



**COLONY AND PROTECTORATE OF KENYA**

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**Double Taxation Agreement with  
Federation of Rhodesia and Nyasaland**

1958

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THE EAST AFRICAN INCOME TAX (MANAGEMENT)  
ACT, 1952

(H.C. Act No. 8 of 1952)

NOTICE OF PROPOSALS FOR DOUBLE TAXATION AGREEMENT  
(FEDERATION OF RHODESIA AND NYASALAND)

THE following is a draft of an Agreement which it is proposed to enter into with the Government of the Federation of Rhodesia and Nyasaland for the relief of Double Taxation.

*Agreement between the Government of the Colony and Protectorate of Kenya and the Government of the Federation of Rhodesia and Nyasaland for the avoidance of double taxation with respect to taxes on income.*

ARTICLE I

(1) The taxes which are the subject of this Agreement are:—

(a) In the Federation:

The income tax, the supertax and the undistributed profits tax (hereinafter referred to as "Federal tax").

(b) In Kenya:

The income tax including surtax and the personal tax (hereinafter referred to as "Kenya tax").

(2) This Agreement shall also apply to any other taxes of a substantially similar character imposed in the Federation or Kenya subsequently to the date of signature of this Agreement.

ARTICLE II

(1) In this Agreement, unless the context otherwise requires—

(a) the term "the Federation" means the Federation of Rhodesia and Nyasaland;

(b) the term "Kenya" means the Colony and Protectorate of Kenya;

(c) the terms "one of the territories" and "the other territory" mean the Federation or Kenya as the context requires;

(d) the term "tax" means Federal or Kenya tax as the context requires;

(e) the term "person" includes any body of persons, corporate or not corporate;

(f) the term "company" includes any body corporate;

(g) the terms "resident of the Federation" and "resident of Kenya" mean respectively any person who is resident in the Federation for the purposes of Federal tax and not resident in Kenya for the purposes of Kenya tax and any person who is resident in Kenya for the purposes of Kenya tax and not resident in the Federation for the purposes of Federal tax; and a company shall be regarded as resident in the Federation if its business is managed and controlled in the Federation and as resident in Kenya if its business is managed and controlled in Kenya;

(h) the terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of the Federation or a person who is a resident of Kenya, as the context requires;

(i) the terms "Federal enterprise" and "Kenya enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the Federation and an industrial or commercial enterprise or undertaking carried on by a resident of Kenya; and the terms

"enterprise of one of the territories" and "enterprise of the other territory" mean a Federal enterprise or a Kenya enterprise, as the context requires;

(j) the term "industrial or commercial enterprise or undertaking" includes an enterprise or undertaking engaged in mining, agricultural or pastoral activities or in the business of banking, insurance, life insurance or dealing in investments and the term "industrial or commercial profits" includes profits from such activities or business and also includes rents or royalties in respect of cinematograph films but does not include income in the form of dividends, interest, rents, royalties (other than rents or royalties in respect of cinematograph films), management charges or remuneration for personal services;

(k) the term "permanent establishment" when used with respect to an enterprise of one of the territories means a branch, management, mine, farm or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connexion—

(i) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker or general commission agent acting in the ordinary course of his business as such;

(ii) the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the mere purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;

(iii) the fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(2) The terms "Federal tax" and "Kenya tax", as used in this Agreement do not include any tax payable in the Federation or Kenya which is payable in respect of any default or omission in relation to the taxes which are the subject of this Agreement or which represents a penalty imposed under the law of the Federation or Kenya relating to those taxes.

(3) Where under this Agreement any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Agreement in the first-mentioned territory shall be determined by reference to the amount so remitted or received.

(4) In the application of the provisions of this Agreement by the Federation or Kenya, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of the Federation, or, as the case may be, Kenya, relating to the taxes which are the subject of this Agreement.

### ARTICLE III

(1) The industrial or commercial profits of a Federal enterprise shall not be subject to Kenya tax unless the enterprise is engaged in trade or business in Kenya through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Kenya, but only on so much of them as is attributable to that permanent establishment: Provided that nothing in this paragraph shall affect any provisions of the law of Kenya regarding the taxation of income from the business of insurance.

(2) The industrial or commercial profits of a Kenya enterprise shall not be subject to Federal tax unless the enterprise is engaged in trade or business in the Federation through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Federation but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and its dealings with the enterprise of which it is a permanent establishment were dealing at arm's length with that enterprise, and the profits so attributed shall be deemed to be income derived from sources in that other territory.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory.

### ARTICLE IV

Where—

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory; and
- (c) in either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises:

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits to tax in the first-mentioned territory.

### ARTICLE V

Notwithstanding the provisions of Articles III and IV profits derived by a resident of one of the territories from operating transport services overland between that territory and the other territory or from operating ships or aircraft shall be exempt from tax in the other territory if they are subject to tax in the first-mentioned territory.

### ARTICLE VI

(1) Any dividend paid by a company resident in the Federation to an individual who—

- (a) is a resident of Kenya; and
- (b) is subject to Kenya tax in respect thereof; and

(c) is not engaged in trade or business in the Federation through a permanent establishment situated therein; shall be exempt from Federal supertax.

(2) Any dividend paid by a company resident in Kenya to an individual who—

- (a) is a resident of the Federation; and
- (b) is subject to Federal tax in respect thereof; and

(c) is not engaged in trade or business in Kenya through a permanent establishment situated therein; shall be exempt from Kenya surtax.

(3) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

### ARTICLE VII

(1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory, but no exemption shall be allowed under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this Article the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark or other like property, but does not include a royalty or other amount paid in respect of the operation of a mine or quarry or of other extraction of natural resources or rents or royalties in respect of cinematograph films.

### ARTICLE VIII

(1) Remuneration (other than pensions) paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if the individual is not ordinarily resident in that territory or is ordinarily resident in that territory solely for the purpose of rendering those services.

(2) Any pension paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if immediately prior to the cessation of those services the remuneration thereto was exempt from tax in that territory whether under paragraph (1) of this Article or otherwise, or would have been exempt under that paragraph if the present Agreement had been in force at the time when the remuneration was paid.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connexion with any trade or business carried on by either of the Contracting Governments for purpose of profit.

(4) For the purposes of this Article the term "Contracting Government" where it applies to the Government of the Federation of Rhodesia and Nyasaland includes the Governments of the territories constituting the Federation.

## ARTICLE IX

(1) An individual who is a resident of the Federation shall be exempt from Kenya tax on profits or remuneration in respect of personal (including professional) services performed within Kenya in any year of income if—

- (a) he is present within Kenya for a period or periods not exceeding in the aggregate 183 days during that year; and
- (b) the services are performed for or on behalf of a person resident in the Federation; and
- (c) the profits or remuneration are subject to Federal tax.

(2) An individual who is a resident of Kenya shall be exempt from Federal tax on profits or remuneration in respect of personal (including professional) services performed within the Federation in any year of assessment if—

- (a) he is present within the Federation for a period or periods not exceeding in the aggregate 183 days during that year; and
- (b) the services are performed for or on behalf of a person resident in Kenya;
- (c) the profits or remuneration are subject to Kenya tax.

(3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

## ARTICLE X

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

## ARTICLE XI

(1) Subject to the provisions of the law of the Federation regarding the allowance as a credit against Federal tax of tax payable in a territory outside the Federation, Kenya tax payable, whether directly or by deduction, in respect of income from sources within Kenya shall be allowed as a credit against any Federal tax payable in respect of that income. In the case of a person who is resident in both the Federation and Kenya, the credit shall extend to the Kenya tax payable in respect of income from sources within the Tanganyika Territory, the Protectorate of Uganda and the Protectorate of Zanzibar.

(2) Subject to the provisions of the law of Kenya regarding the allowance as a credit against Kenya tax of tax payable in a territory outside Kenya, Federal tax payable, whether directly or by deduction, in respect of income from sources within the Federation shall be allowed as a credit against any Kenya tax payable in respect of that income. For the purposes of this paragraph the term "Federal tax" includes any Territorial Surcharge.

(3) For the purposes of this Article profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose

services are wholly or mainly performed in ships or aircraft or other transport vehicles operated by a resident of one of the territories shall be deemed to be performed in that territory.

## ARTICLE XII

(1) The taxation authorities of the Federation and Kenya shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Agreement in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court) concerned with the assessment and collection of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term "taxation authorities" means the Commissioner of Taxes or his authorized representative in the case of the Federation and the Commissioner of Income Tax or his authorized representative in the case of Kenya.

## ARTICLE XIII

This Agreement shall come into force on the date on which the last of all such things shall have been done in the Federation and Kenya as are necessary to give the Agreement the force of law in the Federation and Kenya respectively, and shall thereupon have effect—

(a) in the Federation:

as respects income tax, supertax and undistributed profits tax for the year of assessment commencing on 1st April, 1953, and subsequent years;

(b) in Kenya:

as respects income tax (including surtax) for the year of income beginning on the 1st day of January, 1953, and subsequent years, and as respects Personal Tax for the year beginning on the 1st day of January, 1953, and subsequent years.

## ARTICLE XIV

This Agreement shall continue in effect indefinitely but either of the Governments may, on or before the 30th day of June in any calendar year after the year 1956 give notice of termination to the other Government and, in such event, this Agreement shall cease to be effective—

(a) in the Federation:

as respects income tax, supertax and undistributed profits tax for any year of assessment beginning on or after the 1st April in the calendar year next following that in which the notice is given;

(b) in Kenya:

as respects income tax (including surtax) for any year of income beginning on or after the 1st day of January in the calendar year next following that in which such notice is given and as respects personal tax for any year beginning on, or after the 1st day of January in such next following year.