL ISSUE)**

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Colony and Protectorate of Kenya

GOVERNMENT NOTICE No 608

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council

R W BAKER-BEALL,
Acting Clerk of the Legislative Council

A Bill to Provide for the Payment of an Annual Poll Tax by Non-Natives

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

1 This Ordinance may be cited as the Non-Native Poll Tax Ordinance, 1936, and shall come into operation on the 1st day of January, 1937

Short title and commencement

2 In this Ordinance, unless inconsistent with the context—

Interpretation

‘Asiatic’ non-native means a male person of Asiatic race or origin but shall not include an Arab or a Somali,

‘collector’ means any district officer and such other officers as the Governor may, by notice in the Gazette, appoint either by name or by office,

‘European’ non-native means a male person of European origin or descent,

“magistrate” means a magistrate holding a subordinate court of the first, second or third class,

“non-native” means a male person of eighteen years of age or upwards, who is not a native within the meaning of the Interpretation (Definition of ‘Native’) Ordinance, 1934,

No 55 of 1934

‘the tax’ means the non-native poll tax payable under this Ordinance,

“temporary visit” means a visit to the Colony not exceeding six months in duration

3 There shall be paid in every year by every non-native a tax, to be called to Non-Native Poll Tax, at the following rates —

Amount of tax

- | | |
|----------------------------------|-------|
| (a) By every European non-native | Sh 50 |
| (b) By every Asiatic non-native | Sh 40 |
| (c) By every other non-native | Sh 20 |

Provided that a non-native shall not be liable to pay the tax for the year during which he attains his eighteenth birthday

Tax when payable

4 (1) The tax payable in every year shall be paid between the first day of January and the thirtieth day of April of that year

Provided that any non-native who is not residing in the Colony on the first day of January and who enters the Colony after the thirty-first day of March and is liable to pay the tax under the provisions of this Ordinance shall pay the tax in respect of the year during which he enters the Colony within thirty days after the date of his entry into the Colony

And provided further that any non-native who is residing in the Colony on the first day of January and who leaves the Colony before the thirtieth day of April in the same year, shall pay the tax in respect of that year within thirty days of his return to the Colony whether he returns during the year in which he left the Colony or during a subsequent year

Penalty

(2) Failure to pay the tax by the dates prescribed in this section shall render a non-native liable to pay double the amount of such tax

Tax to be paid to collector

5 The tax shall be paid to a collector, who shall give to the person paying the tax a receipt in the prescribed form

Tax-payer to provide certain information

6 Every person paying the tax shall furnish the collector with such information as may be required by him in preparing a receipt, and shall, if required by such collector, attend personally at the office of the collector for such purpose

Penalty

7 Any non-native who wilfully furnishes a collector with false particulars as to any information required by such collector in preparing a receipt, or who, on being required to attend at the office of a collector, neglects or refuses to attend, or though attending, neglects or refuses to furnish any information required as aforesaid, shall, on conviction, be liable to a fine not exceeding fifteen pounds, or to imprisonment for a term not exceeding two months

Powers of magistrate

8 If any non-native makes default in the payment of the tax due and payable by him in any year any magistrate, having jurisdiction in the district or place in which the person in default is for the time being staying or residing, may issue

a summons directing the defaulter to attend before him, at a time to be named in the summons, to show cause why he should not be ordered to pay the amount due as a judgment debt

9 Where a summons for enabling a defaulter to show cause as mentioned in the last preceding section has been issued, the magistrate may, on the date named in the summons or on any other date to which the hearing may be adjourned, order him to pay into court, within seven days or within such extended time as may be determined by the magistrate, the amount of the unpaid tax and penalty, and costs, either in a lump sum or in instalments

Power to
order payment
into court of
unpaid tax,
etc

10 (1) If the person summoned as aforesaid fails without lawful excuse to comply with the summons or if he makes default in payment into court in the manner aforesaid the magistrate may commit such person to prison, without hard labour, for a term not exceeding six weeks or until payment of the sum ordered to be paid, whichever period is the shorter. Provided that no such committal shall be ordered for default in payment as aforesaid unless it be proved to the satisfaction of the magistrate that the person making default either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected or refuses or neglects, to pay the same

Penalty

(2) Proof of the means of the person making default may be given in such manner as the magistrate thinks fit. For the purpose of such proof, the debtor and any witnesses may be summoned and their attendance enforced by the same processes as in cases in which the magistrate has jurisdiction in civil matters, and such debtor and witnesses may be examined on oath

Proof as to
means of
defaulter

(3) Every order of committal under this section shall be issued, obeyed, and executed in like manner to commitments by a court in the exercise of its jurisdiction in civil cases

Order of
committal

(4) Imprisonment under this section shall not operate as a satisfaction or extinguishment of the judgment debt

Imprisonment
not to
extinguish
liability

(5) The amount of any tax and/or penalty due and unpaid, and the sum (if any) ordered to be paid for costs under section 9 of this Ordinance, may, at any time, be levied by the attachment and sale, under the orders of a magistrate, of the movable

Attachments
and sale of
movable
property

property of the defaulter in like manner as if the same were payable under a decree of a civil court, and a magistrate is hereby empowered to issue such order either on his motion or on the application of any collector

**Payment by
defaulter**

11 In the event of the defaulter paying the whole amount ordered to be paid as aforesaid and the costs of or in connection with any attachment ordered, the magistrate, if a collector, shall issue to the person paying a receipt in the prescribed form for the amount of the tax paid, or, if not a collector, shall remit to a collector the amount so paid after deducting therefrom such part thereof as may represent costs, and the collector on receipt of such sum shall issue to the person who has paid such sum a receipt in the prescribed form

**Power to call
for tax receipt
or informa-
tion**

12 (1) A collector may, at any time require any non-native to produce the receipt issued to such non-native for the payment of the tax last payable, and a collector may retain any receipt so produced for such time as he may consider necessary for the purpose of identifying the non-native named therein with the person producing the same

(2) A collector may require any non-native who refuses or neglects to produce his receipt when requested, to furnish him with information as to the office at which he has paid his tax last payable, and with such further information as the collector may require for the purpose of ascertaining whether such non-native has paid such tax

(3) Any non-native who, without lawful excuse, neglects or refuses to produce his receipt when required as aforesaid, or who, having failed or refused to produce his receipt, fails to furnish the information which may be required of him under sub-section (2) of this section, shall, on conviction, be liable to a fine not exceeding ten pounds or to imprisonment for a term not exceeding one month

**Non-produc-
tion of receipt
prima facie
evidence of
non-payment**

(4) Evidence of the non-production of a receipt for the payment of a tax upon requisition being made as aforesaid shall, in and for the purposes of any proceedings for the recovery of such tax, be prima facie evidence that the tax has not been paid

(5) Any non-native who, upon being required by a collector to produce his receipt, produces a receipt issued to some other person, or, who, having failed or refused to produce his receipt, furnishes a collector with any false particulars as to

any information which may be required of him under subsection (2) of this section, shall, on conviction, be liable to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months

13 The Governor may remit, either wholly or in part, the tax and/or penalty on the ground of poverty, or for any other good cause and may also for like reason refund the tax or any part thereof **Power of Governor to remit or refund tax**

14 There shall be exempted from the payment of the tax under this Ordinance every non-native on a temporary visit to the Colony, provided he is not the owner or lessee of land in the Colony, and is not engaged in any employment or business in the Colony, and has no pecuniary interest in any business or enterprise conducted or carried on in the Colony **Exemptions**

15 The burden of proof of exemption from the tax shall lie on the party claiming the exemption **Burden of proof**

16 The Governor may, from time to time, make rules prescribing the form of the receipt to be issued under this Ordinance, and generally for the better carrying out of the purposes of this Ordinance, and may attach penalties for the breach of any such rule not exceeding a fine of ten pounds or imprisonment for a term not exceeding one month **Power to make rules**

17 The Non-Native Poll Tax Ordinance (Chapter 52 of the Revised Edition), as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, and the Non-Native Poll Tax (Amendment) Ordinance, 1929, is hereby repealed **Repeal, No 7 of 1926 No 4 of 1929**

Provided that such repeal shall not affect any liability, penalty or punishment incurred thereunder or any legal proceedings or remedy in respect of any such liability, penalty, or punishment, but any such legal proceedings or remedy may be carried on or sought as if such Ordinance had not been repealed

OBJECTS AND REASONS

The object of this Bill is to provide for the payment of an annual poll tax by non-natives, and to make provision for the collection of such tax

No additional expenditure of public moneys will be involved if the provisions of this Bill become law

GOVERNMENT NOTICE No 609

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council

R W BAKER-BEALL,
Acting Clerk of the Legislative Council

**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, 1936, and shall come into operation on the first day of January, 1937

Short title and
commence-
ment

2 In this Ordinance, unless the context otherwise requires—

Interpreta-
tion

“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 the Ordinance except the exercise of the powers conferred upon the Commissioner by sections 81, 82 and 84 of this Ordinance,

“company” means any company incorporated or registered under any law in force in the Colony, and any company which, though incorporated or registered outside the Colony, carries on business or has an office or place of business therein,

“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, married woman, 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,

No 19 of 1928
No 21 of 1928

“body of persons” means any body politic corporate or collegiate and any company fraternity fellowship or society of persons whether corporate or not corporate

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

“tax” means the income tax imposed by this Ordinance

Administra-
tion

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

(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 granted in respect of employment whether in money or otherwise,
- (c) the 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, such

annual value, subject to the provisions of any rules made under section 86 (c) of this Ordinance, being deemed to be five per centum of the capital value of such land and improvements,

- (d) dividends, interest or discounts,
- (e) any pension, charge or annuity,
- (f) rents, royalties, premiums and any other profits arising from property

Basis of assessment

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

Special periods 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 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

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

Exemptions

8 There shall be exempt from the tax—

- (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,

No 20 of 1927

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(e) the income of the European Civil Service Provident Fund established under the European Civil Service Provident Fund Ordinance, 1934, No 27 of 1934

(f) the income of the Asian Civil Service Provident Fund established under the Asian Civil Service Provident Fund Ordinance, 1934, No 64 of 1934

(g) the income of any provident fund lawfully established by a local authority,

(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

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,

(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 granted in respect of wounds or disability 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 profits of a non-resident shipowner as defined in section 39 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

Government
loans

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

PART III

ASCERTAINMENT OF CHARGEABLE INCOME

Deductions
allowed

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—

- (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 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

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

Deductions not to be allowed

- (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) any capital withdrawn or any sum employed or intended to be employed as capital,
- (d) any capital employed in improvements,
- (e) any sum recoverable under an insurance or contract of 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,
- (h) debenture interest

Allowance for wear and tear

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 of trade losses

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

And provided also that in no case shall such set-off be allowed to an extent which would reduce the tax payable for any year of assessment to less than one-half of the amount which would have been payable had the set-off not been allowed

(2) 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 (1) For the purpose of ascertaining the chargeable income of any individual there shall be allowed in respect of so much of the income as is earned as sum equal to one-tenth of the amount of such earned income, provided that such deduction shall not in the case of any individual exceed £200, and provided also that where a loss arises in the exercise of any trade, business, profession, or vocation or a loss is brought forward from a previous year under section 13 of this Ordinance, no deduction shall be allowed except in respect of the amount, if any, by which the earned income exceeds such loss or the aggregate amount of such losses as the case may be

Deduction in
respect of
earned income

(2) For the purposes of this section the expression 'earned income' means any income arising in respect of any gains or profits immediately derived by the individual from any trade, business, profession, employment or vocation carried on or exercised by him either as an individual or in the case of a partnership as a partner personally acting therein, or in respect of any pension, superannuation, or other allowance given in respect of past services of the individual or of the husband or parent of the individual or given to the individual in respect of the past services of any deceased person whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation or other allowance or not, after deducting the expenses referred to in sections 10 and 12 of this Ordinance, but before allowing the other deductions to be made in arriving at chargeable income

15 In ascertaining the chargeable income of an individual who is resident in the Colony or who is a British subject there shall be allowed a deduction of one hundred and fifty pounds

Deduction in
case of
residents in
the Colony
and British
subjects

16 In ascertaining the chargeable income of an individual 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 fifty pounds

Deduction for
wife

17 In ascertaining the chargeable income of an individual 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

Deduction for
children

at any university, college, school, or other educational establishment there shall be allowed a deduction of forty pounds in respect of one such child, and a deduction of thirty 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 one hundred 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

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

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18 In ascertaining the chargeable income of any person who—

- (a) shall have made insurance 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 Widow's 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 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

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 chargeable income estimated in accordance with the provisions of this Ordinance before making the deductions specified in this section and in sections 14, 15, 16 and 17 of this Ordinance, and provided also that the total deduction to be allowed under this section shall not exceed two hundred pounds in amount

Proof of claims

19 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

20 The tax upon the chargeable income of every person other than a company shall be charged at the following rates — Rates of tax upon persons other than companies

For every pound of the first £350 one shilling,
 For every pound of the next £350 one shilling fifty cents,
 For every pound of the next £800 two shillings,
 For every pound of the next £1,500 two shillings fifty cents,
 For every pound of the next £2,000 three shillings,
 For every pound of the remainder of the chargeable income three shillings fifty cents

21 The tax upon the chargeable income of a company shall be charged at the rate of two shillings and fifty cents on every pound of the chargeable income thereof Flat rate of tax on company

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 (as reduced by any relief granted under sections 43 and 44 of this Ordinance) on the income out of which such dividend is paid. Provided that where 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 Deduction of tax from dividends of companies

(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 to a person not resident in the Colony deduct therefrom tax at the rate of two shillings and fifty cents 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 Deduction of tax from debenture interest paid by company

Provided that every such amount paid by such company shall be set off against any tax payable by such company under section 21 of this Ordinance in respect of the same year of assessment

(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 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

Set-off in
respect of tax
deducted

23 Any tax which a company has deducted or is entitled to deduct under the last preceding section from a dividend paid to a shareholder, 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 or share is included in the chargeable income of such shareholder or person, be set off for the purposes of collection against the tax charged on that chargeable income

Deduction of
tax from
mortgage
interest
payable by
individual

24 (1) Where any person pays mortgage interest to a person not resident in the Colony 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 and fifty cents 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

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

26 The income of a married woman living with her husband 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 nor in that of her trustee, 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

Wife's income

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), whether a British subject or not, 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 attorney, 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 resid-
ing out of the
Colony

Provided that in the case of any individual who is not resident in the Colony and who is not a British subject, no deduction shall be allowed in respect of earned income, wife or child or in respect of life insurance

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 attorneyship, factorship, agency, receivership, branch or management, and shall be so assessable and chargeable in the name of the attorney, 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 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 may, if he thinks fit, 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 persons 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 to a judge as provided by section 67 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 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 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

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 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 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

35 Where a trade, business, profession or vocation is Partnerships 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 Cap 92 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

Ascertainment
of profits from
certain
agricultural
undertakings

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,

“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 a particular 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 and 11 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 or the total amount of such excesses where expenditure has been so incurred by any such person on more immature areas than one not exceeding in any case fifteen per centum of the profits of that person from his estates for the same period shall be allowed as a deduction from such profits. The balance of such excess shall be deemed to be capital expenditure

37 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

Profits of
non-resident
persons from
sale of
exported
produce

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

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

Special
provisions as
to certain
companies and
businesses

- (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 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 losses (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,

Insurance
companies
other than life
insurance
companies

- (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

Life insurance
companies

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

F —Shipping

Profits of
non-resident
shipowners

39 (1) Subject to the provisions of section 8 (p) 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

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 three 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

40 The master of any ship owned or chartered by a non-resident person who is chargeable under the provisions of section 39 of this Ordinance 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

41 (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

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

42 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 39 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

G —Relief in Cases of Double Taxation

Relief in respect of United Kingdom income tax

43 (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

(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

44 (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

(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.

Income from
certain
dividends to
include tax
thereon

45 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 44 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

46 Where any insurance premium has been allowed as an expense incurred in the production of profits or income, any sum realized under such insurance shall be taken into account in the ascertainment of such profits or income.

Ascertainment
of income of
clubs, trade
associations,
etc

47 (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

48 (1) Where it appears to the Commissioner that with a view to the avoidance or reduction of tax a private company 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

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

(2) 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

(3) Nothing in this section 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

49 (1) Where any person (in this section called "the employee") employed by any other person (in this section called "the employer") has failed to pay the tax with which he is assessable and chargeable together with any penalty imposed under section 73 of this Ordinance within forty-two days after the same has been demanded pursuant to the provisions of this Ordinance, the Commissioner may declare the employer to be the agent of the employee so far as regards

Chargeability of employers

the salary, wages, or other moneys paid by the employer to the employee in respect of the employment, and may give notice to the employer setting forth the fact that the employee has failed to pay such tax and penalty, and requiring the employer as such agent to pay the same on behalf of the employee within such time and in such manner as may be specified by the Commissioner

(2) Thereupon the employer shall deduct and retain from time to time out of such salary, wages or other moneys so much as is sufficient to pay such tax and penalty and shall pay the same in pursuance of this Ordinance, and for any default in doing so the employer shall be liable in addition to the tax and penalty to a penalty not exceeding five pounds

PART VI

GENERAL POWERS OF COMMISSIONER

Notice of
chargeability
and returns

50 (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

(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

Commissioner
may call for
further
returns

51 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

Power to call
for returns,
books, etc

52 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 twenty-one 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

53 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

Returns to be deemed to be furnished by due authority

54 (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

Books of account

(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

55 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

Official information and official secrecy

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

56 (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—

Obligations of employers

(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

57 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

Occupiers to
furnish
returns of
rent payable

58 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

Return of
lodgers and
inmates

59 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

Signature
of notices

60 (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

61 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 service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted

Service
of notices

PART VII

ASSESSMENTS

62 (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

Commissioner
to make
assessment

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

(a) accept the return and make an assessment accordingly, or

(b) 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

63 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 two 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

Additional
assessments

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

Lists of
persons
assessed

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

(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

Power of
Commissioner
to revise
assessment
in case of
objection

65 (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

(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 fourteen 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 Commis-

sioner 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 to a judge under the provisions of this Ordinance, against the assessment made upon him, shall remain unimpaired

66 (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

Errors, etc.,
in assessment
and notices

(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

67 (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 65 of this Ordinance, may appeal against the assessment to a judge upon giving notice in writing to the Commissioner within

Appeals
against
assessments

fourteen days from the date of service upon him of notice of the refusal of the Commissioner to amend the assessment as desired

Provided that, notwithstanding the lapse of such period of fourteen 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 attend before the judge in person on the day and at the time fixed for the hearing of his 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 in person at the hearing of his appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal for such reasonable time as he thinks necessary for the attendance of the appellant, or he may admit the appeal to be made by any agent, clerk or servant of the appellant on his behalf

(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 judge

(9) The decision of the judge hearing the appeal shall be final

Provided that immediately after the decision of the appeal by the judge, the appellant or the Commissioner, if dissatisfied with the decision as being erroneous in law, may declare his dissatisfaction to the judge, and having so expressed his dissatisfaction may by notice require the judge to state a case on a question of law

(10) Such notice shall be in writing and shall be delivered to the Registrar of the Supreme Court, together with a fee of twenty shillings, within twenty-one days of the date of the decision of the appeal by the judge

(11) Notwithstanding that a case has been required to be stated, tax shall be payable 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, 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 73 of this Ordinance

68 (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 before such tax becomes payable under the provisions of section 72 or section 74 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 76 of this Ordinance

Special provisions relating to persons about to leave the Colony

(2) If in any particular case the Commissioner has reason to believe that tax upon any chargeable income may not 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

(3) If in any particular case the Commissioner has reason to believe that tax upon any income which would in the ordinary course become chargeable to tax may not be recovered he may at any time—

(a) by notice in writing to the person by whom the tax would be payable determine a period for which tax shall be charged and require such person to render within the time specified therein returns and particulars of such income for that period,

(b) make an assessment upon such person in the amount of the income returned or if default is made in making a return or the Commissioner is dissatisfied with such return in such amount as the Commissioner may think reasonable. Such assessment shall be made at the rate of tax in force for the current year of assessment

(4) Notice of any assessment made in accordance with the provisions of sub-sections (2) and (3) of this section shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of sub-sections (2) and (3) 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 76 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-sections (2) and (3) of this section shall have the rights of objection and appeal conferred by sections 65 and 67 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-sections (2) and (3) of this section shall not affect the power conferred upon the Commissioner by section 63 of this Ordinance

69 The Chief Justice may make rules governing appeals under this Part and providing for the method of tendering evidence and appointing places for the hearing of

Power to
make rules

such appeals and prescribing the fees to be paid on such appeals and prescribing the procedure to be followed on a case being stated.

70 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 65 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

Assessments
or amended
assessments
to be final

Provided that nothing in this Part shall prevent the Commissioner from making an 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

PART IX

PAYMENT OF TAX

71 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

Procedure in
cases where
objection or
appeal is
pending

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

72 Tax shall be payable within ninety days after the service of a notice of assessment under section 65 of this Ordinance

Time within
which payment
is to be made

73 If any tax is not paid within the period prescribed in section 72 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

Collection of
tax after
determination
of objection
or appeal

74 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 thirty days from the service on the person assessed of the notification of the tax payable, and if such tax is not paid within such period the provisions of the last preceding section shall apply

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

75 (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 of 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

76 (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

Suit for tax by
Commissioner

(2) The Commissioner may appear personally or by an advocate in any suit instituted under this section or on any appeal or stated case under section 67 of this Ordinance

77 (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 two 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

Repayment
of tax

(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

78 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 X

OFFENCES AND PENALTIES

Penalties for offences

79 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

80 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 questions 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

Penalty for making incorrect returns, etc

81 (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
- (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 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

82 (1) Any person who wilfully with intent to evade or to assist any other person to evade tax— Penal provisions relating to fraud, etc

- (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 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

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 Tax to be payable notwithstanding any proceedings for penalties, etc

84 No prosecution in respect of an offence under section 79, section 80, section 81 or section 82 of this Ordinance may be commenced except at the instance of or with the sanction of the Commissioner Prosecution to be with the sanction of the Commissioner

**Savings for
criminal
proceedings**

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

Rules

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

**Repeal
No 33 of 1926
No 34 of 1926**

87 The European Education Tax Ordinance, 1926, and the Asiatic Education Tax Ordinance, 1926, are hereby repealed

Provided that such repeal shall not affect any liability, penalty or punishment incurred thereunder or any legal proceedings or remedy in respect of any such liability, penalty, or punishment, but any such legal proceedings or remedy may be carried on or sought as if such Ordinances had not been repealed

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,

- (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, such annual value being taken at 5 per cent of the capital value,
- (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

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

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

- (a) earned income to the extent of one-tenth of such income, with a maximum of £200,
- (b) a personal allowance of £150,
- (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 sixteen, 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 one-sixth of chargeable income, with a maximum of £200

8 Clause 20 imposes income tax on chargeable income at the following rates —

For every pound of the first £350 One shilling

For every pound of the next £350 One shilling fifty cents

For every pound of the next £800 Two shillings

For every pound of the next £1,500 Two shillings fifty cents

For every pound of the next £2,000 Three shillings

For every pound of the remainder of the chargeable income Three shillings fifty cents

9 Clause 75 allows as a set-off against tax due the amount of poll tax paid in the year in which income tax is due

10 By clause 21 the tax on companies is fixed at Sh 2/50 in the pound

11 Clause 22 entitles a company to deduct tax at Sh 2/50 in the pound from dividends, or from debenture interest payable to a person not resident in the Colony, and clause 23 gives the recipient of such dividends 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 2/50 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 living with 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 part of the profits, not exceeding 15 per cent, 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.

16 Clauses 38 to 41 and 47 make special provision regarding insurance companies, shipping companies and clubs

17 Clause 43 gives relief from double taxation in respect of United Kingdom income tax and clause 44 in respect of income tax in any other part of the British Empire

18 Clause 49 places upon employers the obligation to pay tax by deduction from salary, for any employee who has failed or refused to pay his tax

19 Part VI—clauses 50 to 61—deals with the general powers of the Commissioner. Every tax-payer 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 tax-payer 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

20 Clause 61 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

21 Clauses 62 to 66 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 two years after the year of assessment, and may, in case of objection, revise an assessment

22 Part VIII deals with the subject of appeals from assessment. The appeal is to a judge of the Supreme Court and on a point of law a judge may be required to state a case for the consideration of the Court of Appeal

23 Clause 70 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 make an additional assessment

24 Part IX 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, and if tax is not paid within such period a penalty of 20 per cent of the amount due is added.

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

25 Clause 78 provides for free postage of all communications regarding income tax.

26 Part X 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.

27 Clause 87 repeals the European Education Tax Ordinance, 1926, and the Asiatic Education Tax Ordinance, 1926.

28 The additional expenditure of public moneys involved if the provisions of this Bill become law will be approximately £3,000 per annum.

GOVERNMENT NOTICE No 610

COLONY AND PROTECTORATE OF KENYA

Proposed Introduction of Income Tax and the Consequential Revision of Non-Native Taxation

The Income Tax Bill now published for introduction into Legislative Council follows very closely the provisions of the Income Tax Bill which passed its second reading in 1933

2 Both measures provide for the following deductions from incomes before the figure representing "chargeable income" is reached—

- (a) one-tenth of that part of the income which is earned income, subject to a maximum deduction of £200,
- (b) a deduction of £150 in the case of residents in the Colony or British subjects,
- (c) a deduction of £50 for a wife or wives,
- (d) a deduction of £40 for one child and £30 for each subsequent child, subject to a maximum of £100,
- (e) a deduction in respect of any life insurance premia subject to a maximum of one-sixth of the chargeable income and to a maximum amount of £200

In addition, provision is made, subject to certain conditions, in respect of—

- (f) interest payable by a borrower on capital employed by him in acquiring the income,
- (g) rent payable by any tenant on land or buildings used by him for the purpose of acquiring the income,
- (h) replacement of obsolete plant and machinery used in acquiring the income,
- (i) maintenance and repairs of plant and machinery and repairs to premises employed in acquiring the income,
- (j) bad debts, and in certain circumstances, an allowance for doubtful debts,
- (k) subject to certain provisions, an allowance in respect of trade losses which cannot be wholly set off against income from other sources

3 The rates of tax leviable upon the incomes of persons other than companies after account has been taken of such of the deductions enumerated in paragraph 2 as apply to the individual taxpayer, are as follows —

In respect of "chargeable income"—

- For every pound of the first £350 One shilling
- For every pound of the next £350 One shilling and fifty cents
- For every pound of the next £800 Two shillings
- For every pound of the next £1,500 Two shillings and fifty cents
- For every pound of the next £2,000 Three shillings
- For every pound of the remainder Three shillings and fifty cents

4 Under the 1933 Income Tax proposals, a set-off was allowed in the case of Poll Tax payments but no provision was made for a set-off in respect of Education Tax. At that time Poll Tax was proposed at the rate of Sh 60 per head, and Education Tax was payable at its present figure of Sh 30 in the case of European and Sh 20 in the case of Indian taxpayers. The existing basic rate of Non-Native Poll Tax is Sh 30 payable by every non-native male resident whose taxable income does not exceed £100 per annum. This, together with the Education Taxes, represents a minimum direct payment of Sh 60 per annum for Europeans, Sh 50 for Indians and Sh 30 per annum

Provisions
of new BillDeductions
from income
for taxing
purposesRate on
chargeable
income

Poll Tax

for other non-natives. It is now proposed to merge the minimum Poll Tax and Education Tax into a single Poll Tax of Sh 50 per annum in the case of Europeans, Sh 40 per annum in the case of Asians and Sh 20 per annum in the case of Arabs and Somalis. This payment will be allowed as a set-off against tax payable on "chargeable income" under the Income Tax Ordinance. The adoption of a Poll Tax at varying rates is not in complete accordance with the recommendations of the Financial Commissioner (Sir Alan Pim) who suggested a flat rate of Sh 50 per head, but it is considered that the present proposals distribute the burden more equitably having regard to the necessity for relating a tax to the capacity to pay such tax.

Effective rate
on total
income

5 As has been stated in paragraph 3, chargeable income is that amount of the income which is left after all allowable deductions have been made. The rates given in that paragraph apply only to the "chargeable income", consequently the effective rate on the total income is very much smaller. The following table shows for comparative purposes the effective rates under (a) the present Graduated Non-Native Poll Tax and Education Tax and (b) under Income Tax with the Poll Tax as now proposed. For the purposes of this table and throughout this memorandum the taxpayer has been taken as being a married man with one child, 10 per cent being deducted for earned income and 5 per cent for insurance premia.

INCOME	EUROPEAN		ASIAN	
	(a) Present	(b) Proposed	(a) Present	(b) Proposed
	<i>Cents</i>	<i>Sh cts</i>	<i>Cents</i>	<i>Sh cts</i>
£350	31	16	29	16
£450	29	32	27	32
£550	31	41	29	41
£650	32	48	31	48
£850	34	64	33	64
£1,050	35	76	34	76
£1,450	37	1 01	36	1 01
£2,250	68	1 32	68	1 32
£3,750	81	1 76	81	1 76

Companies

6 In the 1933 proposals provision was made in the case of companies of a flat rate of Sh 2 on every pound of chargeable income. The present Bill provides for a flat rate of Sh 2/50 in the pound, this being considered a more equitable figure in relation to the rates chargeable to individuals having regard to the necessity for maintaining the yield from the tax, and it is one which is common to certain other British Dependencies.

1933 proposals

7 When Income Tax was under discussion in 1933, a reduction of taxation in other directions was not envisaged as, although a set-off was allowed in respect of any hut tax or poll tax which had been paid under the Native Hut and Poll Tax Ordinance, the Northern Frontier Poll Tax Ordinance and the Non-Native Poll Tax Ordinance, the last-named tax was in fact increased from Sh 30 to Sh 60 per head in that year and no provision for remission of taxation in other directions was made.

Re-adjust-
ments now
suggested

8 The present Bills on the other hand are intended to supersede certain of the existing taxation measures with the express purpose of effecting a more equitable distribution of the burden of taxation so far as the non-native races in particular are concerned. If the Income Tax and Poll Tax Bills become law, it is proposed to repeal the European and Asiatic Education Tax Ordinances and the Graduated Non-Native Poll Tax Ordinance. In substitution thereof a Poll Tax of Sh 50 per annum on adult male Europeans, Sh 40 on adult male Asians and Sh 20 on adult male Arabs and Somalis will be imposed, together with any tax payable on "chargeable incomes" as provided for under the Income Tax Ordinance. It is also intended to amend the

Licensing Ordinance by a reversion to the principles and in general to the rates incorporated in the Traders Licensing Ordinance, 1919. The Levy on Official Salaries which has never been regarded as forming part of the fiscal structure of the Colony will be abolished.

9 Disregarding any relief which may be afforded by revision of the Licensing Ordinance, it will be observed that whereas in 1932 adult male Europeans, Indians and Arabs were called upon to pay basic taxes amounting to Sh 90, Sh 80 and Sh 60 per head respectively and under the present laws pay Sh 60, Sh 50 and Sh 30 per head respectively, the rates now proposed are Sh 50, Sh 40 and Sh 20, a reduction in each case of Sh 10 per head as compared with the existing basic direct taxes.

Comparison
between old
and new
basic taxes

10 So far as Goans are concerned, the proposed revision will result in an increase in basic minimum direct taxation of Sh 10 per head as they are not at present called upon to pay the Education Tax. It is considered however that differential treatment of this relatively small section of the community cannot be justified.

11 By this comprehensive readjustment of the fiscal system of the Colony as applied to the non-native races it is confidently believed that many of the difficulties and inequalities apparent in the present legislation will be overcome and that a system based on the broadest principles of equity and justice will be established.

Conclusion

12 There are at present on the Tax Roll 8,125 Europeans, 15,534 Asians and 2,922 Arabs, Somalis and other non-natives, a total of 26,581. Of this number, 5,012 Europeans or 62 per cent, 15,133 Asians or 97 per cent and 2,896 or 99 per cent Arabs, Somalis and others would pay the minimum direct tax. In other words 87 per cent of the total non-native population would not be subjected to any further tax on "chargeable income" in the circumstances disclosed by them in 1935 under the Graduated Non-Native Poll Tax Ordinance.

Number of
taxpayers
on roll

13 Comparing the contribution of individuals under existing taxation, i.e. the Graduated Non-Native Poll Tax and the Education Tax, with assessment under the Income Tax and Poll Tax Bills, it is found that 5,891 Europeans or 73 per cent, 15,368 Asians or 99 per cent and 2,910 Arabs, Somalis etc. or 99.6 per cent, a total of 23,278 or 87 per cent, would pay less or not more under the present proposals.

14 Examining the proposals as they affect the various non-native sections of the community, the following tables give particulars of frequency, (i.e. the number of each of the various sections of taxpayers classified according to their incomes) and yield. Details in regard to income have been abstracted from the 1935 Graduated Poll Tax returns and are consequently based on the incomes of 1934.

Application
to classes

SUMMARY

EUROPEANS	Taxpayers	Yield
		£
Civil Servants	1,201	14,440
Kenya and Uganda Railways and Harbours	412	4,177
Professional	685	5,993
Commercial Employers	765	10,094
Owner Farmers	1,804	7,820
Farm Employees	588	2,396
Commercial Employees	2,202	12,248
Others	468	3,919
TOTAL EUROPEANS	8,125	£61,087

EUROPEANS

DECLARED INCOME	Frequency	Tax		Yield	
		<i>Sh</i>	<i>cts</i>	<i>Sh</i>	<i>cts</i>
CIVIL SERVANTS—					
£300 and under	384	50	00	19,200	00
£400	174	100	00	17,400	00
£500	218	185	00	40,330	00
£600	154	270	00	41,580	00
£700	75	357	50	26,812	50
£800	82	485	00	39,770	00
£900	41	612	50	25,112	50
£1,000 and over	73			78,602	50
TOTAL		1,201	—	288,807	50 or £14,440
KENYA AND UGANDA RAILWAYS AND HARBOURS—					
£300 and under	124	50	00	6,200	00
£400	62	100	00	6,200	00
£500	96	185	00	17,760	00
£600	81	270	00	21,870	00
£700	25	357	50	8,937	50
£800	6	485	00	2,910	00
£900	5	612	50	3,062	50
£1,000 and over	13	—		16,595	00
TOTAL		412	—	83,535	00 or £4,177
PROFESSIONAL—					
£250 and under	495	50	00	24,750	00
£350	49	57	00	2,793	00
£450	44	142	00	6,248	00
£550	24	227	00	5,448	00
£650	16	312	00	4,992	00
£750	8	420	50	3,364	00
£850	9	548	00	4,932	00
£950	4	675	50	2,702	00
£1,000 and over	36	—		64,623	00
TOTAL		685	—	119,852	00 or £5,993
COMMERCIAL EMPLOYERS—					
£250 and under	406	50	00	20,300	00
£350	79	57	00	4,503	00
£450	69	142	00	9,798	00
£550	53	227	00	12,031	00
£650	27	312	00	8,424	00
£750	24	420	50	10,092	00
£850	21	548	00	11,508	00
£950	19	675	50	12,834	50
£1,000 and over	67	—		112,385	00
TOTAL		765	—	201,875	50 or £10,094

EUROPEANS—(Contd)

DECLARED INCOME	Frequency	Tax		Yield	
		<i>Sh</i>	<i>cts</i>	<i>Sh</i>	<i>cts</i>
OWNER FARMERS—					
£250 and under	1,502	50	00	75,100	00
£350	107	57	00	6,099	00
£450	69	142	00	9,798	00
£550	44	227	00	9,988	00
£650	25	312	00	7,800	00
£750	18	420	50	7,569	00
£850	14	548	00	7,672	00
£950	6	675	50	4,053	00
£1,000 and over	19	—		28,327	00
TOTAL	1,804	—		156,406	00 or £7,820
FARM EMPLOYEES—					
£250 and under	438	50	00	21,900	00
£350	62	57	00	3,534	00
£450	46	142	00	6,532	00
£550	20	227	00	4,540	00
£650	7	312	00	2,184	00
£750	7	420	50	2,943	50
£850	1	548	00	548	00
£950	4	675	50	2,702	00
£1,000 and over	3	—		3,041	00
TOTAL	588	—		47,924	50 or £2,396
COMMERCIAL EMPLOYEES—					
£250 and under	1,378	50	00	68,900	00
£350 ..	292	57	00	16,644	00
£450 .	227	142	00	32,234	00
£550	128	227	00	29,056	00
£650 ..	73	312	00	22,776	00
£750 .	32	420	50	13,456	00
£850 .	24	548	00	13,152	00
£950 .	13	675	50	8,781	50
£1,000 and over	35	—		39,963	00
TOTAL	2,202	—		244,962	50 or £12,248
OTHERS—					
£250 and under	285	50	00	14,250	00
£350	54	57	00	3,078	00
£450	44	142	00	6,248	00
£550	20	227	00	4,540	00
£650 .	13	312	00	4,056	00
£750 .	18	420	50	7,569	00
£850 .	10	548	00	5,480	00
£950 .	7	675	50	4,728	50
£1,000 and over	17	—		28,423	50
TOTAL	468	—		78,373	00 or £3,919

SUMMARY

ASIANS	Taxpayers	Yield
		£
Civil Servants	1,305	2,782
Kenya and Uganda Railways and Harbours	1,370	2,929
Professional	189	736
Commercial Employers	3,310	10,869
Owner Farmers	72	144
Farm Employees	3	6
Commercial Employees	9,167	18,562
Others	118	237
TOTAL ASIANS	15,534	£36,265

ASIANS

DECLARED INCOME	Frequency	Tax	Yield
		<i>Sh</i> <i>cts</i>	<i>Sh</i> <i>cts</i>
CIVIL SERVANTS—			
£300 and under	1,252	40 00	50,080 00
£400	50	100 00	5,000 00
£500	3	185 00	555 00
TOTAL	1,305	—	55,635 00 or £2,782
KENYA AND UGANDA RAILWAYS AND HARBOURS—			
£300 and under	1,321	40 00	52,840 00
£400	39	100 00	3,900 00
£500	10	185 00	1,850 00
TOTAL	1,370	—	58,590 00 or £2,929
PROFESSIONAL—			
£250 and under	157	40 00	6,280 00
£350	15	57 00	855 00
£450	6	142 00	852 00
£550	2	227 00	454 00
£650	2	312 00	624 00
£750	2	420 50	841 00
£850	1	548 00	548 00
£950	2	675 50	1,351 00
£1,000 and over	2	—	2,918 00
TOTAL	189	—	14,723 00 or £736
COMMERCIAL EMPLOYERS—			
£250 and under	3,134	40 00	125,360 00
£350	63	57 00	3,591 00
£450	54	142 00	7,668 00
£550	15	227 00	3,405 00
£650	14	312 00	4,368 00
£750	1	420 50	420 50
£850	1	548 00	548 00
£950	5	675 50	3,377 50
£1,000 and over	23	—	68,636 00
TOTAL	3,310	—	217,374 00 or £10,869

ASIANS—(Contd)

DECLARED INCOME	Frequency	Tax	Yield
		<i>Sh cts</i>	<i>Sh cts</i>
OWNER FARMERS— £250 and under	72	40 00	2,880 00 or £144
FARM EMPLOYEES— £250 and under	3	40 00	120 00 or £6
COMMERCIAL EMPLOYEES— £250 and under	9,077	40 00	363,080 00
£350	67	57 00	3,819 00
£450	17	142 00	2,414 00
£550	2	227 00	454 00
£650	2	312 00	624 00
£750	2	420 50	841 00
TOTAL	9,167	—	371,232 00 or £18,562
OTHERS— £250 and under	117	40 00	4,680 00
£350	1	57 00	57 00
TOTAL	118	—	4,737 00 or £237

SUMMARY

ARABS, SOMALIS, ETC	Taxpayers	Yield
Civil Servants	178	£ 207
Kenya and Uganda Railways and Harbours	11	31
Professional	2	2
Commercial Employers	1,078	1,651
Owner Farmers ..	267	267
Commercial Employees	1,386	1,444
TOTAL ARABS, SOMALIS, ETC	2,922	£3,602

ARABS, SOMALIS, ETC

DECLARED INCOME	Frequency	Tax	Yield
		<i>Sh cts</i>	<i>Sh cts</i>
CIVIL SERVANTS—			
£300 and under	173	20 00	3,460 00
£400 .	4	100 00	400 00
£500	—	185 00	—
£600	1	270 00	270 00
TOTAL	178	—	4,130 00 or £207
KENYA AND UGANDA RAILWAYS AND HARBOURS—			
£300 and under	7	20 00	140 00
£400 .	3	100 00	300 00
£500	1	185 00	185 00
TOTAL	11	—	625 00 or £31
PROFESSIONAL—			
£250 and under	2	20 00	40 00 or £2
COMMERCIAL EMPLOYERS—			
£250 and under	1,074	20 00	21,480 00
£350	1	227 00	227 00
£850	1	548 00	548 00
£1,000 and over ..	2	—	10,774 00
TOTAL	1,078	—	33,029 00 or £1,651
OWNER FARMERS—			
£250 and under	267	20 00	5,340 00 or £267
COMMERCIAL EMPLOYEES—			
£250 and under	1,373	20 00	27,460 00
£350	7	57 00	399 00
£450	4	142 00	568 00
£550	2	227 00	454 00
TOTAL	1,386	—	28,881 00 or £1,444

The foregoing tables relate incidence to the various classes of the non-native community. It is now necessary to examine the proposals in relation to individuals and Appendix I is attached with this object in view. The formula specified in paragraph 5 has also been applied to this table. Figures appearing on the left-hand side indicate the various taxes which fall to be deducted from gross incomes and the net income remaining after these liabilities have been met. Those on the right-hand side of the table give particulars of deduction under the new proposals and the net income remaining.

15 So far as yield is concerned, although the data obtained through operation of the Graduated Non-Native Poll Tax Ordinance reduces to a considerable extent the difficulties of estimation, a wide margin of error is inevitable until actual experience of the new measures has been obtained. The following details which are based on 1935 statistics and which make some allowance for an improved collection consequent upon a more equitable distribution of the burden of taxation must therefore be regarded as purely tentative.

1	<i>Poll Tax</i> —European, Sh 50	£20,313	
	Asian, Sh 40	31,068	
	Arabs, etc , Sh 20	2,922	
		<hr/>	
		54,303	
	<i>Less</i> remissions and exemptions	2,500	
		<hr/>	£51,803
2	<i>Income Tax Schedules</i> (Individuals) —(This allows for taxation of quarters, abolition of Railway Levy, etc)		53,151
	Pensioners (say)		2,000
	Companies at Sh 2/50 (say)		25,000
3	<i>Carry Over</i> (say)		3,500
			<hr/>
			£135,454
	<i>Less</i> Non-Native Poll Tax (receipts in respect of 1935)	£70,987	
	Education Taxes	24,792	
		<hr/>	95,779
			<hr/>
			£39,675
			<hr/>

16 By reversion to the rates chargeable under the Traders Licensing Ordinance, 1919, a reduction in revenue of approximately £8,000 from £33,000 to £25,000 might be anticipated.

17 The additional cost of collection following imposition of an Income Tax is tentatively estimated at £3,000.

Application
to individuals

Estimated
yield from
Income Tax

Estimated
yield from
trades
licences,

Estimated
additional
cost

APPENDIX I—EUROPEANS

INCOME	LIABILITIES UNDER PRESENT ENACTMENTS					LIABILITIES UNDER NEW PROPOSALS								
	Basic Poll Tax	Graduated Poll Tax	Education Tax	Total Liabilities	Net Income after Payment of Liabilities		Basic Poll Tax	Income Tax		Total Liabilities	Net Income after Payment of Liabilities			
	<i>Sh</i>	<i>Sh</i>	<i>Sh</i>	<i>Sh</i>	£	<i>s</i>	<i>Sh</i>	<i>Sh</i>	<i>cts</i>	<i>Sh</i>	<i>cts</i>	£	<i>s</i>	<i>cts</i>
£100	30	—	30	60	97	0	50	—		50	00	97	10	00
£200	30	10	30	70	196	10	50	—		50	00	197	10	00
£300	30	30	30	90	295	10	50	—		50	00	297	10	00
£400	30	50	30	110	394	10	50	50	00	100	00	395	0	00
£500	30	70	30	130	493	10	50	135	00	185	00	490	15	00
£600	30	110	30	170	591	10	50	220	00	270	00	586	10	00
£700	30	150	30	210	689	10	50	307	50	357	50	682	2	50
£800	30	190	30	250	787	10	50	435	00	485	00	775	15	00
£900	30	230	30	290	885	10	50	562	50	612	50	869	7	50
£1,000	30	270	30	330	983	10	50	690	00	740	00	963	0	00
£1,100	30	310	30	370	1,081	10	50	817	50	867	50	1,056	12	50
£1,200	30	350	30	410	1,179	10	50	985	00	1,035	00	1,148	5	00
£1,300	30	390	30	450	1,277	10	50	1,155	00	1,205	00	1,239	15	00
£1,400..	30	430	30	490	1,375	10	50	1,325	00	1,375	00	1,331	5	00
£1,500	30	470	30	530	1,473	10	50	1,495	00	1,545	00	1,422	15	00
£1,600	30	970	30	1,030	1,548	10	50	1,665	00	1,715	00	1,514	5	00
£1,700	30	970	30	1,030	1,648	10	50	1,835	00	1,885	00	1,605	15	00
£1,800	30	970	30	1,030	1,748	10	50	2,005	00	2,055	00	1,697	5	00
£1,900	30	970	30	1,030	1,848	10	50	2,175	00	2,225	00	1,788	15	00
£2,000	30	970	30	1,030	1,948	10	50	2,345	00	2,395	00	1,880	5	00
£2,100	30	1,470	30	1,530	2,023	10	50	2,562	50	2,612	50	1,969	7	50
£2,200	30	1,470	30	1,530	2,123	10	50	2,800	00	2,850	00	2,057	10	00
£2,300	30	1,470	30	1,530	2,223	10	50	3,037	50	3,087	50	2,145	12	50
£2,400	30	1,470	30	1,530	2,323	10	50	3,275	00	3,325	00	2,233	15	00
£2,500	30	1,470	30	1,530	2,423	10	50	3,512	50	3,562	50	2,321	17	50
£2,600	30	1,970	30	2,030	2,498	10	50	3,750	00	3,800	00	2,410	0	00
£2,700	30	1,970	30	2,030	2,598	10	50	3,987	50	4,037	50	2,498	2	50
£2,800	30	1,970	30	2,030	2,698	10	50	4,225	00	4,275	00	2,586	5	00
£2,900	30	1,970	30	2,030	2,798	10	50	4,462	50	4,512	50	2,674	7	50
£3,000	30	1,970	30	2,030	2,898	10	50	4,700	00	4,750	00	2,762	10	00
£3,100	30	2,470	30	2,530	2,973	10	50	4,937	50	4,987	50	2,850	12	50
£3,200	30	2,470	30	2,530	3,073	10	50	5,175	00	5,225	00	2,938	15	00
£3,300	30	2,470	30	2,530	3,173	10	50	5,412	50	5,426	50	3,026	17	50
£3,400	20	2,470	30	2,530	3,273	10	50	5,650	00	5,700	00	3,115	0	00
£3,500	30	2,470	30	2,530	3,373	10	50	5,887	50	5,937	50	3,203	2	50
£4,000	30	2,970	30	3,030	3,848	10	50	7,255	00	7,305	00	3,634	15	00
£5,000	30	3,970	30	4,030	4,798	10	50	10,255	00	10,305	00	4,484	15	00

APPENDIX I—ASIANS

INCOME	LIABILITIES UNDER PRESENT ENACTMENTS					LIABILITIES UNDER NEW PROPOSALS				
	Basic Poll Tax	Graduated Poll Tax	Education Tax	Total Liabilities	Net Income after Payment of Liabilities	Basic Poll Tax	Income Tax	Total Liabilities	Net Income after Payment of Liabilities	
	<i>Sh</i>	<i>Sh</i>	<i>Sh</i>	<i>Sh</i>	£ <i>s</i>	<i>Sh</i>	<i>Sh</i> <i>cts</i>	<i>Sh</i> <i>cts</i>	£ <i>s</i> <i>cts</i>	
£100	30	—	20	50	97 10	40	—	40 00	98 0 00	
£200	30	10	20	60	197 0	40	—	40 00	198 0 00	
£300	30	30	20	80	296 0	40	—	40 00	298 0 00	
£400	30	50	20	100	395 0	40	60 00	100 00	395 0 00	
£500	30	70	20	120	494 0	40	145 00	185 00	490 15 00	
£600	30	110	20	160	592 0	40	230 00	270 00	586 10 00	
£700	30	150	20	200	690 0	40	317 50	357 50	682 2 50	
£800	30	190	20	240	788 0	40	445 00	485 00	775 15 00	
£900	30	230	20	280	886 0	40	572 50	612 50	869 7 50	
£1,000	30	270	20	320	984 0	40	700 00	740 00	963 0 00	
£1,100	30	310	20	360	1,082 0	40	827 50	867 50	1,056 12 50	
£1,200	30	350	20	400	1,180 0	40	995 00	1,035 00	1,148 5 00	
£1,300	30	390	20	440	1,278 0	40	1,165 00	1,205 00	1,239 15 00	
£1,400	30	430	20	480	1,376 0	40	1,335 00	1,375 00	1,331 5 00	
£1,500	30	470	20	520	1,474 0	40	1,505 00	1,545 00	1,422 15 00	
£1,600	30	970	20	1,020	1,549 0	40	1,675 00	1,715 00	1,514 5 00	
£1,700	30	970	20	1,020	1,649 0	40	1,845 00	1,885 00	1,605 15 00	
£1,800	30	970	20	1,020	1,749 0	40	2,015 00	2,055 00	1,697 5 00	
£1,900	30	970	20	1,020	1,849 0	40	2,185 00	2,225 00	1,788 15 00	
£2,000	30	970	20	1,020	1,949 0	40	2,355 00	2,395 00	1,880 5 00	
£2,100	30	1,470	20	1,520	2,024 0	40	2,572 50	2,612 50	1,969 7 50	
£2,200	30	1,470	20	1,520	2,124 0	40	2,810 00	2,850 00	2,057 10 00	
£2,300	30	1,470	20	1,520	2,224 0	40	3,047 50	3,087 50	2,145 12 50	
£2,400	30	1,470	20	1,520	2,324 0	40	3,285 00	3,325 00	2,233 15 00	
£2,500	30	1,470	20	1,520	2,424 0	40	3,522 50	3,562 50	2,321 17 50	
£2,600	30	1,970	20	2,020	2,499 0	40	3,760 00	3,800 00	2,410 0 00	
£2,700	30	1,970	20	2,020	2,599 0	40	3,997 50	4,037 50	2,498 2 50	
£2,800	30	1,970	20	2,020	2,699 0	40	4,235 00	4,275 00	2,586 5 00	
£2,900	30	1,970	20	2,020	2,799 0	40	4,472 50	4,512 50	2,674 7 50	
£3,000	30	1,970	20	2,020	2,899 0	40	4,710 00	4,750 00	2,762 10 00	
£3,100	30	2,470	20	2,520	2,974 0	40	4,947 50	4,987 50	2,850 12 50	
£3,200	30	2,470	20	2,520	3,074 0	40	5,185 00	5,225 00	2,938 15 00	
£3,300	30	2,470	20	2,520	3,174 0	40	5,422 50	5,462 50	3,026 17 50	
£3,400	30	2,470	20	2,520	3,274 0	40	5,660 00	5,700 00	3,115 0 00	
£3,500	30	2,470	20	2,520	3,374 0	40	5,897 50	5,937 50	3,203 2 50	
£4,000	30	2,970	20	3,020	3,849 0	40	7,265 00	7,305 00	3,634 15 00	
£5,000	30	3,970	20	4,020	4,799 0	40	10,265 00	10,305 00	4,484 15 00	

GOVERNMENT NOTICE No 611

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council

R W BAKER-BEALL,
Acting Clerk of the Legislative Council

**A Bill to Provide for the Licensing of Traders
within the Colony and to fix the Licence
Fees Payable**

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

1 This Ordinance may be cited as the Licensing Ordinance, 1936, and shall come into operation on the 1st day of January, 1937

Short title
and com-
mencement

2 In this Ordinance, unless the context otherwise requires —

Interpreta-
tion

“commercial traveller” means any person who, not being ordinarily resident in the Colony, solicits orders for goods on behalf of other persons but does not include a person employed as a traveller by a firm or persons licensed under this Ordinance,

“commission agent and/or manufacturer’s representative” means any person resident in the Colony who receives or orders from abroad goods on account of others, whether such goods are imported in his own name or not,

“hawker” means any person who, whether as principal, agent or employee, carries on the business of offering or exposing for sale, barter or exchange elsewhere than at a fixed place any goods, and for that purpose travels about from place to place with goods on any vehicle or with a pack animal or carrier,

“licensing officer” means any district officer or any other person whom the Governor may, by notice in the Gazette, appoint either by name or by office,

“store” means any building or part thereof in which goods are sold or exposed for sale but does not include a canteen holding a Canteen Liquor Licence under the provisions of the Liquor Ordinance, 1934,

No 62 of 1934

	<p>“trade” or “trading” means the selling of goods for purposes of profit in a store</p>	
Limitation of licences under the Ordinance	<p>3 Nothing in this Ordinance contained shall be deemed to entitle the holder of a licence under this Ordinance to sell any article or substance for the sale of which a separate licence is required by any law for the time being in force in the Colony</p>	
Traders to be licensed	<p>4 (1) No person in the Colony shall trade, or carry on the business of a commercial traveller, or a commission agent and/or manufacturer's representative, unless he holds a licence, for the time being in force authorizing him to do so, issued under the provisions of this Ordinance</p>	
Offences	<p>(2) If any person contravenes the provisions of this section, he shall be liable for a first offence to a fine not exceeding fifty pounds or in default of payment to imprisonment for any term not exceeding two months, and for a second or subsequent offence to a fine not exceeding two hundred and fifty pounds or in default of payment to imprisonment for a term not exceeding six months</p>	
Forms of licences	<p>5 The licences to be issued under this Ordinance shall be in the forms set out in Schedules B and C to this Ordinance</p>	
Licence fees	<p>6 (1) The fees payable for the licences issued under the provisions of this Ordinance shall be as follows —</p> <p>(a) For a trading licence for each store with liberty to store in and deliver out of public and other godowns and warehouses</p> <p style="text-align: right;">£15 per annum</p> <p>Provided that for each store when the value of the goods on hand during the year for which the licence is required does not exceed at each such store £150 at any one time during the period of the validity of the licence the following fee shall be payable —</p> <p>(1) In municipalities, townships and trading centres</p> <p style="text-align: right;">£1-10 per annum</p> <p>(ii) Elsewhere</p> <p style="text-align: right;">Sh 10 per annum</p>	

- | | |
|-------------------------------------------------------------------------------------------------------|-----------------------------------------|
| (b) For a commercial traveller's licence | £20 per annum or for any shorter period |
| (c) For a licence to carry on the business of a commission agent and/or manufacturer's representative | £15 per annum |
| (d) For a hawker's licence | £1-10 for three months |

(2) When applying for a trading licence under sub-paragraphs (i) or (ii) of paragraph (a) of sub-section (1) of this section, the owner or manager of each such store shall declare in writing to the licensing officer the maximum value of goods which he anticipates will be on hand at any one time during the period in respect of which the licence is applied for, but if the value of his goods during such period shall exceed the said estimate at any one time during the period of the validity of such licence he shall pay any balance which may be found due, and, unless and until such sum is paid, he shall not be granted a further licence under this Ordinance

7 (1) Licences, other than a hawker's licence, under this Ordinance shall become due on the first day of January in each year and shall expire on the thirty-first day of December next following. Provided that a licence to carry on the business of a commercial traveller may be taken out upon any day in each year

Period of validity

(2) Where a licence, other than a commercial traveller's licence, is due after the thirtieth day of June in any year, the fee for the licence shall be one-half of the annual fee specified in this Ordinance

8 (1) A trading licence, or a licence issued to a commission agent and/or manufacturer's representative, may, by endorsement of a licensing officer and on payment of a fee of five shillings, be transferred to different premises

Transfer of licences

(2) Upon good reasons being adduced therefor a licence referred to in sub-section (1) of this section may, by endorsement of a licensing officer and on payment of a fee of ten shillings, be transferred to another person

9 A licensing officer, on being satisfied that a licence issued by him under this Ordinance has been lost or destroyed and on payment to him of a fee of five shillings, shall issue a duplicate licence to the licensee

Issue of duplicate licences

- Licences to be exhibited at place of business** **10** Every licence, other than a hawker's licence, shall be exhibited in a prominent place in the premises to which it relates or, if the business is not carried on in definite premises, such licence shall be kept at the place where the person carrying on the business usually resides
- Licences to be produced for inspection** **11** Every licence issued under this Ordinance shall be produced for inspection to any administrative or police officer, or licensing officer on reasonable notice being given by him
- Power of entry** **12** (1) Any administrative officer, police officer or licensing officer may enter any premises in respect of which a licence has been issued under this Ordinance, and may require to be furnished with such information as will enable him to determine whether or not the provisions of this Ordinance are being complied with
(2) Any administrative officer, police officer or licensing officer may enter any premises in respect of which a licence has not been issued under this Ordinance but in which he has good reason to suspect that there is carried on any business or trade for which a licence is provided under this Ordinance, and may require to be furnished with any information he may deem to be necessary
- Books to be kept** **13** Every person holding a trading licence under this Ordinance shall keep such books as will enable a licensing officer to ascertain the nature of the trade carried on and the value of the goods on hand at any one time
- Value of goods may be determined by administrative, police or licensing officer** **14** In the case of a trader licensed under sub-paragraphs (i) and (ii) of paragraph (a) of sub-section (1) of section 6 of this Ordinance, the nature of the trade carried on and the value of the goods on hand at any one time may be determined by any administrative officer, European police officer or licensing officer
- Offences** **15** Any person who—
(a) contravenes the provisions of section 10 of this Ordinance, or
(b) fails to produce his licence when notice has been given to him to do so under section 11 of this Ordinance, or
(c) fails to furnish any information required from him under the provisions of section 12 of this Ordinance, or

- (d) fails to keep the books required to be kept under the provisions of section 13 of this Ordinance, or
- (e) obstructs or hinders any administrative or police officer or licensing officer in the exercise of his duties under this section,

shall be guilty of an offence against this Ordinance

16 Any person holding a trading licence, who is convicted of giving short change, short measure or weight, or of not keeping proper books of account, or of any breach of this Ordinance, or of any Rule made thereunder, shall, in addition to any penalty to which he may otherwise be liable, on a first conviction be liable to have the conviction endorsed on his licence and on a second or subsequent conviction be liable to have his licence cancelled

Endorsement
and cancella-
tion of licence

17 Every licence holder, keeping a store, office or other place of business under his licence shall exhibit at such place a signboard or name-plate bearing in legible English characters the name under which he carries on the business as shown on his licence

Signboards to
be exhibited

18. (1) No person shall hawk goods in any district of the Colony unless he holds a hawker's licence, for the time being in force authorizing him to do so, issued under the provisions of this Ordinance

Hawkers'
licences

(2) A hawker's licence shall authorize the person to whom it is issued to hawk goods only within the district specified in such licence

19. (1) Subject to the provisions of sub-section (2) of this section, where any person employs servants to hawk goods on his account such person shall be liable to take out a licence and to pay the fees therefor for each such servant

Servants of
hawkers

(2) A hawker shall not transfer his licence to any person Provided that a servant may travel with his master's licence and trade for his master's benefit And provided further that a separate licence shall be taken out for each servant if more than one is employed, as provided in sub-section (1) of this section

(3) Every person required by this section to be provided with a hawker's licence shall carry the same with him and shall produce the same on the demand of any administrative officer, licensing officer or police officer

(4) The provisions of section 18 and of this section of this Ordinance shall not apply to—

- (a) any commercial traveller,
- (b) any person hawking only goods in respect of which no licence under this Ordinance is required for the sale thereof in a store,
- (c) any person selling goods in any market legally established,
- (d) any person selling fish, vegetables, fruit, milk, victuals, firewood or newspapers,
- (e) any person selling religious or instructive literature to natives

Issue of
licence

20 Licences shall be issued by a licensing officer

Application
for licences

21 (1) Every application for a licence, other than a hawker's licence, shall be in the form contained in Schedule A to this Ordinance

(2) Every such application shall be signed by the owner, manager or authorized representative of the business. Provided that a licence may be issued without written application if the applicant applies in person for the licence and the licensing officer is satisfied that the applicant has not sufficient knowledge of the English language to be able to apply in writing

Power to
refuse licence
in certain
circumstances

22 A licensing officer may in his discretion refuse a licence to a person who has had his licence cancelled under the provisions of section 16 of this Ordinance, or who is a minor, or who is an undischarged bankrupt. If a licensing officer in exercise of the powers conferred upon him by this sub-section refuses a licence, the person to whom such licence has been refused may appeal to the Governor, whose decision shall be final

Exemptions

23 Persons engaged in any one of the following businesses shall not merely in respect of such business be liable to take out a trading licence under this Ordinance —

- (a) The business or trade of a planter, farmer, stock raiser, market gardener or dairyman disposing of his own produce, but not including a manufacturer of sugar or a manufacturer of tea or a manufacturer of roasted coffee

- (b) A business for which a licence is taken out under any law for the time being in force relating to intoxicating liquor in respect of brewers or traders dealing solely in intoxicating liquors
- (c) The business of mining under the authority of a prospecting right, an exclusive prospecting licence, a location or a mining lease granted under the Mining Ordinance, 1933, or the Oil Production Ordinance, 1924, or any legislation substituted therefor No 61 of 1933
No 11 of 1924
- (d) brickmakers, butchers and bakers catering solely for, and domestic industries carried on by, natives, Somalis, Baluchis born in Africa, Malagasies and Comoro Islanders
- (e) Any other business or trade, in respect of which a licence is required to be taken out under any other law for the time being in force in the Colony, to which the Governor may, by notice in the Gazette, extend the provisions of this section

24 (1) Any licensee under this Ordinance who employs in his store, office or other place of business any agent, clerk or other person shall be answerable for the acts of such agent, clerk or other person in so far as they concern the business of such licensee in relation to this Ordinance, and if such agent, clerk or other person commits any act which is an offence against the provisions of this Ordinance, such licensee and his agent, clerk or other person shall be jointly and severally liable to the forfeiture, fines and penalties thereby incurred

Licensee
responsible for
acts of
employee

(2) The licensee shall not be allowed to plead as a bar to the proceedings taken against him that any such agent, clerk or other person who may have committed such offence did so without his authority, or was not acting in the capacity of an agent, clerk or other person employed

25 The Governor in Council may make Rules—

Rules

- (a) prescribing forms of application, forms of licences and any other forms required for the better carrying out of the provisions of this Ordinance,
- (b) amending or revoking the forms set out in Schedules A, B or C of this Ordinance,
- (c) generally for the better carrying out of the provisions of this Ordinance

Penalty

26 Any person who is guilty of an offence against this Ordinance or who acts in contravention of any of the provisions thereof or of any Rules made thereunder shall, if no other penalty is imposed by this Ordinance or by any Rules made thereunder, be liable on conviction for each offence to a fine not exceeding ten pounds and in default of payment to imprisonment for a term not exceeding one month

SCHEDULE A

COLONY AND PROTECTORATE OF KENYA

THE LICENSING ORDINANCE, 1936

FORM OF APPLICATION FOR A LICENCE

A separate form must be completed in respect of each licence applied for

- 1 Name under which the business is to be carried on
- 2 Full address where the business is to be carried on
- 3 Name of proprietor, partner or owning company
- 4 Full description of the business for which a licence is required
- 5 State number and date of licence previously held, or state date of commencing business
- 6 State period for which licence is required
- 7 Is your stock insured against fire
- 8 If so, for what amount
- 9 Name of insurance company

I hereby certify that the information given in this application is true and correct

Signature of Applicant

Designation

Date

Declaration to be completed by an applicant for a licence to carry on business as a trader to whom sub-section (2) of section 6 of this Ordinance applies

In respect of the licence for which I make application, I hereby declare that the value of the goods on hand will not at any time during the period of validity of the said licence exceed £

Date

Signature

FOR OFFICIAL USE ONLY

Licence No Date Fee
Issued in the name of
in respect of premises situate
under section
Station
Registered

Licensing Officer

SCHEDULE B
COLONY AND PROTECTORATE OF KENYA
THE LICENSING ORDINANCE, 1936
LICENCE

Station

Licence is hereby granted to
of (address)

to carry on the

business of
on premises situated at

This licence expires on the thirty-first day of December,
19

Fee paid (in words)
(Sh -)

Date

Licensing Officer

SCHEDULE C
COLONY AND PROTECTORATE OF KENYA
THE LICENSING ORDINANCE, 1936
HAWKER'S LICENCE

Station
Licence is hereby granted to
to hawk goods in the District of the Colony for
a period of months
This licence expires on the day of
19
Fee paid (in words)
(Sh)
Date

Licensing Officer

OBJECTS AND REASONS

The object of this Bill is to re-introduce the scale of trading licence fees which were in force before the enactment of the Licensing Ordinance, 1933
No additional expenditure of public moneys will be involved if the provisions of this Bill become law