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GOVERNMENT NOTICE NO 19

HIS EXCELLENCY the Governor in Council has approved of the following Bill being introduced into the Legislative Council

G. BERESFORD STOOKE,
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 —

CHAPTER I

PRELIMINARY

1 This Ordinance may be cited as “ the Income Tax Short title Ordinance, 1933 ”

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

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

“ Commissioner ” means the Commissioner charged with the administration of this Ordinance, and includes a Deputy Commissioner or an Assistant Commissioner for all the purposes of the Ordinance except the exercise of the powers conferred upon the Commissioner by sections 81, 82 and 84 of the Ordinance

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

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

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

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,

No 21 of 1928

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

“ year of assessment ” means the period of twelve months commencing on the first day of January, 1933, and each subsequent period of twelve months,

“ tax ” means the income tax imposed by this Ordinance

Administration

3 For the due administration of this Ordinance the Governor may appoint a Commissioner, a Deputy Commissioner, 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

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

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

(b) otherwise than for the purposes of this Ordinance, shall be guilty of an offence against this Ordinance

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

(4) Where under any law in force in any part of His Majesty's Dominions or in any place under His Majesty's protection 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 to have such access to any records or documents as may be necessary for the performance of his official duties. 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).

CHAPTER 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, 1933, and for each subsequent year of assessment upon the income of any person accruing in, derived from, or received in, the Colony in respect of—

Charge of
income tax.

- (a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession, or vocation may have been carried on or exercised;
- (b) gains or profits from any employment, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise;
- (c) the annual value of land and improvements thereon used by or on behalf of the owner or used rent free by the occupier, for the purpose of residence or enjoyment, and not for the purpose of gain or profit, such annual value being deemed to be five per centum of the capital value of such land and improvements;
- (d) dividends, interest or discounts;
- (e) any pension, charge or annuity;
- (f) rents, royalties, premiums and any other profits arising from property.

Basis of assessment

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

Special periods of assessment

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

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

EXEMPTIONS

Exemptions

8 There shall be exempt from the tax—

- (a) the official emoluments received by the officer administering the Government,
- (b) the income of the Kenya and Uganda Railway Services,
- (c) the income of the Widows' and Orphans' Pension Scheme established under the Widows' and Orphans' Pensions Ordinance,
- (d) the income of the Asiatic Widows' and Orphans' Fund established under the Asiatic Widows and Orphans' Pension Ordinance, 1927,
- (e) the income of the Kenya and Uganda Railway Provident Fund established under the State Railway Provident Fund Ordinance,
- (f) the income of any provident fund lawfully established by a local authority,
- (g) 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,

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- (h) 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,
- (i) 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,
- (j) 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,
- (k) pensions granted in respect of wounds or disability caused in war,
- (l) any capital sum received by way of retiring or death gratuity or as consolidated compensation for death or injuries,
- (m) the income of the Post Office Savings Bank,
- (n) the profits of a non-resident shipowner as defined in section 39 of this Ordinance provided that the State to which such non-resident shipowner belongs extends a similar exemption to British and Colonial non-resident shipowners carrying on business in such State

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

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

CHAPTER III

ASCERTAINMENT OF CHARGEABLE INCOME

Deductions
allowed

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

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

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

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

on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as receipts of the trade, business, profession or vocation for that year,

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

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

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

No 57 of 1931

No 58 of 1931

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

Deductions not to be allowed

- (a) domestic or private expenses,
- (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income
- (c) any capital withdrawn or any sum employed or intended to be employed as capital,
- (d) any capital employed in improvements,
- (e) any sum recoverable under an insurance or contract of indemnity,
- (f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income,
- (g) any amounts paid or payable in respect of United Kingdom income tax or surtax, Kenya income tax or Empire income tax as defined in this Ordinance,
- (h) debenture interest

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

Allowance of
trade losses

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

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

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

(2) For the purposes of this section the year 1931 shall be deemed to have been a year preceding a year of assessment

Deduction in
respect of
earned income

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

(2) For the purposes of this section the expression "earned income" means any income arising in respect of any gains or profits immediately derived by the individual from any trade, business, profession, employment or vocation carried on or exercised by him either as an individual or in the case of a partnership as a partner personally acting therein, or in respect of any pension, superannuation, or other allowance given in respect of past services of the individual or of the husband or parent of the individual or given to the individual in respect of the past services of any deceased person whether the individual or husband or parent of the individual shall

have contributed to such pension, superannuation or other allowance or not, after deducting the expenses referred to in sections 10 and 12 of this Ordinance, but before allowing the other deductions to be made in arriving at chargeable income

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

Deduction in case of residents in the Colony and British subjects

16 In ascertaining the chargeable income of an individual who proves to the satisfaction of the Commissioner that he had during the year immediately preceding the year of assessment a wife or wives living with or wholly maintained by him there shall be allowed a deduction of fifty pounds

Deduction for wife

17 In ascertaining the chargeable income of an individual who proves to the satisfaction of the Commissioner that he had any child living at any time within the year preceding the year of assessment who was either under the age of sixteen or who if over the age of sixteen years at any time within that year was receiving full time instruction at any university, college, school, or other educational establishment there shall be allowed a deduction of forty pounds in respect of one such child, and a deduction of thirty pounds in respect of each subsequent such child, provided that the total deduction to be allowed under this section shall not exceed a total amount of one hundred pounds

Deduction for children

The expression "child" in this section includes a step-child but does not include an illegitimate or an adopted child

18 In ascertaining the chargeable income of any person who—

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

(a) shall have made insurance on his life or the life of his wife in any insurance company, or

(b) shall have made annual contribution 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 such other fund as the Governor may by order declare to be an approved fund for the purposes of this section,

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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 or contribution beyond an amount equal to one-sixth part of the chargeable income estimated in accordance with the provisions of this Ordinance before making the deductions specified in this section and in sections 14, 15, 16 and 17 of this Ordinance, and provided also that the total deduction to be allowed under this section shall not exceed one hundred pounds in amount

Proof of
claims

19 Every individual who claims an allowance under this Chapter 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

CHAPTER IV

RATE OF TAX

Rates of tax
upon persons
other than
companies

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

For every pound of the first £750 one shilling fifty cents,

For every pound of the next £750 two shillings,

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

For every pound of next £2,000 three shillings,

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

Flat rate of
tax on
company

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

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 (as reduced by any relief granted under sections 42 and 43 of this Ordinance) on the income out of which such dividend is paid, provided that where tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company

(2) Every such company shall upon payment of a dividend whether tax is deducted therefrom or not furnish each share-

holder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the company has deducted or is entitled to deduct in respect of that dividend

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

Deduction of
tax from
debenture
interest paid
by company

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

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

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

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

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 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 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, 1933, the chargeable income of any person from any dividend, portion of dividend or debenture interest to which section 22 would have applied if this Ordinance had been in force at the time of the payment of such dividend, portion of dividend or debenture interest shall be deemed to have borne tax at the rate of two shillings in the pound, and such person shall be entitled to the set-off provided by this

section, 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 dividend, portion of dividend or debenture interest were omitted from his chargeable income and no set-off under this section were allowed

Deduction of
tax from
mortgage
interest
payable by
individual

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

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

Temporary
residents

25 Tax shall not be payable in respect of any income arising out of 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

CHAPTER V

PROVISIONS RELATING TO SPECIAL CASES

A — Husband and Wife

Wife's income

26 The income of a married woman living with her husband shall, for the purposes of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name nor in that of her trustee, provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total income of the husband and wife may, if necessary, be collected from the wife notwithstanding that no assessment has been made upon her

B — Trustees, Agents, etc

Chargeability
of trustees,
etc

27 A receiver appointed by the court, 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

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

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

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

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

(2) Where a non-resident person carries on business with a resident person, and it appears to the Commissioner that owing to the close connexion 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 connexion with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person

(3) Where it appears to the Commissioner by whom the assessment is made, or to the judge by whom an appeal is heard, that the true amount of the gains or profits of any non-resident person assessable and chargeable to tax in the name of a resident person cannot in any case be readily ascertained the Commissioner or judge may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable per-

centage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is assessable and chargeable as aforesaid, and in such case the provisions of this Ordinance relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons of income to be charged

Provided that the amount of the percentage shall in each case be determined having regard to the nature of the business, and shall, when determined by the Commissioner, be subject to an appeal to a judge as provided by section 67 of this Ordinance

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

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

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

a retailer of the goods sold, who had bought from the manufacturer or producer direct, and on proof to the satisfaction of the Commissioner or judge of the amount of the profits on the basis aforesaid the assessment shall be made or amended accordingly

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

Acts, etc., to be done by trustees

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

Lists to be prepared by representative or agent

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

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

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

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

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

Indemnification of representative

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

Deceased persons

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 the personal representative of such person shall be assessable and chargeable to the tax to which such person would have been assessable and chargeable, and shall be answerable for doing all such acts, matters and things as such person if he were alive would be liable to do under this Ordinance

Provided that in the case of a person dying during the year preceding the year of assessment if his personal representative distributes his estate before the commencement of the year of assessment such personal representative shall pay the tax at the rate or rates in force at the date of distribution of the estate, if the rate of tax for the year of assessment has not been fixed at that date

Joint trustees

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

C —Partnership

Partnerships

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

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

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

(i) is first named in the agreement of partnership, or

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

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

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

D —Agriculture

36 (1) In this section—

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

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

‘ immature area ’ means an estate or part of an estate, first planted in a particular year, in which the trees planted in that year are not fully mature, or not in full bearing

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

(3) The income and expenditure in connexion with any immature area shall be separately considered and it shall be

Ascertainment
of profits from
certain
agricultural
undertakings

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 not exceeding fifteen per centum of the profits of that person from his estates for the same period shall be allowed as a deduction from such profits. The balance of such excess shall be deemed to be capital expenditure

Profits of
non-resident
persons from
sale of
exported
produce

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

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

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

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

- (a) in the case of an insurance company (other than a life insurance company) where the gains or profits accrue in part outside the Colony the gains or profits on which tax is payable shall be ascertained by taking the gross premiums and interest and other income received or receivable in the Colony (less any premiums returned to the insured and premiums paid on re-insurance), and deducting from the balance so arrived at a reserve for unexpired risks at the percentage adopted by the company in relation

to its operations as a whole for such risks at the end of the year preceding the year of assessment and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of the said year and from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in the Colony and a fair proportion of the expenses of the head office of the company,

- (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

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

Profits of
non-resident
shipowners

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

(2) Where for any accounting period such person produces the certificate mentioned in sub-section (3), 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) cannot for any reason be satisfactorily applied, the profits arising in the Colony may be computed on a fair percentage of the full sum receivable on account of the carriage of passengers, mails, live stock and goods shipped in the Colony

Provided that where any person has been assessed for any year of assessment by reference to such percentage, he shall be entitled to claim at any time within three years of 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)

(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

Master of ship
to be an agent

40 The master of any ship owned or chartered by a non-resident person who is chargeable under the provisions of section 39 of this Ordinance shall (though not to the exclusion of any other agent) be deemed the agent of such non-resident person for all the purposes of this Ordinance

Refusal of
clearance
where tax is
in arrear

41 (1) In addition to any other powers of collection and recovery provided in this Ordinance, the Commissioner may, where the tax charged on the income of any person who carries

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

(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.

G—Relief in Cases of Double Taxation

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

Relief in
respect of
United
Kingdom
income tax

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

(3) For the purposes of this section, the expression "rate of tax" when applied to tax paid or payable under this Ordinance means the rate determined by dividing the amount of the

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

Relief in
respect of
Empire
income tax

43 (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 or in any place under His Majesty's protection (other than the United Kingdom or this Colony), 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

44 The income of a person arising from a dividend paid by a company liable to Kenya tax, United Kingdom income tax, or Empire tax within the meaning of section 43 of this Ordinance shall, where any such tax has been deducted therefrom, be the gross amount before making such deduction, where no such deduction has been made, the income arising shall be the amount of the dividend increased by an amount on account of such taxes corresponding to the extent to which the profits out of which the said dividend has been paid have been charged with such taxes

Income from certain dividends to include tax thereon

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

How certain receipts from insurance to be treated

46 (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

Ascertainment of income of clubs, trade associations, etc

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

47 (1) Where it appears to the Commissioner that with a view to the avoidance or reduction of tax a company controlled by not more than five persons has not distributed to its shareholders as dividend profits made in any period ending after the first day of April, 1933, 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.

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

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

(4) In this section—

(a) 'disposition' includes any trust, grant, covenant, agreement or arrangement,

(b) 'company controlled by not more than five persons' means a company in which—

(i) the number of shareholders is not more than fifty, and

(ii) more than half the total shares issued are held by not more than five persons, their wives, or minor children, either directly or through nominees.

48 (1) Where any person (in this section called ‘the employee’) employed by any other person (in this section called ‘the employer’) has failed to pay the tax with which he is assessable and chargeable together with any penalty imposed under section 73 of this Ordinance within forty-two days after the same has been demanded pursuant to the provisions of this Ordinance, the Commissioner may declare the employer to be the agent of the employee so far as regards the salary, wages, or other moneys paid by the employer to the employee in respect of the employment, and may give notice to the employer setting forth the fact that the employee has failed to pay such tax and penalty, and requiring the employer as such agent to pay the same on behalf of the employee

Chargeability
of employers

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

CHAPTER VI

GENERAL POWERS OF COMMISSIONER

49 (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, 1933, such notice shall be given within forty-two days after the commencement of this Ordinance

(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

50 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

Commissioner
may call for
further
returns

or further returns respecting any matter of which a return is required or prescribed by this Ordinance

Power to call
for books

51 For the purpose of obtaining full information in respect of any person's income the Commissioner may give notice in writing to such person requiring him to produce for examination within the time limited by such notice any deeds, plans, instruments, books, accounts, trade lists, stock lists or documents which the Commissioner may deem necessary

Returns to be
deemed to be
furnished
by due
authority

52 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

53 (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 in a prescribed language such records, books and accounts 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

54 The Commissioner may require any officer in the employment of the Government 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

55 (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, except persons who are not employed in any other employment and

whose remuneration in the employment for the year does not exceed one hundred and fifty pounds,

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

Provided that an employer shall not be liable to any penalty for omitting from any such return the name or place of residence of any person employed by him and not employed in any other employment if it appears to the Commissioner, on inquiry, that such person has no chargeable income

(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

56 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

57 The Commissioner may give notice in writing to any person who is the occupier of any land and improvements 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

58 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

Return of lodgers and inmates

house hotel, or institution, and has been so resident, except for temporary absences, throughout the preceding three months

Bankers to
render returns
of coupons
cashed by
them

59 (1) Any banker, agent of a banker, or other person in the Colony who on any date subsequent to the first day of April, 1933, pays or credits to any person the value or proceeds of a coupon for any interest, dividend, or other annual payment payable out of or in respect of the stock, funds, shares, or securities of any company or body of persons not resident in the Colony shall, within thirty days of such date, render to the Commissioner a statement showing the name and address of such person, particulars of such coupon, and the amount paid or credited in respect thereof

Provided that the Commissioner may authorize any such banker, agent of a banker or other person to render such statements quarterly or half-yearly during any year of assessment

(2) In this section, "coupon" includes any warrant, bill of exchange, or order to pay money purporting to be issued, drawn, or made in payment of any interest, dividend, or other annual payment as aforesaid

Signature
of notices

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

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

CHAPTER VII

ASSESSMENTS

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

Commissioner
to make
assessment

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

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

(b) refuse to accept the return and, to the best of his judgment, determine the amount of the chargeable income of the person and assess him accordingly

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

63 Where it appears to the Commissioner that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Commissioner may within the year of assessment or within two years after the expiration thereof assess such person at such amount or additional amount as, according to his judgment, ought to have been charged, and the provisions of 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

64 (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

Power of
Commissioner
to revise
assessment
in case of
objection

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

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

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

(4) In the event of any person assessed, who has objected to an assessment made upon him, agreeing with the 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 to a judge under the provisions of this Ordinance, against the assessment made upon him, shall remain unimpaired

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

Errors, etc.,
in assessment
and notices

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

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

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

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

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

CHAPTER VIII

APPEALS

67 (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioner in the manner provided in sub-section (4) of the preceding section, may appeal against the assessment to a judge upon giving notice in writing to the Commissioner within fourteen days from the date of service upon him of notice of the refusal of the Commissioner to amend the assessment as desired

Appeals
against
assessments

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

(2) Every person appealing shall attend before the judge in person on the day and at the time fixed for the hearing of his appeal

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

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

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

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

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

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

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

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

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

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

(11) Notwithstanding that a case has been required to be stated, tax shall be payable in accordance with the decision of the judge. Provided that if the amount of the assessment is altered by the order or judgment of the court of appeal, then—

- (a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the court of appeal may order, or
- (b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax, except that no penalty shall be due on such arrears under section 73 of this Ordinance

63 (1) If in any particular case the Commissioner has reason to believe that a person who has been assessed to tax may leave the Colony before such tax becomes payable under the provisions of section 72 or section 74 of this Ordinance without having paid such tax he may by notice in writing to such person demand payment of such tax within a time to be limited in such notice. Such tax shall thereupon be payable at the expiration of the time so limited and shall in default of payment unless security for payment thereof be given to the satisfaction of the Commissioner be recoverable forthwith in the manner prescribed by section 76 of this Ordinance

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

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

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

- (a) by notice in writing to the person by whom the tax would be payable determine a period for which tax

shall be charged and require such person to render within the time specified therein returns and particulars of such income for that period,

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

(4) Notice of any assessment made in accordance with the provisions of sub-sections (2) and (3) of this section shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of sub-sections (2) and (3) of this section) shall be payable on demand made in writing under the hand of the Commissioner and shall in default of payment unless security for the payment thereof be given to the satisfaction of the Commissioner be recoverable forthwith in the manner prescribed by section 76 of this Ordinance.

Any person who has paid the tax in accordance with a demand made by the Commissioner or who has given security for such payment under sub-sections (2) and (3) of this section shall have the rights of objection and appeal conferred by sections 65 and 67 of this Ordinance and the amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.

(5) The provisions of sub-sections (2) and (3) of this section shall not affect the power conferred upon the Commissioner by section 63 of this Ordinance.

Power to
make rules

69 The Chief Justice may make rules governing appeals under this Chapter 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 and prescribing the procedure to be followed on a case being stated.

Assessments
or amended
assessments
to be final

70 Where no valid objection or appeal has been lodged within the time limited by this Chapter 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 section 65 (4) 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 Chapter shall prevent the Commissioner from making an assessment or additional assessment for any year of assessment which does not involve re-opening any matter which has been determined on appeal for the year

CHAPTER IX

PAYMENT OF TAX

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

Procedure in cases where objection or appeal is pending

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

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

Time within which payment is to be made

73 If any tax is not paid within the period prescribed in section 72 of this Ordinance—

Penalty for non-payment of tax, and enforcement of payment

(a) a sum equal to ten 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 under the law for the time being in force in the Colony relating to the collection of tax or as hereafter provided,

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

Collection of
tax after
determination
of objection
or appeal

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

Cap 51
Cap 52

75 (1) Where any individual chargeable with tax for any year of assessment has paid hut tax or poll tax under the Native Hut and Poll Tax Ordinance or non-native poll tax under the Non-Native Poll Tax Ordinance 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 or non-native poll tax, as the case may be. Provided that no such deduction shall be allowed unless—

- (a) the receipt for the hut tax, poll tax or non-native poll tax is surrendered at the time of payment of the tax due under this Ordinance, and
- (b) the tax due under this Ordinance is paid within the period prescribed by sections 72 and 74 of this Ordinance

Cap 52

(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 by section 3 of the Non-Native Poll Tax Ordinance

Cap 52

(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 13 of the Non-Native Poll Tax Ordinance

Suit for tax by
Commissioner

76 (1) Tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner in his official name with full costs of suit from the person charged therewith as a debt due to the Government of the Colony as well as by the means provided in section 73 of this Ordinance

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

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

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

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

CHAPTER X

OFFENCES AND PENALTIES

79 Any person guilty of an offence against this Ordinance 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 with or without hard labour for any term not exceeding three months. **Penalties for offences**

80 Every person who—

- (a) fails to comply with the requirements of a notice given to him under this Ordinance, **Penalty for failure to attend on summons, etc**

- (b) without sufficient cause fails to attend in answer to a notice or summons issued to him under this Ordinance or having attended fails to answer any questions lawfully put to him, or
- (c) fails to comply with the requirements of section 59 (1) of this Ordinance,

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 with or without hard labour for a term not exceeding three months

Penalty for
making
incorrect
returns, etc

81 (1) Every person who without reasonable excuse—

- (a) makes an incorrect return by omitting or understating any income of which he is required by this Ordinance to make a return, either on his own behalf or on behalf of another person or a partnership, or
- (b) makes an incorrect statement in connexion with a claim for a deduction or allowance under Chapter III, or
- (c) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership,

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

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

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

Penal
provisions
relating to
fraud, etc

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

- (a) omits from a return made under this Ordinance any income which should be included, or

- (b) makes any false statement or entry in any return made under this Ordinance, or
- (c) makes a false statement in connexion with a claim for a deduction or allowance under Chapter III, or
- (d) signs any statement or return furnished under this Ordinance without reasonable grounds for believing the same to be true, or
- (e) 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
- (f) 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
- (g) 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 the total of two hundred pounds and treble the amount of tax for which he is liable under this Ordinance for the year of assessment in respect of or during which the offence was committed, or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment

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

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

Tax to be payable notwithstanding any proceedings for penalties, etc

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

Prosecution to be with the sanction of the Commissioner

85 The provisions of this Ordinance shall not affect any criminal proceedings under any other Ordinance or law

Savings for criminal proceedings

Rules

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

- (a) for the form of returns, claims, statements and notices under this Ordinance,
- (b) for the deduction and payment of tax at the source in respect of emoluments and pensions payable out of the revenue of the Colony or from the funds of the Railways and Harbours Administration,
- (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 Railways and Harbours Administration,
- (d) for any such matters as are authorized by this Ordinance to be prescribed

OBJECTS AND REASONS

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

- (a) gains or profits from any trade, business or profession,
- (b) gains or profits from employment, including the value of quarters board or other allowances,
- (c) the annual value of land and improvements thereon used or occupied for the purpose of residence or enjoyment and not for the purpose of gain or profit, such annual value being taken at 5 per cent of the capital value,
- (d) dividends, interest or discounts,
- (e) any pension, charge or annuity,
- (f) rents and other profits arising from property

2 Tax is assessable and payable in any year on the chargeable income of the preceding year. Thus the tax payable in 1933 will be assessed on the income of 1932

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

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

5 Clauses 10 and 11 show what deductions will and will not be allowed from gross income in calculating chargeable income

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

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

- (a) earned income to the extent of one-tenth of such income, with a maximum of £200,
- (b) a personal allowance of £150,
- (c) an allowance of £50 for a wife living with or wholly maintained by the person chargeable to tax
- (d) an allowance for children who are either under the age of sixteen, or who if over that age, are receiving full time instruction of £40 for the first child and £30 for each other child with a maximum allowance of £100,
- (e) an allowance in respect of life insurance to the extent of one-sixth of chargeable income, with a maximum of £100

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

- For every pound of the first £750 One shilling fifty cents
- For every pound of the next £750 Two shillings
- For every pound of the next £1 500 Two shillings fifty cents
- For every pound of the next £2 000 Three shillings
- For every pound of the remainder of the chargeable income Three shillings fifty cents

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

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

11 Clause 22 entitles a company to deduct tax at Sh 2 in the pound from dividends or debenture interest payable, 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 living with her husband is deemed to be the income of the husband for income tax purposes but a proportion of the tax due may be recovered from the wife if it is not paid by the husband

15 Clause 36 provides that part of the profits, not exceeding 15 per cent, may be allowed where a person engaged in permanent cultivation i.e. the cultivation of such crops as tea, coffee or coco-nuts, has incurred expenditure in bringing new areas of land under cultivation

16 Clauses 38 to 41 and 46 make special provision regarding insurance companies, shipping companies and clubs

17 Clause 42 gives relief from double taxation in respect of United Kingdom income tax, and clause 43 in respect of income tax in any other part of the British Empire

18 Clause 48 places upon employers the obligation to pay tax by deduction from salary, for any employee who has failed or refused to pay his tax

19 Chapter VI—clauses 49 to 60—deals with the general powers of the Commissioner. Every tax-payer is under an obligation to send in a return of income, and the Commissioner may call for further returns and require the production of books. He may also require a tax-payer to keep books in a prescribed form and in a prescribed language. Officials of Government, local authorities and other public bodies, employers, recipients of income on behalf of another person, occupiers of land leased by them to another, hotel-keepers and bankers are placed under an obligation to render returns and give information which may be called for

20 Clause 61 provides that a notice sent by post shall be deemed to have been served not later than seven days after the

day on which it would have been received by the addressee in ordinary course of post

21. Clauses 62 to 66 deal with assessment. It is the duty of the Commissioner to assess every person chargeable with tax and prepare assessment lists. He may make an additional assessment at any time within two years after the year of assessment, and may, in case of objection, revise an assessment.

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

23. Clause 70 provides that, where no valid objection or appeal has been lodged or where on objection or appeal the amount of chargeable income has been determined, the assessment shall be final, subject to the Commissioner's right to make an additional assessment.

24. Chapter IX prescribes the time for payment of tax, penalties for non-payment, and the method of recovery of tax due. Tax is due and payable within thirty days after service of a notice of assessment, and if tax is not paid within such period a penalty of 10 per cent of the amount due is added.

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

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

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

27. It is not possible at present to give a fair estimate of the departmental expenditure which will be involved in the administration of the Ordinance, but it is anticipated that it is not likely to exceed £8,000 per annum.

GOVERNMENT NOTICE No 20

The following Memorandum, which explains some of the more important provisions of the Income Tax Bill, is published for general information

H M -M MOORE,
Colonial Secretary

NOTES ON INCOME TAX BILL

These notes are intended to explain briefly the scope of the Bill and the general intention of the main provisions. They are not exhaustive and of course have no legal force

INCOME ASSESSABLE AND BASIS OF ASSESSMENT

The income to be charged is any income *arising in the Colony or received in the Colony* from any trade, profession, employment, rents, dividends, interest, pensions, etc. The income of a married woman living with her husband is added to the income of the husband, and the assessment is to be made upon the husband for the tax due upon the joint incomes. The assessment for any year of assessment is based on the income of the preceding year, thus for the year of assessment commencing on 1st January, 1933, the income to be charged is the income of the year to 31st December, 1932.

GRADUATION ALLOWANCES AND RATE OF TAX

The total income for the year 1932 has to be ascertained according to the Rules in the Bill and then certain deductions have to be made from the total income to arrive at what is called "chargeable income."

The tax upon individuals is graduated so that the percentage that the tax payable bears to the total income becomes higher as the income increases. This result is achieved by a combination of the allowances and increasing rates of tax.

ALLOWANCES

The following allowances are proposed as a deduction from the total income

Abatement —£150

Allowance for Wife —£50 allowed to a taxpayer with a wife living with or wholly maintained by him

Allowance for Children —£40 for the first child and £30 for each subsequent child, with a maximum allowance of £100

The allowance is given for a child under the age of sixteen or a child still at school or college, if over that age

Earned Income Relief —A deduction of one-tenth of the earned income included in the total income is allowed up to a maximum allowance of £200. Pensions are generally regarded as earned income

Life Assurance, etc —Premiums paid upon a life insurance policy upon the taxpayer's own or his wife's life are allowed as a deduction, together with contributions to the Widows' and Orphans' Pension Scheme, the Railway Provident Fund or any similar scheme which the Governor may declare to be an "approved fund." This deduction is restricted to a maximum of £100 or one-sixth of the total income whichever is the less

RATES OF TAX ON CHARGEABLE INCOME

The above allowances are, when due, to be deducted from the total income in arriving at the "chargeable income" and the tax is computed at the following rates upon the *chargeable income* —

- On £1-£750 of chargeable income Sh 1/50 in £1
- On £751-£1,500 of chargeable income Sh 2 in £1
- On £1,501-£3,000 of chargeable income Sh 2/50 in £1
- On £3,001-£5,000 of chargeable income Sh 3 in £1
- On Excess over £5,000 of chargeable income Sh 3/50 in £1

SET-OFF OF HUT TAX OR POLL TAX

From the tax payable under the above scheme a further deduction of the hut tax or poll tax paid for the same year may be made upon condition that the income tax is paid by the due date, and the hut tax or poll tax receipt is surrendered

EFFECTIVE RATES OF TAX

The above rates are only applied to the balance of income remaining after deducting the allowances due in any particular case It follows that the net rate of tax upon the total income is very much less than would appear at first sight In fact a bachelor whose income is wholly earned and who has no claim for any other allowance than the abatement and the relief to earned income does not pay at a rate of Sh 1/50 in the pound on the whole of his income until his income reaches £2 000 The income has to be considerably higher in the case of a married man with children before a rate of Sh 1/50 in the pound applies to his total income

The following schedule shows the net tax payable in nine specimen cases There are three income groups A, B and C and in each group three different cases

Group A has a total assessable income of £650
Group B „ „ „ „ „ £1,350
Group C „ „ „ „ „ £2,900

A (1), B (1) and C (2) are all single

A (2) B (2) and C (2) are married and have no children for whom an allowance is due

A (3), B (3) and C (3) are married with three or more children for whom an allowance is due

In the B group each member pays £60 Life Assurance

In the C group each member pays more than £100 Life Assurance

	A	B	C
Salary	£ 500	£ 1,000	£ 2,000
Value of Quarters and Board, etc	150	150	400
Income from Foreign Dividends Received in Colony	—	200	500
TOTAL INCOME £	650	1,350	2,900

	A (1)	A (2)	A (3)	B (1)	B (2)	B (3)	C (1)	C (2)	C (3)
Abatement	£ 150	£ 150	£ 150	£ 150	£ 150	£ 150	£ 150	£ 150	£ 150
Earned Income Relief—									
Group A 1/10 of £650	65	65	65	—	—	—	—	—	—
Group B 1/10 of £1,150	—	—	—	115	115	115	—	—	—
Group C 1/10 of £2,400 (Maximum £200)	—	—	—	—	—	—	*200	*200	*200
Life Assurance—									
Actual Premium Paid (Max £100)	—	—	—	60	60	60	*100	*100	*100
Wife	—	50	50	—	50	50	—	50	50
Children	—	—	100	—	—	100	—	—	100
Total Deduction	215	265	365	325	375	475	450	500	600
Chargeable Income	435	385	285	1,025	975	875	2,450	2,400	2,300
Charged at Sh 1/50	435	385	285	750	750	750	750	750	750
„ Sh 2	—	—	—	275	225	125	750	750	750
„ Sh 2/50	—	—	—	—	—	—	950	900	800
Tax in Shillings	Sh cts 652 50	Sh cts 577 50	Sh cts 427 50	Sh 1,675	Sh 1,575	Sh 1,375	Sh 5,000	Sh 4,875	Sh 4,625
Less Poll Tax Set off	30 00	30 00	30 00	30	30	50	30	30	30
Net Tax Payable	622 50	547 50	397 50	1,645	1,545	1,345	4,970	4,845	4,595
Effective Rate of Tax in Shillings in £1 on Total Income	0 96	0 84	0 61	1/22	1/14	1/00	1/72	1/67	1/58

*Items restricted to maxima

In the event of the investment income in the cases of B and C including dividends or debenture interest from which Kenya income tax had been deducted, the tax so deducted would be set-off against the tax computed as due and only the net amount would be collected from the individual (clause 23)

From these tables it will be seen that the tax on a single man with an earned income of £650 is less than a rate of Sh 1 in the pound, and in the case of a married man with three children under sixteen the rate falls to Cents 61 in the pound. The effective rate and the tax payable after allowing for the set-off of poll tax in the cases of (1) a bachelor, (2) a married man without children and (3) a married man with three children each paying 5 per cent of his total income in life assurance premia are shown below. It has been assumed that the income is wholly earned in each case —

Total Income	1		2		3	
	Bachelor		Married Man		Married Man Three Children	
	Tax	Effective Rate	Tax	Effective Rate	Tax	Effective Rate
	<i>Sh cts</i>	<i>Sh cts</i>	<i>Sh cts</i>	<i>Sh cts</i>	<i>Sh cts</i>	<i>Sh cts</i>
£300	127 50	0 42	52 50	0 17	—	—
£400	255 00	0 64	180 00	0 45	30 00	0 07
£500	382 50	0 76	307 50	0 61	157 50	0 31
£600	510 00	0 85	435 00	0 72	285 00	0 47
£700	637 50	0 91	562 50	0 80	412 50	0 59
£800	765 00	0 96	690 00	0 86	540 00	0 67
£900	892 50	0 99	817 50	0 91	667 50	0 74
£1,000	1,020 00	1 02	945 00	0 94	795 00	0 79
£1,250	1,420 00	1 14	1,320 00	1 06	1,120 00	0 90
£1,500	1,845 00	1 23	1,745 00	1 16	1,545 00	1 03
£1,750	2,270 00	1 30	2,170 00	1 24	1,970 00	1 13
£2,000	2 720 00	1 36	2,595 00	1 29	2,395 00	1 19
£2,500	3,970 00	1 59	3,845 00	1 54	3,595 00	1 44
£3,000	5,220 00	1 74	5,095 00	1 70	4,845 00	1 61

RATE OF TAX COMPANIES

Companies are charged at a flat rate of Sh 2 in the pound without any of the above personal deductions

TAXATION AT THE SOURCE

The general scheme is to assess the *individual* but —

- (a) Companies are assessed on their full profits to include dividends and deduct tax from the dividends upon payment
- (b) Companies will deduct tax at Sh 2 in the pound from debenture interest on payment
- (c) When mortgage interest is paid to a person *not resident* in the Colony the mortgagor is required to deduct tax at Sh 2 in the pound upon payment and to pay to the revenue the tax so deducted

Where the recipient of income so taxed at the source includes such income in his return the tax already suffered is deducted from the tax assessable upon his total income. If it exceeds this amount a repayment may be claimed

Special provision is made for the year of assessment 1933 when any such dividends to be returned will have been paid in full as there was no income tax in force in 1932. In view of the fact that tax for 1933 will be collected from the company on its 1932 profits it is not proposed to tax the 1932 dividends again in the hands of the shareholders, but they will be treated as taxed at the correct rate for each shareholder unless he is liable on a portion for his income at a greater rate than Sh 2 in the pound. This special arrangement obviously only refers to dividends from which Kenya income tax at Sh 2 in the pound should be deducted

TRADES, PROFESSIONS, ETC

General —The Bill taxes net profits after allowing expenses exclusively incurred in earning them, but certain deductions such as capital expenditure, domestic and private expenditure, etc., are specifically disallowed by clause 11. The allowable expenses are not listed, and the tests as to what can be deducted are —

- (a) Is it an expense incurred in producing the income?
- (b) Is it specifically dealt with in clause 10?
- (c) Is the deduction prohibited by clause 11?

Date of accounts —Where a trader etc. regularly makes up accounts to some date other than 31st December, the Commissioner may agree to accept the profits of the trade etc., for the year to the date of the business balance sheet as the profits liable to assessment for the year following—e.g. where a farmer makes up his accounts to 30th June in each year his assessment for 1933 may be based on the profit for the year to 30th June, 1932, plus any other assessable income he may have for the year to 31st December, 1932. In such a case the trader must continue to adopt the same basis of assessment, except that the Commissioner has power to agree to an adjustment if for any reason a change is made in the dates to which the accounts are prepared.

It will greatly facilitate the assessment of the tax and avoid difficulties later in the year if traders will arrange with the Commissioner to forward copies of their accounts as soon as they are prepared so that the liability on this source of income may be agreed before the returns for assessment are due to be made by the taxpayers.

WEAR AND TEAR AND OBSOLESCENCE

Special provision is made for an allowance for wear and tear of property, including plant and machinery, arising out of the use of that property in earning the profits to be assessed. A further provision is also made for an allowance where obsolete plant is sold or scrapped and replaced. In practice, the method of calculating the wear and tear is usually by writing down the value of a particular type of plant at an agreed rate, e.g., a motor lorry cost £700 on 1st January, 1932, and suppose the rate of depreciation agreed is 20 per cent, then the allowance is —

1st January, 1932	Value	£700
Wear and tear 1932	20 per cent (allowed in 1933 assessment)	140
		—
	Value in January 1933	560
	Wear and tear, 1933 (allowed in 1934 assessment)	112
		—
		£448
		—

If the lorry was sold in 1934 for £300 and replaced by a new one, a claim may be made for obsolescence of £148, this being the difference between the sale price and the written down value. This amount would be deducted from the profits of 1934 in arriving at the assessment for 1935, and in addition a claim for wear and tear on the new lorry could be made.

SET-OFF OF LOSSES

This is dealt with in clause 13. Where a loss is made in the year in any trade or business it will, as far as possible, be set off against any other income of the individual for the same year in arriving at the assessment for the subsequent year.

Any balance of the loss may be carried forward and set off against the income of the next year and so on for five years. The amount of the loss to be allowed as a set-off in any one of these five years is to be restricted so that the tax payable is not reduced to less than one-half of the tax that would have been payable on the income without any set-off.

A simple example will illustrate this provision

An individual trader has no other income than the profits of his business

He is entitled to the following allowances —

Abatement £150

Wife Allowance £50

Earned Income Relief One-tenth of his earned income

His profits were —

1932	Loss	£1,000
1933	Profit	£500
1934	Profit	£750
1935	Profit	£1,500
1936	Profit	£750

	Year in which loss is assessed	First year after year of assessment	Second year after year of assessment	Third year after year of assessment	Fourth year after year of assessment
1 Year of Assessment	1933	1934	1935	1936	1937
2 Assessment is in respect of income of year	1932	1933	1934	1935	1936
3 Total income for year in line 2 assessable for year of assessment (line 1)	Nil	£500	£750	£1,500	£750
4 Tax payable if no allowance made for loss brought forward	—	375/-	712/50	1 925/-	712/50
5 Maximum allowance of tax (half amount in line 4)	—	187/50	356/25	962/50	356/25
6 Tax in line 5 represents tax on an income of	—	£361	£486	£936	£486
7 Loss which can be set off (line 3 less line 6)	—	£139	£264	£564	£264*
8 Balance of loss still to be carried forward	£1 000	£361	£597	£33	—*
9 Amount of assessment for year of assessment (line 1)	Nil	£361	£486	£936	£717

*£33 balance allowed

EMPLOYMENT ETC

The income assessable is the total of the emoluments of the office. Where quarters or board are provided, the annual value has to be estimated and added to the salary. In the case of officials of the Government or the Railway Administration, power is taken to prescribe rules for assessing the amount to be taken as the annual value of free quarters. Where an official salary is subject to a levy under an Ordinance the income is the salary less the levy.

PROPERTY

Where property is let the income is the amount of the rents less any expenses necessarily incurred in acquiring the income such as normal repairs, etc., but excluding capital expenditure. Where property is owned and occupied or occupied rent free as a residence or for enjoyment and not for business purposes the income is assumed to be 5 per cent of the capital value.

OTHER INCOME

Other items of income, such as dividends, interest, annuities, pensions, etc., are assessed upon the income of the year preceding the year of assessment. From this income may be deducted any interest paid in respect of capital employed in producing the income.

For example, if a loan of £1,000 is obtained from a bank the capital is invested in shares of a company in the Colony, and the whole of the income is assessable to tax upon the recipient under this Bill, the interest payable to the bank may be deducted from the income on the investment, but if the capital is invested outside the Colony and the income from the investment is not assessable under this Bill, no deduction will be allowed for the interest paid.

OBLIGATIONS OF TAXPAYERS

(1) Every individual chargeable to tax is required to inform the Commissioner by the 31st of March in any year that he is chargeable, an extra forty-two days are allowed for the year of assessment 1933. Any person is also to make such returns as may be required.

(2) Adequate books of account are to be kept in a prescribed language.

(3) Mortgagees are to deduct tax at Sh. 2 in the pound on payment of mortgage interest to a non-resident mortgagee.

(4) Employers are to render return of employees with the salaries, etc., paid to them.

(5) Certain returns are to be made on request by agents, hotel-keepers, trustees, etc.

APPEALS

The Commissioner will issue to the taxpayer notices showing the amount of the assessment made, the deductions allowed and the tax payable. If the taxpayer is dissatisfied with the assessment, he is to appeal to the Commissioner within fourteen days and state the reasons for his objection. The Commissioner will ask for any further information required and will try to reach an agreement with the taxpayer, and if an alteration is agreed he will issue an amended notice. Alternatively, he will inform him that he cannot agree to any amendment, and the taxpayer then has fourteen days to give notice to the Commissioner that he wishes to appeal to a judge. The judge's decision is final, except that a case can be stated on a point of law.

It is hoped that in a normal year a large proportion of the assessments will be agreed between the taxpayer and the Commissioner prior to the making of the assessment.

PAYMENT OF TAX

The tax is to be paid within thirty days of the service of the notice of assessment or of the date of the amended notice in the event of an appeal. The final date will be indicated on the notice of assessment. *If the tax is not paid by that date, a penalty addition of ten per cent will be made automatically and the right to claim a set-off of the poll tax lapses.* Where an appeal is under consideration, the tax will be allowed to stand over until the determination, but the tax due on the undisputed portion of the assessment can be collected.

DOUBLE INCOME TAX RELIEF

Where the same *item* of income is assessed to income tax both in Kenya and the United Kingdom, the general effect of the relief provisions is to grant relief equal to the lower of the two taxes. With the rates proposed in the Bill and the present rate of income tax in the United Kingdom, the adjustment will in practically all cases have to be made in the United Kingdom assessment.

Similar relief is to be given when the same item of income is liable to income tax in Kenya and another Colony or Dominion *which provides for relief on similar lines*. For example, a pensioner of the Colony and a British subject, residing in the United Kingdom, receives his pension of £600 per annum from the Colony in the United Kingdom and has no other income assessable here. He is married but claims no other allowances. The Kenya tax will be —

Pension		£600
Less Abatement	£150	
Wife	£50	
Earned Income Relief	£60	
	—	260
Chargeable Income		£340

Tax Due=Sh. 510

The Kenya Rate is therefore 510/600 shilling in £1=Sh. 0/85 in £1.

The Commissioners of Inland Revenue certify that United Kingdom appropriate rate is 5 61 shillings in £1

No relief is therefore due in Kenya, as the Kenya rate is less than one-half of the appropriate United Kingdom rate and relief will be due in the United Kingdom on the amount of this pension assessed there at the Kenya rate of 0 85 shillings in £1

NON-RESIDENTS

British subjects not resident in the Colony are entitled to the personal reliefs granted by the Bill. Special provisions are made for the assessment and collection of tax from non-residents and also for the assessment of non-resident persons trading in the Colony

GENERAL

There are special provisions dealing with the liability of insurance companies (clause 38) and shipping companies (clauses 39 to 41) and clubs (clause 46). These are however probably of limited interest, and are not dealt with in these notes.

Attention may be called to the list of items of income exempted in clause 8 and particularly to the exemption accorded to pensions granted for wounds or disability caused in war.

It is impossible to deal with every aspect of the proposed income tax in a memorandum of this description but it is hoped that the foregoing notes will help in the general appreciation of the scope of the Bill.