



**THE
OFFICIAL GAZETTE
OF THE
COLONY AND PROTECTORATE
OF
KENYA
(SPECIAL ISSUE)**

**Published under the Authority of His Excellency the Governor of the
Colony and Protectorate of Kenya**

Vol. XXXIX.—No. 8

NAIROBI, February 16, 1937

Price 50 Cents

Registered as a Newspaper at the G.P.O.

TABLE OF CONTENTS

	PAGE
Proclamation No. 12—Meeting of the Legislative Council	174
Govt. Notices Nos. 127-8—Legislative Council—Appointments	174
Govt. Notice No. 129—For introduction into Legislative Council—A Bill to Impose a Tax upon Incomes and to Regulate the Collection thereof	175
„ „ „ 130—For introduction into Legislative Council—A Bill relating to the Advance- ment of the Passion Fruit Industry	223
„ „ „ 131—For introduction into Legislative Council—A Bill to Amend the Kerosene Oil (Repayment of Duty) Ordinance, 1930	227
„ „ „ 132—For introduction into Legislative Council—A Bill to Amend the Mining Ordinance, 1933	231

Colony and Protectorate of Kenya

PROCLAMATION No. 12

MEETING OF THE LEGISLATIVE COUNCIL.

PROCLAMATION.

I, Armigel de Vins Wade, Companion of the Most Distinguished Order of Saint Michael and Saint George, Officer of the Most Excellent Order of the British Empire, Acting Governor and Commander-in-Chief of the Colony and Protectorate of Kenya, in exercise of the powers vested in me by Instructions under the Royal Sign Manual and Signet dated the 29th day of March, 1934, do hereby direct that a session of the Legislative Council be held at the Memorial Hall, Nairobi, on Tuesday, the second day of March, 1937, at 11 a.m.

Given under my hand at Nairobi this 15th day of February, 1937.

A. DE V. WADE,
Acting Governor.

GOD SAVE THE KING.

GOVERNMENT NOTICE No. 127

LEGISLATIVE COUNCIL

APPOINTMENT

IN virtue of the powers vested in him by section 19 of the Legislative Council Ordinance (Chapter 24 of the Revised Edition), His Excellency the Acting Governor has been pleased to nominate

MR. AMAR NATH MAINI

to act as one of the Members of the Legislative Council for the Indian Electoral Area in place of the Hon. Isher Dass, an Elected Member for the said Electoral Area, now absent from the Colony and Protectorate, during such absence, subject, however, to the provisions of the aforesaid section of the Legislative Council Ordinance.

Nairobi,
13th February, 1937.

W. M. LOGAN,
Acting Colonial Secretary.

GOVERNMENT NOTICE No. 128

LEGISLATIVE COUNCIL

APPOINTMENT

IT is hereby notified for general information that His Excellency the Acting Governor has been pleased to make the following provisional appointment:—

To be temporarily a Nominated Official Member of the Legislative Council—

MONTAGUE RICHARD REYNOLDS VIDAL, ESQUIRE.

Nairobi,
13th February, 1937.

W. M. LOGAN,
Acting Colonial Secretary.

GOVERNMENT NOTICE No. 129

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, 1937, and shall be deemed to have come into operation on the first day of January, 1937. Short title and commencement.

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

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

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

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

“company” means—

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

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

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

“incapacitated person” means any infant, lunatic, idiot, or insane person;

No. 19 of 1928. “local authority” means a municipal council or a municipal board established under the Local Government (Municipalities) Ordinance, 1928, or a district council established under the Local Government (District Councils) Ordinance, 1928;

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

“tax” means the income tax imposed by this Ordinance;

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

Administration.

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

Official secrecy.

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

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

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

(b) otherwise than for the purposes of this Ordinance, shall be guilty of an offence against this Ordinance and shall be liable on conviction by a magistrate of the first or second

class to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and such imprisonment.

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

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

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

PART II

IMPOSITION OF INCOME TAX

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

Charge of
income tax.

(a) gains or profits from any trade, business, profession or vocation for whatever period of time such trade, business, profession, or vocation may have been carried on or exercised;

- (b) gains or profits from any employment, including the estimated annual value of any quarters or board or residence or of any other allowance (other than a subsistence or travelling allowance, or an entertainment allowance which is proved to the satisfaction of the Commissioner to have been expended for the purposes for which it was made) granted in respect of employment whether in money or otherwise.

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

- (c) the net annual value of land and improvements thereon used by or on behalf of the owner or used rent free by the occupier, for the purpose of residence or enjoyment, and not for the purpose of gain or profit;
- (d) dividends, interest or discounts;
- (e) any pension, charge or annuity;
- (f) rents, royalties, premiums and any other gains or profits not falling within any of the foregoing paragraphs of this section:

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

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.

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

Special periods
of assessment.

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

EXEMPTIONS

8. There shall be exempt from the tax—

Exemptions.

(a) the official emoluments received by the officer administering the Government;

(b) the income of the Kenya and Uganda Railways and Harbours Services;

(c) the income of the Asiatic Widows' and Orphans' Fund established under the Asiatic Widows' and Orphans' Pension Ordinance, 1927;

No. 20 of 1927.

(d) the income of the Kenya and Uganda Railway Provident Fund established under the State Railway Provident Fund Ordinance;

Cap. 35.

(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 other provident fund declared by the Governor under section 19 of this Ordinance to be an approved fund;

(i) the income of any local authority in so far as such income is not derived from a trade or business carried on by the local authority:

Provided that the Governor in Council¹ by order, subject to such conditions as he may impose and for such period as may be stated in the order, may exempt from the tax the income of any local authority derived from a trade or business if he is satisfied that the public interest is best served by such an exemption;

- (j) the income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution, or the income of trusts of a public character;
- (k) the emoluments payable to members of the permanent consular services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;
- (l) the emoluments payable from Imperial funds to members of His Majesty's Forces and to persons in the permanent service of the Imperial Government in the Colony in respect of their offices under the Imperial Government;
- (m) the emoluments payable from Dominion funds to any accredited representative in the Colony of any Dominion;
- (n) war pensions or gratuities;
- (o) any capital sum received by way of retiring or death gratuity or as consolidated compensation for death or injuries;
- (p) the income of the Post Office Savings Bank;
- (q) the income of the Land and Agricultural Bank of Kenya established under the Land and Agricultural Bank Ordinance, 1930;
- (r) the income of the Farmers Conciliation Board established under the Farmers Assistance Ordinance, 1936;
- (s) the profits of a non-resident shipowner as defined in section 41 of this Ordinance provided that the State to which such non-resident shipowner belongs extends a similar exemption to British and Colonial non-resident shipowners carrying on business in such State:

No. 3 of 1931.

No. 18 of 1936.

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

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

Government
loans.

PART III.

ASCERTAINMENT OF CHARGEABLE INCOME

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

Deductions
allowed.

- (a) except as hereinafter provided, sums payable by such person by way of interest upon any money borrowed by him, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;
- (b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;
- (c) where any person engaged in any trade, business, profession or vocation has expended any sum in replacing any plant or machinery which was used or employed in such trade, business, profession or vocation, and which has become obsolete, an amount equivalent to the cost of the plant or machinery replaced, after deducting from that cost such sum as shall represent the total depreciation which has occurred by reason of wear and tear since the date of purchase of such plant and machinery or, in the case of such plant and machinery purchased before the first day of January, 1937, since that date, and any sum realized by the sale thereof;
- (d) any sum expended for repair of premises, plant and machinery employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed:

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

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

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

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

No. 57 of 1931. (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.

Deductions not to be allowed.

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

- (a) domestic or private expenses;
- (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
- (c) income carried to any reserve fund or, subject to the provisions of this Ordinance, capitalized in any way;
- (d) any loss or expense which is recoverable under any insurance, contract or indemnity;

(f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;

(g) any amounts paid or payable in respect of United Kingdom income tax or surtax, Kenya income tax or Empire income tax as defined in this Ordinance.

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

Allowance for wear and tear.

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

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

Allowance of trade losses.

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

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

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

Deduction for dependants.

14. (1) Subject to the provisions of sub-section (3) of this section, in ascertaining the chargeable income of an individual who is resident in the Colony and who proves to the satisfaction of the Commissioner that during the year immediately preceding the year of assessment he has maintained or contributed to the maintenance of a dependent relative there shall be allowed a deduction of the sum expended on such maintenance.

(2) Where the dependent relative in respect of whom a deduction is claimed under the provisions of this section is a child in respect of whom a deduction has been allowed under the provisions of section 18 of this Ordinance, then in such case the amount that may be allowed as a deduction under the provisions of this section shall be the difference between the sum allowed in respect of such child under the provisions of section 18 of this Ordinance and the sum of one hundred pounds.

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

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

Deduction in case of residents in the Colony.

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

Deduction in case of non-residents.

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

Deduction for wife.

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

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

Deduction for children.

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

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

19. In ascertaining the chargeable income of any person who—

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

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

(b) shall have contributed to the Widows' and Orphans' Pension Scheme in the Colony or to an approved scheme as defined in the Widows' and Orphans' Pension Ordinance, or to the Asiatic Widows' and Orphans' Pension Fund, or to the Kenya and Uganda Railway Provident Fund, or to the European Civil Service Provident Fund, or to the Asian Civil Service Provident Fund, or to such other public or private fund as the Governor may by order declare to be an approved fund for the purposes of this section,

Cap. 34.

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

Provided that no such deduction shall be allowed in respect of any such annual amount of premium and/or contribution beyond an amount equal to one-sixth part of the

assessable income: And provided further that the total deduction to be allowed under this section shall not exceed two hundred pounds in amount.

Proof of claims.

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

PART IV.

RATE OF TAX.

Rates of tax.

21. The tax upon the chargeable income of every person shall be charged at the following rates:—

For every pound of the first £700: one shilling;

For every pound of the next £500: one shilling fifty cents;

For every pound of the next £1,500: two shillings;

For every pound of the remainder of the chargeable income: two shillings fifty cents:

Provided that in the case of a company the rate of tax for every pound of the chargeable income in excess of £1,200 shall be two shillings.

Deduction of tax from dividends of companies.

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

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

Deduction of tax from debenture interest paid by company.

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

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

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

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

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

Set-off in respect of tax deducted.

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

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

(3) The expression "appropriate rate" means the rate of tax determined by dividing the amount of tax paid by the company on its income by the amount of income on which such tax has been paid.

24. (1) Where any person pays mortgage interest to a person not resident in the Colony or to the agent of such person and is entitled to deduct such interest under section 10 of this Ordinance he shall upon paying the interest deduct

Deduction of tax from mortgage interest payable by individual.

therefrom tax at the rate of two shillings on every pound of such interest and shall forthwith render an account to the Commissioner of the amount so deducted and every such amount shall be a debt from him to the Government of the Colony and shall be recoverable as such.

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

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

Temporary
residents.

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

PART V.

PROVISIONS RELATING TO SPECIAL CASES.

A.—Husband and Wife.

Wife's income.

26. The income of a married woman not separated from her husband under a judicial order or written agreement shall, for the purposes of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name: Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total

income of the husband and wife may, if necessary, be collected from the wife notwithstanding that no assessment has been made upon her.

B.—Trustees, Agents, etc.

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

Chargeability
of trustees,
etc.

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

Chargeability
of agent of
person resid-
ing out of the
Colony.

Provided that in the case of any individual who is not resident in the Colony no deduction, other than the deduction allowed under section 16 of this Ordinance, shall be allowed.

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

(2) Where a non-resident person carries on business with a resident person, and it appears to the Commissioner that owing to the close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

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

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

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

(5) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him assessable and chargeable in pursuance of sub-sections (2) and (3) of this section in the name of a resident person shall not of itself make him assessable or chargeable in respect of gains or profits arising from those sales or transactions.

(6) Where a non-resident person is assessable and chargeable to tax in the name of any attorney, factor, agent, receiver, branch or manager, in respect of any gains or profits arising

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

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

Acts, etc., to be done by trustees.

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

Lists to be prepared by representative or agent.

(a) a true and correct statement of all such income;

(b) the name and address of every person to whom the same shall belong,

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

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

Manager of corporate bodies of persons.

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, to the extent to which the assets of such person are acquired by him in the due and proper administration of the estate of such person, be assessable and chargeable to the tax to which such person would have been assessable and chargeable, and shall be answerable for doing all such acts, matters and things as such person, if he were alive, would be liable to do under this Ordinance:

Provided that in the case of a person dying during the year preceding the year of assessment if his personal representative distributes his estate before the commencement of the year of assessment such personal representative shall pay the tax at the rate or rates in force at the date of distribution of the estate.

Joint trustees.

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

C.—Partnership.

Partnerships.

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

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

- (2) (a) the precedent partner, that is to say, the partner who of the partners resident in the Colony—
- (i) is first named in the agreement of partnership; or
 - (ii) if there be no agreement, is specified by name or initials singly or with precedence to the other partners, in the usual name of the partnership; or
 - (iii) is first named in the statement made under section 5 of the Registration of Business Names Ordinance; or
 - (iv) is the precedent acting partner if the partner named with precedence is not an acting partner,
- shall, when required by the Commissioner, make and deliver a return of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Ordinance, and declare therein the names and addresses of the other partners in the firm together with the amount of the share of the said income to which each partner was entitled for that year;
- (b) where no partner is resident in the Colony the return shall be made and delivered by the attorney, agent, manager or factor of the partnership resident in the Colony;
- (c) the provisions of this Ordinance with respect to the failure to deliver returns or particulars in accordance with a notice from the Commissioner shall apply to any return required under this section;
- (3) The income of any non-resident partner or partners from the partnership shall be assessable in the name of the partnership or of any resident partner or of any agent of the partnership in the Colony, and the tax charged thereon shall be recoverable by all means provided in this Ordinance out of the assets of the partnership or from any partner or from any such agent.

D.— Agriculture.

36. (1) In this section—

“permanent cultivation” means the cultivation of land for the purpose of producing coco-nuts, tea, coffee, and other products from palms, trees or bushes of a more or less permanent character, all of which are hereinafter referred to as trees;

Ascertainment of profits from certain agricultural undertakings.

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

“immature area” means an estate or part of an estate, first planted in any one year, in which the trees planted in that year are not fully mature, or not in full bearing.

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

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

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

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

Special
deductions
allowed to
farmers.

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

- (a) dipping tanks;
- (b) new fencing;
- (c) rotation replanting of sisal;
- (d) measures for the prevention of soil erosion.

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

Option to
farmers.

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

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

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

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

(5) The decision as to the basis upon which a farmer elects to be assessed shall be notified by him in writing to the Commissioner when rendering his first return subsequent to the first day of January, 1937, under this Ordinance, and the decision so notified shall be binding upon him in respect of all subsequent returns: Provided that the Commissioner may for good and sufficient reasons and upon such terms as he may consider necessary for the protection of revenue permit any farmer who has so notified his election to adopt the alternative method in respect of any years of assessment subsequent to the year of assessment commencing on the first day of January, 1937.

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

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

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

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

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

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

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

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

Provided that if it is shown that the profit has been increased through treatment of the product outside the Colony other than handling, grading, blending, sorting, packing and disposal, such increase of profit shall not be deemed to be income arising in or derived from the Colony. Where any such produce is not sold in a wholesale market, the profit arising in the Colony shall be deemed to be not less than the profit which might have been obtained if such person had sold such produce wholesale to the best advantage.

E.—Insurance Companies.

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

- (a) in the case of an insurance company (other than a life insurance company) where the gains or profits accrue in part outside the Colony the gains or

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

profits on which tax is payable shall be ascertained by taking the gross premiums and interest and other income received or receivable in the Colony (less any premiums returned to the insured and premiums paid on re-insurance), and deducting from the balance so arrived at a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the year preceding the year of assessment and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of the said year and from the net amount so arrived at deducting the actual claims paid or outstanding (less the amount recovered in respect thereof under re-insurance), the agency expenses in the Colony and a fair proportion of the expenses of the head office of the company;

- (b) in the case of a life insurance company, whether mutual or proprietary, the gains or profits on which tax is payable shall be the investment income less the management expenses (including commission): Provided that where such a company received premiums outside the Colony the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in the Colony bore to the total premiums received after deducting from the amount so arrived at the agency expenses in the Colony and a fair proportion of the expenses of the head office of the company.

Life insurance companies.

F.—Shipping.

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

Profits of non-resident shipowners

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

(2) Where for any accounting period such person produces the certificate mentioned in sub-section (3) of this section, the profits arising in the Colony from his shipping

business for such period, before deducting any allowance for depreciation, shall be a sum bearing the same ratio to the sums receivable in respect of the carriage of passengers, mails, live stock, and goods shipped in the Colony as the ratio for the said period shown by that certificate of the total profits to the total sum receivable by him in respect of the carriage of passengers, mails, live stock and goods.

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

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

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

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

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

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

Master of ship
to be an agent.

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

Refusal of
clearance
where tax is
in arrear.

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

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

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

G.—*Relief in Cases of Double Taxation*

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

Relief in
respect of
United
Kingdom
income tax.

appropriate to his case under this Ordinance exceeds half the appropriate rate of United Kingdom tax. If, however, the rate of tax appropriate to his case under this Ordinance exceeds the appropriate rate of United Kingdom tax he shall be entitled only to relief at a rate equal to half the appropriate rate of United Kingdom tax.

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

(3) For the purposes of this section, the expression "rate of tax" when applied to tax paid or payable under this Ordinance means the rate determined by dividing the amount of the tax paid or payable for the year (before the deduction of the relief granted under this section) by the amount of the income in respect of which the tax paid or payable under this Ordinance has been charged for that year except that where the income which is the subject of a claim to relief under this section is computed by reference to the provisions of section 28 of this Ordinance on an amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Commissioner.

Relief in
respect of
Empire
income tax.

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

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

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

(2) If any person not resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his

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

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

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

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

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

Income from certain dividends to include tax thereon.

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

How certain receipts from insurance to be treated.

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

Ascertainment of income of clubs, trade associations, etc.

48. (1) Where a body of persons, whether corporate or unincorporate, carries on a club or similar institution and receives from its members not less than three-fourths of its gross receipts on revenue account (including entrance fees and subscriptions), it shall not be deemed to carry on a business; but where less than three-fourths of its gross receipts are received from members, the whole of the income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and the body of persons shall be chargeable either in respect of the profits therefrom, or in respect of the income which would be assessable if it were not deemed to carry on a business, whichever is the greater.

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

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

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

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

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

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

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

PART VI

GENERAL POWERS OF COMMISSIONER

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

Notice of
chargeability
and returns.

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

(2) The Commissioner may by notice in writing require any person to furnish him within a reasonable time with a return of income and such particulars as may be required for the purposes of this Ordinance with respect to the income for which such person is chargeable.

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

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

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

Commissioner
may call for
further
returns.

Power to call
for returns,
books, etc.

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

Returns to be
deemed to be
furnished
by due
authority.

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

Books of
account.

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

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

Official
information
and official
secrecy.

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

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

Obligations of
employers.

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

(a) the names and places of residence of all persons employed by him; and

- (b) the payments and allowances made to those persons in respect of that employment,

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

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

58. Where any person in any capacity whatever—

- (a) receives any profits or income to which this Ordinance applies which belongs to some other person, or
(b) pays to some other person, or to his order, any such profits or income,

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

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

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

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

Occupiers to furnish returns of rent payable.

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

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

Return of lodgers and inmates.

Signature
of notices.

61. (1) Every notice to be given by the Commissioner under this Ordinance shall be signed by the Commissioner or by some person or persons from time to time appointed by him for that purpose, and every such notice shall be valid if the signature of the Commissioner or of such person or persons 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.

Service
of notices.

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

PART VII.

ASSESSMENTS.

Commissioner
to make
assessment.

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

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

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

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

(3) Where a person has not delivered a return and the Commissioner is of the opinion that such person is liable to tax, he may, according to the best of his judgment, determine

the amount of the chargeable income of such person, and assess him accordingly, but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

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

Additional
assessments.

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

Lists of
persons
assessed.

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

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

Power of
Commissioner
to revise
assessment
in case of
objection.

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

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

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

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

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

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

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

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

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

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

Errors, etc.,
in assessment
and notices.

PART VIII.

APPEALS.

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

Establish-
ment of local
committees.

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

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

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

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

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

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

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

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

Appeals to
local
committees.

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

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

(2) Any person appealing may appear before the local committee either in person or by agent.

Appeals to
Supreme Court.

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

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

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

Provided always that if it be proved to the satisfaction of the judge that owing to absence from the Colony, sickness or other reasonable cause, any person is prevented from attending

at the hearing of his appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of such appeal for such reasonable time as he thinks necessary for the attendance of the appellant.

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

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

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

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

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

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

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

(10) Notwithstanding that an appeal from the decision of the judge has been lodged, tax shall be assessed in accordance with the decision of the judge: Provided that if the amount of the assessment is altered by the order or judgment of the Court of Appeal or Privy Council, then—

(a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the court of appeal may order; or

(b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax, except that no penalty shall be due on such arrears under section 76 of this Ordinance.

(11) The Commissioner may, if he is dissatisfied with the decision of a local committee, appeal against the decision to a judge upon giving notice in writing to the other party to the first appeal within thirty days after the date of such

decision and the provisions of this section so far as they are applicable shall apply to any such appeal by the Commissioner.

Assessments
or amended
assessments
to be final.

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

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

Power to
make rules.
No. 3 of 1924.

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

PART IX

SPECIAL PROVISIONS RELATING TO PERSONS ABOUT TO LEAVE THE COLONY PERMANENTLY

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

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

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

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

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

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

PART X

PAYMENT OF TAX

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

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

Procedure in cases where objection or appeal is pending.

Time within
which payment
is to be made.

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

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

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

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

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

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

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

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

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

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

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

Collection of tax after determination of objection or appeal.

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

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

No. 50 of 1936.

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

No. 50 of 1936.

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

No. 50 of 1936.

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

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 under this Ordinance.

Repayment
of tax.

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

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

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

Free postage.

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

PART XI

OFFENCES AND PENALTIES

Penalties for
offences.

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

83. Every person who—

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

Penalty for failure to attend on summons, etc.

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

84. (1) Every person who without reasonable excuse—

- (a) makes an incorrect return by omitting or understating any income of which he is required by this Ordinance to make a return; or
- (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,

Penalty for making incorrect returns, etc.

shall be guilty of an offence and shall on summary conviction by a magistrate of the first or second class be liable to a fine not exceeding one hundred pounds and double the amount of tax which has been undercharged in consequence of such incorrect return, or information, or would have been so undercharged if the return or information had been accepted as correct.

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

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

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

- (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

Penal provisions relating to fraud, etc.

- (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.

Tax to be payable notwithstanding any proceedings for penalties, etc.

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

Prosecution to be with the sanction of the Commissioner.

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

Savings for criminal proceedings.

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

Rules.

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

- (a) for the form of returns, claims, statements and notices under this Ordinance;

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

OBJECTS AND REASONS.

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

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

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

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

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

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

5. Clauses 10 and 11 show what deductions will and will not be allowed from gross income in calculating chargeable income. Special provision has been made for farmers,

who will be allowed to deduct expenditure incurred on fencing, soil erosion measures, the provision of dipping tanks, and, in the case of sisal growers, rotation replanting (clause 37).

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

7. Clauses 14 to 19 make provision for deductions in respect of—

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

8. Clause 21 imposes income tax on chargeable income at the following rates:—

For every pound of the first £700: One shilling.

For every pound of the next £500: One shilling fifty cents.

For every pound of the next £1,500: Two shillings.

For every pound of the remainder of the chargeable income: Two shillings fifty cents.

9. Companies will be charged at the same rate as individuals, except that the maximum will be two shillings in the pound.

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

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

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

13. Clause 25 exempts from tax income arising out of the Colony and received in the Colony by persons on a temporary visit to the Colony, i.e. a visit not exceeding six months in all in that year preceding the year of assessment.

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

15. Clause 36 provides that a deduction from profits may be allowed where a person engaged in permanent cultivation, i.e. the cultivation of such crops as tea, coffee, or coco-nuts, has incurred expenditure in bringing new areas of land under cultivation.

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

16. Clauses 40 to 42 and 48 make special provision regarding insurance companies, shipping companies and clubs.

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

18. Part VI—clauses 51 to 62—deals with the general powers of the Commissioner. Every taxpayer is under an obligation to send in a return of income, and the Commissioner may call for further returns and require the production of books. He may also require a taxpayer to keep books in a prescribed form and in a prescribed language. Officials of Government, local authorities and other public bodies, employers, recipients of income on behalf of another person, occupiers of land leased by them to another, hotel-keepers and bankers are placed under an obligation to render returns and give information which may be called for.

19. Clause 62 provides that a notice sent by post shall be deemed to have been served not later than seven days after the day on which it would have been received by the addressee in ordinary course of post.

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

21. Part VIII deals with the subject of appeals from assessment. The appeal is in the first instance to a local committee and then to a judge of the Supreme Court.

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

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

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

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

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

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

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

26. The additional expenditure of public moneys involved if the provisions of this Bill become law is estimated to be approximately £3,000 per annum.

GOVERNMENT NOTICE No. 130

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 relating to the Advancement of the
Passion Fruit Industry**

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 Passion Fruit Ordinance, 1937. Short title.

2. In this Ordinance—

“agency” means the person or body of persons from time to time appointed by the Governor in Council to be the agency for the purposes of this Ordinance;

Interpretation.

“passion fruit” means the fruit of the plant known botanically as *Passiflora edulis*, or any product of such fruit;

“purchase” includes agree or contract to purchase, and connotes taking delivery of the article purchased and making payment therefor within a reasonable time.

3. The Governor in Council may, by proclamation, appoint any person or body of persons to be the agency for the purposes of this Ordinance, and may in like manner revoke or vary such appointment. As and from the date of any such appointment, and so long as there is an agency so appointed, the provisions of sections 4 and 9 of this Ordinance shall apply.

Governor in Council may appoint agency.

4. (1) Every person carrying on the business of a passion fruit grower shall, within one month after the commencement of this Ordinance, or within one month after he begins to carry on the said business, register himself as a passion fruit grower at the office of the District Commissioner of the district or one of the districts in which he carries on business.

Registration of passion fruit growers.

(2) A fee of five shillings shall be payable for such registration.

5. No passion fruit shall be exported from the Colony except by the agency.

Passion fruit not to be exported except by agency.

Agency only to purchase.

6. No person other than the agency shall purchase passion fruit for the purpose of export.

Levy.

7. It shall be lawful for the Governor from time to time by proclamation in the Gazette to impose a levy on all passion fruit produced in and exported from the Colony.

Appeal from agency to Governor.

8. Any person aggrieved by any decision of the agency may appeal to the Governor, whose decision shall be final, but nothing in this section contained shall be deemed to deprive any person of any right of action which he may have in any competent court of the Colony.

Penalty for offences.

9. Any person who is guilty of a breach of the provisions of any of the foregoing sections of this Ordinance or of any rules made thereunder shall, on conviction before a magistrate of the first or second class, be liable for a first offence to a fine not exceeding one hundred pounds or to imprisonment for six months, or to both such fine and such imprisonment, and for a second or subsequent offence to a fine not exceeding five hundred pounds or to imprisonment for twelve months, or to both such fine and such imprisonment.

Power to make rules.

10. The Governor in Council may make rules for the regulation and control of the passion fruit industry and without prejudice to the generality of the foregoing for all or any of the following purposes:—

- (a) prescribing the conditions on which the agency may be appointed;
- (b) prescribing the duties and functions of the agency;
- (c) controlling the manufacture and sale of products of passion fruit grown in the Colony;
- (d) regulating the distribution of the proceeds to passion fruit growers of sales of passion fruit by the agency;
- (e) empowering the general meeting of passion fruit growers to fix and vary the fees to be charged by the agency for preparation of passion fruit products;
- (f) providing for the submission of returns to the agency relating to the cultivation of passion fruit and quantities of passion fruit which shall be available for export;
- (g) providing for grading of passion fruit received by the agency;

- (h) empowering the agency to assign to each passion fruit grower quotas of passion fruit which shall be sent to the agency for preparation of passion fruit products;
 - (i) regulating the quantities of passion fruit which shall be accepted by the agency;
 - (j) generally for the better carrying out of the provisions of this Ordinance.
-

OBJECTS AND REASONS.

This Bill is prepared at the desire of passion fruit growers. Its object is to regulate the preparation for export and the marketing of the products of passion fruit grown in the Colony. The agency will be empowered to buy passion fruit, to prepare its products for export, and to distribute the proceeds of sales to growers proportionate to deliveries accepted.

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

Time and
procedure for
obtaining
repayment.

Section 3 of the Principal Ordinance which it is proposed to amend:—

3. (1) A claim for obtaining repayment under section 2 of this Ordinance shall be made four times annually in respect of imported kerosene oil used in the three months ending 31st March, 30th June, 30th September, and 31st December respectively.

(2) For the purpose of making such claim the user of imported kerosene oil shall make and subscribe a statutory declaration in the form in the schedule hereto before a magistrate, a justice of the peace or a commissioner for oaths.

(3) Such claim shall thereupon be sent by the user to the Treasurer not later than one month after the expiry of the three months in respect of which the claim is made, and the Treasurer shall pay to the user, out of such funds as may be provided by the Legislative Council for that purpose, such sum as may be due under the provisions of this Ordinance.

Stamp duty.

Section 4 of the Principal Ordinance which it is proposed to replace:—

4. No stamp duty shall be chargeable upon a statutory declaration made under the provisions of this Ordinance.

The Schedule to the Principal Ordinance which it is proposed to replace:—

SCHEDULE

STATUTORY DECLARATION

I, of
do solemnly and sincerely declare that during the three months ending* I have owned and/or used the undermentioned farm tractor(s) namely—

<i>Make</i>	<i>Engine No.</i>
.....
.....
.....
.....

GOVERNMENT NOTICE No. 131

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 Amend the Kerosene Oil (Repayment of Duty) Ordinance, 1930

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 Kerosene Oil (Repayment of Duty) (Amendment) Ordinance, 1937, and shall be read as one with the Kerosene Oil (Repayment of Duty) Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

Short title.

No. 58 of 1930.

2. Sub-section (2) of section 3 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

Repeal and replacement of section 3 (2) of the Principal Ordinance.

“(2) For the purpose of making such claim the user of imported kerosene oil shall make and subscribe a declaration in the form in the Schedule hereto.”

3. Section 4 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 4 of the Principal Ordinance.

Penalties.

“4. Any person making a false declaration in the form in the Schedule hereto shall on conviction be liable for the first offence to imprisonment for a term not exceeding one year or to a fine not exceeding fifty pounds and for the second or subsequent offence to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred pounds.”

4. The Schedule to the Principal Ordinance is hereby repealed and the following Schedule is substituted therefor:—

Repeal and replacement of schedule to the Principal Ordinance.

SCHEDULE
DECLARATION

I, of
do solemnly and sincerely declare that during the three months ending* I have owned and/or used the undermentioned farm tractor(s) namely—

<i>Make</i>	<i>Engine No.</i>
.....
.....
.....
.....

and that during the said period of three months I have used† gallons of imported kerosene oil which was purchased by me, as shown on the attached invoices, solely for the purpose of supplying motive power to the above-mentioned farm tractor(s) while such tractor(s) were actually employed by me in agriculture and that no portion of the above-mentioned † gallons of imported kerosene oil was used for any other purpose.

AND I do further solemnly and sincerely declare that I have not made any previous claim in respect of any portion of the said quantity of † gallons of imported kerosene oil.

AND I make this declaration conscientiously believing the same to be true and according to the Statutory Declarations Ordinance, 1926.

.....
Signature of Declarant.

Made before me this day of
at.....

.....
*Magistrate, Justice of the Peace or
Commissioner for Oaths.*

*Insert 31st March, 30th June, 30th September or 31st December as the case may be.

†In words.

and that during the said period of three months I have used† gallons of imported kerosene oil which was purchased by me, as shown on the attached invoices, solely for the purpose of supplying motive power to the above-mentioned farm tractor(s) while such tractor(s) were actually employed by me in agriculture and that no portion of the above-mentioned †..... gallons of imported kerosene oil was used for any other purpose.

AND I do further solemnly and sincerely declare that I have not made any previous claim in respect of any portion of the said quantity of †.....gallons of imported kerosene oil.

.....
Signature of Declarant.

Witnessed by

.....
*Insert here 31st March, 30th June, 30th September or 31st December as the case may be.
†In words.

OBJECTS AND REASONS

Under the Principal Ordinance a person making a claim for obtaining repayment of Customs duty paid on kerosene oil used solely for agricultural purposes must subscribe a statutory declaration before a magistrate, a justice of the peace, or a commissioner for oaths.

It has been represented that in order to make such declarations farmers in outlying districts have to travel long distances at considerable cost to themselves.

The object of this Bill is to dispense with the usual formalities of a statutory declaration and substitute therefor a simple declaration, and to provide a penalty for making a false declaration.

No expenditure of public moneys will be involved if the provisions of this Bill become law, but a loss of revenue amounting to approximately £80 per annum, being the fees payable on subscribing the necessary statutory declarations, will accrue.

Section 31 of the Principal Ordinance which it is proposed to replace:—

31. Subject to the provisions of section 25 of this Ordinance, the holder of a location shall, in respect of such location, have all the rights conferred on the holder of a lease by section 50 of this Ordinance.

Sub-section (1) of section 68 of the Principal Ordinance which it is proposed to amend:—

68. (1) The Commissioner may send a copy, certified under his hand and seal, of any decree or order made by him to any civil court within the local limits of whose jurisdiction the subject-matter of the decree is situated, and such civil court shall enforce the decree of the warden in the same manner in which it would enforce its own decree or order.

GOVERNMENT NOTICE No. 132

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 Amend the Mining Ordinance, 1933.

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 Mining (Amendment) Ordinance, 1937, and shall be read as one with the Mining Ordinance, 1933, hereinafter referred to as the Principal Ordinance. Short title.
No. 61 of 1933.

2. Section 31 of the Principal Ordinance, as repealed and replaced by section 16 of the Mining (Amendment) Ordinance, 1936, is hereby repealed and the following section is substituted therefor:— Repeal and replacement of section 31 of the Principal Ordinance.
No. 44 of 1936.

“31. Subject to the provisions of section 25 of this Ordinance, the holder of a location shall, in respect of such location, have all the rights conferred upon a lessee by section 50 of this Ordinance and shall have the right to enter upon the land the subject of the location, and the exclusive right to prospect or mine thereon and to remove therefrom and dispose of the minerals in respect of which the location shall have been registered.” Rights under a location.

3. Sub-section (1) of section 68 of the Principal Ordinance is hereby amended by deleting the word “warden” which occurs in the fifth line thereof and by substituting therefor the word “Commissioner”. Amendment of section 68 (1) of the Principal Ordinance.

OBJECTS AND REASONS.

The object of this Bill is to correct two minor mistakes in the Mining (Amendment) Ordinance, 1936.

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