

CHAPTER 332

THE INCOME TAX ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 332

THE INCOME TAX ACT

An Act to make provision for the charge, assessment and collection of Income Tax, for the ascertainment of the income to be charged and for related matters.

[1st January, 1974]

[s. 1]

Acts Nos.

33 of 1973

16 of 1974

15 of 1975

7 of 1976

9 of 1977

12 of 1977

20 of 1978

2 of 1979

12 of 1979

10 of 1980

12 of 1980

25 of 1980

12 of 1981

20 of 1981

16 of 1983

10 of 1984

15 of 1985

6 of 1986

10 of 1986

12 of 1986

6 of 1987

9 of 1988

13 of 1989

17 of 1990

18 of 1991

14 of 1992

17 of 1992

5 of 1993

10 of 1993

1 of 1994

2 of 1994

16 of 1994

17 of 1995

25 of 1997

27 of 1997

2 of 1998

8 of 1998

10 of 1999

12 of 1999

9 of 2000

11 of 2000

15 of 2000

14 of 2001

18 of 2002

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh332s1]1. Short title and application to Zanzibar Act No. 12 of 1979 s. 26

(1) This Act may be cited as the Income Tax Act.

(2) This Act shall apply to Mainland Tanzania as well as to Tanzania Zanzibar:

Provided that in the case of income of an individual ordinarily resident in Zanzibar and which is accrued in or derived from Zanzibar, other than income from the Government of the United Republic, or a parastatal organisation, the rates of tax and provisions relating to personal allowances in force immediately before the coming into force of this Act shall apply as if subsections (2) and (3) of section 139 had not been enacted, so however, that the provisions of subsection (5) of section 139 and the provisions of the Sixth Schedule to this Act shall apply mutatis mutandis in relation to all such incomes for the year of income 1974 and subsequent years of income to the same extent as those provisions apply to the incomes for the year of income 1973 and the preceding years of income.

[s. 140]

[PCh332s2]2. Interpretation Acts Nos. 15 of 1975 s. 16; 7 of 1976 s. 24; 20 of 1978 s. 9; 16 of 1983 s. 13; 10 of 1993 s. 15; 16 of 1994 s. 14, 15, 16; 27 of 1997 s. 4; 8 of 1998 s. 20

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

"accounting period", in relation to any person, means the period for which such person makes up the accounts of his business;

"administration rate" means the administration rate of tax specified in the Third Schedule;

"assessment" means any assessment or an additional assessment made under this Act;

"business" means any form of trade, profession or vocation but does not include employment;

"capital gains tax rate" means the capital gains tax rate specified in the Third Schedule;

"Commissioner" means the Commissioner of Income Tax appointed under the provisions of this Act;

"construction project" means a project for the construction of buildings, structures or public works in the United Republic;

"co-operative society" means a co-operative society registered under the Co-operative Societies Act *;

"corporation" means any company or other body corporate established, incorporated or registered by or under any law in force in the United Republic or elsewhere;

"corporation rate" means the corporation rate specified in the Third Schedule;

"debenture" includes any debenture stock, mortgage, mortgage stock, or any similar instrument acknowledging indebtedness, secured on any assets of the person issuing the

debenture; and, for the purposes of paragraph (c) of subsection (1) of section 7, includes any loan or loan stock, whether secured or unsecured;

"director" means—

(a) in relation to a corporation the affairs of which are managed by a board of directors or similar body, a member of that board or similar body;

(b) in relation to a corporation the affairs of which are managed by a single director or similar person, that director or person;

(c) in relation to a corporation the affairs of which are managed by the members themselves, a member of the body corporate,

and includes any person in accordance with whose directions and instructions such persons are required or are accustomed to act;

"District Advisory Committee" means a committee established under section 129;

"due date" means the date on or before which any tax is due and payable under this Act or pursuant to any notice issued under this Act;

"employee" in relation to a corporation includes a director in receipt of remuneration for his services;

"employer" includes any resident person responsible for the payment of, or on account of, any emoluments to any employee, and any reference to an employer shall be deemed to include a

reference to any agent, manager or other representative so responsible in the United Republic of any employer who may be resident outside the United Republic;

"farmer" means any person who carries on a pastoral, agricultural or other similar operation;

"foreign tax", in relation to income charged to tax in the United Republic, means any income tax or any tax of a similar nature charged under any law in force in any place with the Government of which a special arrangement under this Act has been made by the Government of the United Republic and which is the subject of such arrangement;

"incapacitated person" means a minor or any individual who is substantially blind or physically crippled or substantially mentally retarded or who is adjudged under any law, whether of the United Republic or of any other country, to be of unsound mind;

"individual" means a natural person, whether male or female and whether married or unmarried;

"individual rates" means the individual rates of income tax specified in the Third Schedule;

"insurance relief" means a relief referred to under the provisions of section 32A of this Act;

"interest" means interest payable in any manner in respect of any loan, deposit, debt, claim or other right or obligation, and includes any premium or discount by way of interest and

any commitment or service fee paid in respect of any loan, credit, or discount on treasury bills but does not include interest charged on tax;

"loss", in relation to gains or profits, means a loss computed in like manner as gains or profits;

"management or professional fee" means any payment made to any person, other than a payment made to an employee by his employer, as consideration for any services of a managerial, technical or professional nature, however calculated; and includes any fee or other monetary consideration, including any monetary gift, paid or given to any non-resident person in respect of any theatrical or musical performance, any sports or acrobatic exhibition or any other entertainment performed, conducted, held or given in the United Republic;

"mineral" means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, or in or under the seabed, formed by or subject to a geological process, but does not include petroleum as defined in the Petroleum (Exploration and Production) Act *, or water;

"mining" means intentionally winning minerals and includes every method or process by which mineral is won;

"mining operations" means prospecting, mining or operations connected with prospecting or mining carried out pursuant to rights granted under the Mining Act *;

"Minister" means the Minister responsible for matters relating to finance;

"non-resident rate" means the rate of non-resident withholding tax specified in the Third Schedule;

"officer" means the Commissioner and includes any public officer employed in connection with the assessment, collection or recovery of tax;

"parastatal organisation" means—

- (a) a local government authority;
- (b) a body corporate established by or under any written law other than the Companies Act *;
- (c) a trade union registered under the Trade Unions Act *;
- (d) any company registered under the Companies Act * not less than fifty per centum of the issued share capital of which is owned by the Government or a parastatal organisation or, where the company is limited by guarantee, a company in respect of which the amount that the Government or the parastatal organisation which is a member of such company has undertaken to contribute in the event of the company being wound up is not less than fifty per centum of the aggregate amount which all the members have undertaken to contribute; and references in this paragraph to a parastatal organisation include references to any such company;

"partnership firm" means a firm of two or more persons carrying on business in partnership;

"pension fund" means any fund for the payment of pensions, gratuities or other similar benefits to employees on retirement, or to the dependants of employees on the death of such

employees, and "approved pension fund" means a pension fund which has been approved by the Commissioner under Part V;

"pension scheme" includes any scheme for the payment of pensions or other similar benefits, to employees on retirement, or to the dependants of employees on the death of such employees and "approved pension scheme" means a pension scheme which has been approved by the Commissioner under Part V;

"permanent establishment", in relation to any person, means a fixed place of business in which such person carries on business and for the purposes of this definition a building site or a construction or assembly project which has existed for six months or more shall be deemed to be a fixed place of business;

"permanent or semi-permanent crops" means such crops as the Minister may, by notice in the Gazette, declare to be permanent or semi-permanent crops for the purposes of this Act;

"personal relief" means child relief or married relief;

"premises" means land and any improvement thereon, and includes any building or, where part of a building is occupied as a separate dwelling house, that part;

"prospect" means to search for any mineral by any means and to carry out any such works and remove any such samples as may be necessary to test the mineral bearing qualities of land and includes reconnaissance operations as defined in the Mining Act *;

"provident fund" means any fund or scheme for the payment of a sum of money or for the grant of other monetary benefits, to an employee on determination of his employment or to the

dependants of the employee on the death of such employee; and "approved provident fund" means a provident fund which has been approved by the Commissioner under Part V;

"provisional return of income" means a provisional return of income required to be submitted under section 58;

"resident" has the meaning assigned to that expression by subsection (2);

"resident withholding rate" means the rate of resident withholding tax specified in the Third Schedule;

"return of income" means a return of income furnished by a person consequent upon a notice served by the Commissioner under this Act, together with any documents required to be furnished therewith;

"royalty" means any payment made as a consideration for the use of, or the right to use—

- (a) any copyright of literary, artistic or scientific work; or
- (b) any cinematograph film, including film or tape for radio or television broadcasting; or
- (c) any patent, trade mark, design or model, plan, formula or process; or
- (d) any industrial, commercial or scientific equipment;

or for information concerning industrial, commercial or scientific equipment or experience, and includes gains derived from the sale or exchange of any right or property giving rise to such royalty;

"Schedule" means a Schedule to this Act;

"scheduled company" shall have the meaning assigned to that expression in Part XI;

"tax" means the income tax charged under this Act;

"tax clearance certificate" means a certificate issued under section 106;

"technical services" in respect of mining operations, means services in respect of earthmoving, engineering, construction, and includes geological, geotechnical and metallurgical services or any other like services;

"total income" means the aggregate of income from all taxable sources after effecting necessary deductions under part IV of the Principal Act but does not include incomes exempt from tax;

"trade" includes every trade, manufacture, or concern in the nature of trade;

"trade association" means any body of persons which is an association of persons separately engaged in any business with the main object of safeguarding or promoting the business interests of such persons;

"trustee" includes an executor of the will of a deceased person and an administrator of the estate of a deceased person, and trustees shall, for the purposes of this Act, be deemed to be a body of persons;

"whole-time service director" means a director of a corporation who is required to devote substantially the whole of his time to the service of such corporation in a managerial or technical

capacity and is not the beneficial owner of, or able, either directly or through the medium of another corporation or by any other means, to control more than five percent of the share capital or voting power of such corporation;

"year of income" means a calendar year.

(2) For the purposes of this Act a person shall be deemed to be a resident in relation to any year of income—

(a) in the case of an individual—

(i) if he has a permanent home in the United Republic and was present in the United Republic during any part of that year of income; or

(ii) where he has no permanent home in the United Republic—

(A) if he was present in the United Republic in that year of income for a period or periods amounting in the aggregate to 183 days or more; or

(B) if he was present in the United Republic in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each such year of income;

(b) in the case of a corporation—

(i) if the corporation was incorporated under a law of the United Republic; or

(ii) if the management and control of the affairs of the corporation were exercised in the United Republic during any period in that year of income;

(c) in the case of a body of persons other than a corporation, if the management and control of the body of persons were exercised in the United Republic during any period in that year of income;

(d) if the Minister has, by notice in the Gazette, declared such person to be a resident for the purposes of this Act for that year of income.

(3) In relation to any year of income in respect of which any order relating to tax has been made under the Public Finance Act *, reference in this Act to rates of tax shall, so long as any such order remains in force, be construed as references to the rates referred to in such order; and if, after any such order has ceased to have effect, the rates of tax in relation to such year of income as specified in this Act are different from those referred to in such order, and any assessments have already been made having regard to such rates in such order, then all such adjustments shall be made to such assessments as may be necessary to give effect to the rates of tax for such year of income as specified in this Act.

(4) For the purposes of this Act—

(a) in respect of a non-resident person, income shall be deemed to have accrued in the United Republic if such income arises in, or becomes due or payable in, the United Republic;

(b) in respect of a non-resident person, income shall be deemed to have derived from the United Republic if the locality of the source of the income is the United Republic or if the income accrues under a contract the locality of which is the United Republic:

Provided that the meanings assigned to the expressions "accrued in" and "derived from" by this subsection or any other provision of this Act shall be in addition to and not in substitution of or in derogation of the ordinary meanings of those expressions.

(5) The tax due under this Act shall be payable in accordance with the provisions of this Act and, without prejudice to any such provision, the tax due from an individual shall be payable monthly where such tax is in respect of his income from employment, and in any case where tax due from an individual is in respect of income other than income from employment, the tax due shall be calculated by reference to the monthly rates specified in the Third Schedule on the basis of the directions specified in the note appended to the first paragraph of that Schedule.

PART II

IMPOSITION OF INCOME TAX (ss 3-13C)

[PCh332s3]3. Charge of tax Acts Nos. 12 of 1979 s. 23; 10 of 1986 s. 19; 17 of 1990 s. 23; 14 of 1992 s. 21; 17 of 1992 s. 21; 16 of 1994 s. 16; Act No. 9 of 2000; s. 28

(1) Subject to, and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income—

(a) in the case of a resident person, upon all the income of such person which accrued worldwide; or

(b) in the case of any other person, upon all the income of such person which accrued in or was derived from the United Republic.

(2) Subject to this Act, income upon which tax is chargeable under this Act is income in respect of—

(a) gains or profits from—

(i) any business, for whatever period of time carried on;

(ii) any employment or services rendered;

(iii) any right granted to any other person for use or occupation of any property;

(b) dividends or interest, where the interest exceeds the first two hundred and fifty thousand shillings of any income accruing as interest on monies saved in any bank operating in the United Republic;

(c) any pension or amount received under a pension scheme or a pension fund, other than any pension payable to an employee who has retired from the service of the Government or a parastatal organisation, any annuity or a trust scheme which is approved or established by or under any written law;

(d) any amount received by way of alimony or allowance—

(i) under any judicial order of separation or maintenance, or under any decree of divorce; or

(ii) under any written agreement of separation; or

(iii) under any agreement between spouses where they are separated in such circumstances that the separation is likely to be permanent;

(e) any amount deemed to be the income of any person under this Act, other than any amount payable by way of pension to any person who has retired from the service of the Government or a parastatal organisation.

(3) For the avoidance of doubt it is hereby declared that where an individual—

(a) receives benefit of domestic services from a member of his family;

(b) occupies any premises owned by him; or

(c) utilises any agricultural product or handcraft product produced by him for his own consumption or use or for the consumption or use by the members of his family without receiving any monetary consideration from any such member of his family for such consumption or use,

the value of such services, occupation or product so used shall be deemed not to be income.

(4) [Repealed by Act 9 of 2000 s. 28.]

(5) Every tax withholder to whom the provisions of Part IXB apply shall register with the Commissioner at the nearest office within thirty days after the date the obligation to comply with this Part first arises.

(6) A person or tax withholder who fails to comply with the provisions of subsection (4) or (5) shall be guilty of an offence.

[PCh332s3A]3A. Taxpayer identification number and issuance of certificate Act No. 9 of 2000 s. 29

(1) Every person whose income is chargeable to tax under this Act shall upon application for registration, have a taxpayer identification number allocated to him by the Commissioner.

(2) Every person, other than an individual, shall register for a taxpayer identification number within thirty days after the date on which that person is established, incorporated or registered by or under any law in force in the United Republic.

(3) Every person who becomes chargeable to tax pursuant to the provisions of this Act shall register for a taxpayer identification number with the Commissioner within thirty days after the date on which that person becomes so chargeable.

(4) The Commissioner shall issue to a person registered under this Act a certificate of registration which that person shall display in a conspicuous position at his place of business.

[PCh332s3B]3B. Section not to apply to certain employees Act No. 9 of 2000 s. 29

(1) Notwithstanding the provisions of section 3A, this section shall not apply in relation to an employee—

(a) if such employee had no income chargeable to tax for such year of income other than his income from emoluments; and

(b) if the tax payable in respect of such emoluments has been recovered by deduction under Part IX of this Act.

(2) Every tax withholder to whom the provisions of Part IXB of this Act apply shall have a taxpayer identification number, which shall be produced when required by the Commissioner.

(3) Every tax withholder to whom the provisions of Part IXB of this Act apply, shall register for taxpayer identification number within thirty days after the date on which the obligation to comply with this Part arises.

[PCh332s3C]3C. Identification number for protection or collection of tax Act No. 9 of 2000 s. 29

(1) For the purposes of collection or protection of tax, any person whom the Commissioner may so require shall have a taxpayer identification number.

(2) Any person who is required under this Act to make a return, statement or other document shall, while making such a return, statement or document include the taxpayer identification number of that person.

[PCh332s3D]3D. Making return, statement, etc., for another person Act No. 9 of 2000 s. 29

(1) Any person who is required to make a return, statement, or other document on behalf of another person shall include the taxpayer identification number in such a manner as may be prescribed for the purposes of proper identification of the person in whose behalf the return, statement or other document is submitted.

(2) Subject to subsection (1), any person required under this Act to make a return, statement or order document in respect of another person shall request from that other person, and include in the return statement or other document, the taxpayer identification number, in the

prescribed manner for proper identification of the person on whose behalf the return, statement or other document is submitted.

[PCh332s3E]3E. Minister may amend, vary or replace Seventh Schedule Act No. 9 of 2000 s. 29

(1) Every institution specified under the Seventh Schedule to this Act, shall require a taxpayer identification number from any person applying for anything listed or engaged in the types of transactions listed in the Seventh Schedule.

(2) The Minister may, by order published in the Gazette, amend, vary or replace the Seventh Schedule.

(3) Any person who, in relation to the transactions for which a taxpayer identification number is required, refuses or fails to comply with the provisions of section 3A or 3E commits an offence punishable under this Act.

[PCh332s4]4. Income from businesses Act No. 14 of 1992 s. 22

For the purposes of subparagraph (a) (i) of subsection (2) of section 3–

(a) the gains or profits of a partner from a partnership shall be the sum of–

(i) any remuneration payable to him by the partnership together with any interest on capital so payable, less any interest on capital payable by him to the partnership; and

(ii) his share of the total income of the partnership, calculated after deducting therefrom the tax payable thereon, and the total of any remuneration and interest on capital

payable to any partner by the partnership and after adding any interest on capital payable by any partner to the partnership, and where the partnership makes a loss, calculated in the manner set out in subparagraph (ii), his gains or profits shall be the excess, if any, of the amount set out in subparagraph (i) over his share of such loss;

(b) any sum received under any insurance against loss of profits, or received by way of damages or compensation for loss of profits, shall be deemed to be gains or profits of the year of income in respect of which it is received;

(c) where in computing gains or profits for any year of income any expenditure or loss has been deducted, or a deduction in respect of any reserve or provision to meet any liability has been made, and in a later year of income the whole or part of such expenditure or loss is recovered, or the whole or part of such liability is released, or the retention in whole or part of such reserve or provision has become unnecessary, then any sum so recovered or released or no longer required as a reserve or provision shall be deemed to be gains or profits of the year of income in which it is recovered or released or no longer required:

Provided that if the person chargeable with tax in respect of any such sum requests the Commissioner in writing to exercise his power under this proviso, the Commissioner may divide such sum into so many equal portions, not exceeding six, as he may consider fit, and one such portion shall be taken into account in computing the gains or profits of such person for the year of income in respect of which such sum is so deemed to be gains or profits and for each of the previous years of income corresponding to the number of such portions;

(d) where under the Second Schedule it is provided that a balancing charge shall be made or a sum shall be treated as a trading receipt, for any year of income, the amount thereof shall be deemed to be gains or profits of such year of income.

[PCh332s5]5. Income from employment, etc. Acts Nos. 16 of 1974 s. 9; 10 of 1986 s. 20; 17 of 1990 s. 24; 13 of 1996 s. 24; 8 of 1998 s. 21; 18 of 2002 s. 33

(1) For the purposes of subparagraph (a) (ii) of subsection (2) of section 3 of this Act, any amount paid to—

(a) a person who is, or was at the time of the employment or when the services were rendered, a resident person in respect of any employment or services rendered by him in the United Republic or outside the United Republic; or

(b) a non-resident person in respect of any employment with or services rendered to an employer who is resident in the United Republic or the permanent establishment in the United Republic of an employer who is not resident,

shall be deemed to have accrued in or to have been derived from the United Republic:

Provided that the Minister may, by order in the Gazette, modify all or any of the provisions of this subsection in its application to any employee or category of employees referred to therein.

(2) For the purposes of subparagraph (a) (ii) of subsection (2) of section 3 of this Act, "gains or profits" includes—

(a) any wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, or any subsistence, travelling, entertainment or other allowance received in respect of employment or services rendered; and any amount so received in respect of employment or services rendered in a year of income other than the year of income in which it is received shall be deemed to be income in respect of such other year of income:

Provided that—

(a) where the Commissioner is satisfied that any such subsistence, travelling, entertainment or other allowance represents solely the reimbursement to the recipient of an amount expended by him wholly and exclusively in the production of his income from the employment or services rendered then in the calculation of the gains or profits of the recipient he shall exclude any such allowance or expenditure;

(b) where any such amount is received in respect of a year of income which expired earlier than five years prior to the year of income in which it was received, or prior to the year of income in which the employment or services ceased, if earlier, such amount shall, for the purposes of the computation of the tax payable thereon, be allocated equally between the year of income in which it is received or, if the employment or services ceased in an earlier year of income between such earlier year of income; and the five years of income immediately preceding such year of income in which such amount is so received or, as the case may be, such earlier year of income in which the employment or service ceased, and each such portion allocated to any such year of income shall be deemed to be income of that year of income in addition to any other income in that year of income;

(c) the provisions of section 8 shall apply for the purpose of the computation of tax on commuted pension;

(d) the following allowances payable to an employee under this paragraph shall not be liable to tax:

(i) a house allowance not exceeding a prescribed percentage of the salary of an officer deductible from his salary toward house rent charges;

(ii) transport allowance of an amount not exceeding the monthly allowance prescribed by the Government for travelling to and from an employee's office and his residence;

(iii) a responsibility allowance not exceeding that payable to employees in the service of the Government or a parastatal organisation;

(iv) a housing allowance not exceeding 15% of the basic salary payable to an employee shall not be liable to tax.

(b) save as otherwise expressly provided in this section, the value of any benefit, advantage, or facility of whatsoever nature, the aggregate value whereof is not less than fifty thousand shillings, granted in respect of employment or services rendered;

(c) any amount received as compensation for the termination of any contract of employment or services, whether or not provision is made in such contract for the payment of such compensation:

Provided that, except in the case of a director, other than a whole time service director, of a corporation the directors whereof have a controlling interest therein—

(i) where such contract is for a specified term, the amount included in gains or profits under this subparagraph shall not exceed the amount which would have been received in respect of the unexpired period of such contract and shall be deemed to have accrued evenly in such unexpired period;

(ii) where such contract is for an unspecified term and provides for compensation on the termination thereof, such compensation shall be deemed to have accrued in the period immediately following such termination at a rate equal to the rate per annum of the gains or profits from such contract received immediately prior to such termination;

(iii) where such contract is for an unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination thereof shall be deemed to have accrued in the period immediately following such termination at a rate equal to the rate per annum of the gains or profits from such contract received immediately prior to such termination, but the amount so included in gains or profits shall not exceed the amount of three years remuneration at such rates;

(d) any balancing charge under Part II of the Second Schedule;

(e) the value, ascertained in accordance with subsection (3) of premises provided by an employer for occupation by his employee for residential purposes:

Provided that the value of the premises shall be deemed not to be such gains or profits in any case where—

(i) the monthly total income of the employee, excluding the value of the premises, does not exceed eight hundred shillings;

(ii) the employee being an employee of the Government or of a parastatal organisation, pays rent on the basis of a general scheme relating to rents chargeable to such employees in proportion to their monthly income from such employment;

(f) any amount paid by an employer as a premium for an insurance on the life of his employee and for the benefit of such employee or any of his dependants other than such an amount paid to an approved pension scheme or an approved pension fund.

(3) In paragraph (c) of subsection (2) of this section the value of premises, excluding the value of any furniture or other contents so provided, shall be deemed to be—

(a) in the case of a director of a corporation, other than a whole-time service director, an amount equal to fifteen percent of his total income excluding the value of such premises;

(b) in the case of any other employee, an amount equal to fifteen percent of the gains or profits from his employment excluding the value of such premises, subject to a limit of the rent paid by the employer if this is paid under an agreement made at arms length with a third party:

Provided that—

(i) where any person occupies such premises for part only of a year of income then the value, ascertained under the foregoing provisions, shall be reduced by such proportion as may be just and reasonable having regard to the period of occupation and the yearly rate of gains or profits from employment;

(ii) where the employee pays rent to his employer for such premises the value, ascertained under the foregoing provisions, shall be reduced by the amount of such rent;

(iii) where part only of any premises is so provided, the Commissioner may reduce the value, as ascertained under the foregoing provisions, to such amount as he may consider just and reasonable.

(4) Notwithstanding anything to the contrary in subsection (2) of this section "gains or profits" shall not include—

(a) the expenditure on passages between the United Republic and any place outside the United Republic borne by the employer:

Provided that this paragraph shall not apply to expenditure other than expenditure on the provision of passages for the benefit of an employee recruited or engaged outside the United Republic and who is in the United Republic solely for the purpose of serving the employer and is not a citizen of the United Republic;

(b) in the case of a full-time employee (which expression shall not include any director other than a whole-time service director of a corporation) the value of any medical and cafeteria services provided by the employer; and

(c) subject to subsection (1)(f) the amount paid by the employer as contribution to any unapproved pension fund or unapproved provident fund or scheme, which together with other contributions by the employer to any approved or unapproved pension fund or scheme or any approved or unapproved provident fund or scheme and contributions by the employee to any approved pension scheme or fund does not exceed twenty percent of the gross remuneration of the employee, where the benefits are for the employee only and twenty-four percent of the gross remuneration of the employee where the benefits are payable also in respect of the widow or widower or dependant of such employee;

(d) the amount received by an employee from an approved provident fund.

[PCh332s6]6. Income from the use of property

For the purposes of paragraph (a) (iii) of subsection (2) of section 3 of this Act, "gains or profits" shall include any royalty, rent, premium or like consideration received for the use or occupation of property.

[PCh332s7]7. Income from dividends Acts Nos. 16 of 1994 s. 17; 17 of 1995 s. 13

(1) For the purposes of paragraph (b) of subsection (2) of section 3–

(a) a dividend paid by a resident corporation shall be deemed to be income of the year of income in which it was payable or deemed to be payable;

(b) when, in relation to any corporation that is being wound up voluntarily, any profits whether earned before or during the winding up are distributed (whether in cash or otherwise) the distribution shall be deemed to be payment of a dividend;

(c) where any corporation issues debentures or redeemable preference shares for a sum less than their nominal value or redeemable value, whichever is the greater, or bonus share, the issue of such debentures or preferential shares or bonus shares shall be deemed to include a payment of dividend on the shares held by shareholders of an amount equal to such excess or, in the case of a bonus share, an amount equal to the nominal value:

Provided that this paragraph shall not apply if–

(i) the sum paid for such debentures or redeemable preference shares is ninety five percent or more of their nominal or redeemable value, whichever is the greater;

(ii) in the case of bonus shares, the ownership in such shares did not change hands during such year of income.

(d) where a branch of any non-resident corporation having a permanent establishment in the United Republic remits any of its after tax profits to its head office, or retains the profits without reinvesting them in the United Republic, the remittance or retention of the profits shall be deemed to be a payment of a branch dividend.

(2) Notwithstanding paragraph (b) of subsection (2) of section 3, a dividend received by a resident corporation shall be deemed not to be income chargeable to tax:

Provided that this subsection shall not apply to a dividend received by a corporation which controls, directly or indirectly, less than twenty five percent of the voting power of the corporation paying the dividends and which is not a financial institution specified in the Fourth Schedule.

[PCh332s8]8. Income from pensions, etc. Acts Nos. 12 of 1980 s. 14; 14 of 1992 s. 23

(1) For the purposes of this Act any pension or retirement annuity received by a non-resident individual from a pension fund or pension scheme established in the United Republic or under an annuity contract made in the United Republic shall be deemed to have accrued in or to have been derived from the United Republic.

(2) [Omitted.]

(3) Notwithstanding paragraph (c) of subsection (2) of section 3 of this Act, the first twenty-four thousand shillings of the retirement annuities received by a resident individual in any year of income shall be taxed at rates one half of those normally applicable; and for purposes of assessment under this subsection any pension or retirement annuity income received shall be deemed to be those portions of an individual's total income as are taxable at the lowest of the rates applicable to successive portions of his total income.

(4) Any commuted pension received by surrender of future pension rights or any amount received under a pension scheme, a pension fund, an annuity contract or a trust scheme, which is approved or established by or under any written law, shall, for the purposes of this Act, be deemed to be the income for the year in which it is paid:

Provided that where any employee commutes his future pension rights by receiving not more than one half of his total pension entitlement the commuted portion shall be deemed not to be income for the purposes of this Act.

[PCh332s9]9. Income of certain non-resident persons deemed derived from the United Republic Acts Nos. 8 of 1998 s. 22; 12 of 1999 s. 12

(1) Where a non-resident person carries on the business of ship owner, charterer or air transport operator and, any ship or aircraft owned or chartered by him calls at any port or airport in the United Republic, the gains or profits from such business from the carriage of passengers who embark, or cargo or mail which is embarked, in the United Republic, rental of containers and related equipment which is supplementary or incidental to such business shall be such percentage of the full amount received on account of such carriage as the Commissioner may determine to be just and reasonable; and such gains or profits shall be deemed to be income derived from the United Republic.

Provided that this subsection shall not apply to any gains or profits from the carriage of passengers who embark, or cargo or mail which is embarked, in the United Republic solely as a result of transshipment.

(2) Where a non-resident person carries on in the United Republic the business of transmitting messages by cable or by radio or by electronic communication, then the gains or profits from such business shall be such percentage as the Commissioner may determine to be just and reasonable of the full amount received from the transmission of messages which are transmitted by any apparatus established in the United Republic whether or not such messages originated in the United Republic; and such gains or profits shall be deemed to be income derived from the United Republic.

[PCh332s10]10. Income from management or professional fees, royalties, dividends, interest and rent Act No. 27 of 1997 s. 5

For the purposes of this Act, where a resident person or a person having a permanent establishment in the United Republic makes a payment to any other person in respect of—

- (a) any management;
- (b) any professional fee not being a fee for the provision of technical services;
- (c) any royalty;
- (d) any dividend;
- (e) any interest;
- (f) the use of any property;
- (g) the provision of technical services,

the amount thereof shall be deemed to be income of the payee which accrued in or was derived from the United Republic:

Provided that the provisions of this section shall not apply to any such payment as aforesaid unless the payment arises out of or is in connection with an activity or transaction, or intended activity or transaction, wholly or partly in the United Republic, or in the case of a payment of interest, unless such interest is in respect of moneys raised for the purposes of an activity or transaction wholly or partly in the United Republic.

[PCh332s11]11. Trust income, etc., deemed income of trustee, beneficiary, etc.

(1) Any income chargeable to tax under this Act and received by any person in his capacity as a trustee shall be deemed to be income of such trustee.

(2) Any amount received as income in any year of income by any person beneficially entitled thereto from any trustee in his capacity as such, or paid out of trust income by the trustee on behalf of such person, shall, subject to this Act, be deemed to be income of such person; and to the extent that any such amount is received or so paid out of income chargeable to tax under this Act on such trustee it shall be deemed to be income—

(a) in any case other than that of an annuity directed to be paid free of tax—

(i) of such gross amount as would, after deduction or tax at the rate paid or payable on such income by such trustee, be equal to the amount received or so paid; and

(ii) that has borne tax at such rate;

(b) in the case of an annuity directed to be paid free of tax, of such gross amount as is equal to the amount of such annuity together with the amount of the sums paid by such trustee to the annuitant to meet the liability of the annuitant to tax on such annuity:

Provided that in the case of any amount paid by an executor or an administrator to a person entitled thereto under the will or on intestacy (otherwise than under any settlement under the will) the amount so paid shall be deemed not to be chargeable income of the person to whom or on whose behalf it is paid where tax at the administration rate has been paid on such amount.

[PCh332s12]12. Collusive agreements or hirings

(1) Where—

(a) in computing gains or profits a deduction is allowable in respect of a payment made under a contract of hiring of an asset of any description; and

(b) before, at or after the time when the payment is made the parties to the contract enter into an agreement under which the ownership of, or any interest in, the asset passes to the person who made the payment or to an associate of his in return for a capital sum which is less than the true market value of the asset at that date,

the person or associate, as the case may be, shall be chargeable to tax on the amount by which the true market value exceeds that capital sum.

(2) Subsection (1) of this section shall not apply to payments made under a contract of hiring entered into before 1st July, 1973.

(3) In this section—

"asset" means any description of property or rights other than land or rights or interests in or over land;

"associate" means—

(a) in relation to any individual—

(i) the spouse of the individual;

(ii) any person related to the individual or his spouse by consanguinity or affinity;

(iii) any partner of the individual or his spouse;

(b) in relation to any person—

(i) any body of persons of which that person and persons associated with him have control;

(ii) any person nominated by such person to receive the ownership of or any interest in an asset under the kind of agreement mentioned in paragraph (b) of subsection (1) of this section;

(c) in relation to any corporation (hereinafter referred to as "the first-mentioned corporation")—

(i) any other corporation (hereinafter referred to as "the second-mentioned corporation") which owns more than twenty-five percent of the issued share capital of the first-mentioned corporation;

(ii) any other corporation, more than twenty-five percent of the issued share capital of which is owned by such first mentioned corporation or such second-mentioned corporation;

"contract of hiring" means any kind of agreement or arrangement under which payments are made for the use of or otherwise in respect of, an asset.

[PCh332s13]13. Tax on capital gains income Acts Nos. 16 of 1974 s. 10; 7 of 1976 s. 25; 16 of 1983 s. 14; 17 of 1990 s. 25; of 1993 s. 16; 13 of 1996 s. 25; 12 of 1999 s. 13; 11 of 2000 s.

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(1) Where in any year of income any person sells any interest held by him in any premises or sells any financial asset owned by him in the United Republic, the difference between—

(a) the value of consideration for which such interest or such financial asset is sold; and

(b) so much of the adjusted cost to such person of such interest or financial asset as has not been claimed as deduction in respect of the capital expenditure to such interest or such financial asset under the Second Schedule,

shall be deemed to be capital gains income of such person accrued in or derived from the United Republic in the year of income in which the sale takes place and shall be chargeable to tax at the capital gains tax rate:

Provided that—

(i) no interest under subsection (1) held by any person in any premises or financial assets shall be transferred or registered without a certificate of clearance issued by the Commissioner in that behalf certifying that capital gains tax has been paid or is not payable;

(ii) where the Commissioner is of the opinion that the actual value of the interest sold by any person is higher than the one declared by him, he may, if he determines it to be just and

reasonable, direct that such adjustment be made with respect to the value of the interest sold as he considers appropriate.

(2) For the purposes of this section, the expression "adjusted costs" means the costs arrived at after adjusting for inflation or devaluation using the inflation or exchange rates, as the case may be, applicable at the time of the sale.

(3) For the purposes of this section where any interest or property to which this section applies is sold by way of a transaction in the nature of a hire purchase, the interest or property shall be deemed to have been sold on the date on which the possession is delivered and any interest payable shall be deemed to form part of the selling price.

(4) This section shall not apply to the sale of any interest in premises where the proceeds of sale or the profits realised are income chargeable to tax under any other provisions of this Act.

(5) The provisions of this section shall not apply to the sale of shares issued by a company listed under the Dar es Salaam Stock Exchange.

(6) The capital gains tax payable under this section shall be due and payable within thirty days from the date of sale.

(7) Any person who disputes an assessment made upon him under this Act may appeal to the Commissioner in accordance with the provisions of the Tax Revenue Appeals Act, 2000.

[PCh332s13A]13A. Repealed

[Repealed by Act No. 25 of 1997 s. 25.]

[PCh332s13B]13B. Repealed

[Repealed by Act No. 25 of 1997 s. 26.]

[PCh332s13C]13C. Repealed

[Repealed by Act No. 11 of 2000 s. 23.]

PART III

EXEMPTION FROM TAX (ss 14-15)

[PCh332s14]14. Certain income exempt from tax, etc.

(1) Notwithstanding anything in Part II, the income specified in the First Schedule which accrued in or was derived from the United Republic or such other of the Partner States as may be so specified shall be exempt from tax to the extent so specified.

(2) The Minister may, by order in the Gazette, amend, vary or replace the First Schedule.

[PCh332s15]15. Minister may exempt incomes from tax Act No. 16 of 1974 s. 11

(1) 1 The Minister may, by order in the Gazette provide—

(a) that any income or class of incomes accrued in or derived from the United Republic shall be exempt from tax to the extent specified in such order; or

(b) that any exemption under the First Schedule shall cease to have effect either generally or to such extent as may be specified in such order.

(2) The Minister may, by order under his hand or by order published in the Gazette, remit in whole or in part the tax payable by any person in respect of any year of income specified in such order.

(3) The Minister may, by order in the Gazette, exempt from tax such portion of the income of an agricultural marketing organisation as the Minister is satisfied has been or will be paid into a reserve fund established by such organisation for price stabilisation and every such exemption shall be subject to such administrative and accounting regulations as the Minister may, by order, specify either generally or in relation to any such particular organisation.

(4) For the purposes of subsection (2) "agricultural marketing organisation" means any corporation or other body of persons charged by any written law with the responsibility for the orderly marketing of any agricultural or pastoral product, and "agricultural product" in this subsection includes livestock and any product of livestock.

PART IV

ASCERTAINMENT OF TOTAL INCOME (ss 16-21)

[PCh332s16]16. Deductions allowed Acts Nos. 16 of 1974 s. 12; 20 of 1978 s. 20; 12 of 1979 s. 25; 10 of 1980 s. 21; 12 of 1985; 10 of 1986 s. 21; 17 of 1990 s. 27; 18 of 1991 s. 29; 1 of 1994 s. 14; 13 of 1996 s. 26; 27 of 1997 s. 6; 8 of 1998 s. 23; 12 of 1999 s. 14; 11 of 2000 s. 24; 18 of 2002 s. 34

(1) For the purpose of ascertaining the total income of any person for any year of income there shall, subject to section 17, be deducted all expenditure incurred in such year of income

which is expenditure wholly and exclusively incurred by him in the production of such income and where under section 31 any income of an accounting period ending on some day other than the last day of such year of income is, for the purpose of ascertaining total income for any year of income, taken to be income for any year of income, then such expenditure incurred during such period shall be treated as having been incurred during such year of income.

(2) Without prejudice to subsection (1) of this section, in computing for any year of income the gains or profits chargeable to tax under paragraph (a) of subsection (2) of section 3, the following amounts shall be deducted—

(a) bad debts incurred in the production of such gains or profits which the Commissioner considers to have become bad, and doubtful debts so incurred to the extent that they are estimated to the satisfaction of the Commissioner to have become bad, during such year of income;

(b) any deductions to be made under the Second Schedule in respect of such year of income;

(c) any expenditure of a capital nature incurred during such year of income by the owner or occupier of farm land for the prevention of soil erosion;

(d) any expenditure of a capital nature incurred in such year of income by any person on legal costs and stamp duties in connection with the acquisition of premises used or to be used by him for the purposes of his business;

(e) any expenditure, other than expenditure referred to in paragraph (f), incurred in connection with any business before the date of commencement of such business where such expenditure would have been deductible under this section if incurred after such date, so however that such expenditure shall be deemed to have been incurred on the date on which such business commenced;

(f) in the case of the owner of premises, any sums expended by him during such year of income for structural alterations to the premises where such expenditure is necessary to maintain the existing rent:

Provided that no deduction shall be made for the cost of any extension to, or replacement of, such premises;

(g) the amount considered by the Commissioner to be just and reasonable as representing the diminution in value of any implement, utensil or similar article, not being machinery or plant in respect of which a deduction may be made under the Second Schedule, employed in the production of gains or profits;

(h) any entrance fee or annual subscription paid during such year of income to a trade association which has made an election under subsection (2) of section 21;

(i) in the case of gains or profits of the owner of any land from the sale of, or the grant of the right to fell standing timber which was growing on such land at the time such owner acquired such land—

(i) where such land was acquired for valuable consideration, so much of such consideration as the Commissioner may determine to be just and reasonable as representing the cost of such standing timber; or

(ii) where no valuable consideration was given for the land, so much of such amount as the Commissioner may determine to be just and reasonable as representing the value of such standing timber at the time such owner acquired such land, as is attributable to such timber sold during such year of income;

(j) in the case of gains or profits from the sale of standing timber by a person who has purchased the right to fell such timber, so much of the price paid for such right as the Commissioner may determine to be just and reasonable as attributable to the timber sold during such year of income;

(k) any expenditure of a capital nature incurred in such year of income by the owner or tenant of any agricultural land, as defined in the Second Schedule, on clearing such land, or on clearing and planting thereon permanent or semi-permanent crops;

(l) such amount in relation to mining operations which during the year of income has been—

(i) expended; or

(ii) in a manner approved by the Commissioner, was used in order to provide funds at a future date to defray expenses,

in connection with remedying, to the satisfaction of the Minister responsible for minerals, upon cessation of mining operations, any damage caused by such mining operations to the surface of, and the environment on, the land in question:

Provided that any amount provided for under subparagraph (ii) which is not used for the purpose specified herein, shall be included in the income of such person in the year of income following the year of income within which that person ceases to carry on mining operations, but if the amount so provided or any part of it is at any time, before the cessation of mining operations, utilised for any purpose other than the purpose specified therein, the amount so utilised shall be included in the income of that person in the year of income within which the amount is so utilised;

(m) any expenditure incurred by any person for the purposes of any business carried on by him being—

(i) expenditure of a capital nature on scientific research; or

(ii) expenditure not of a capital nature on scientific research; or

(iii) a sum paid to any scientific research association approved for the purposes of this paragraph by the Commissioner as being an association which has as its object the undertaking of scientific research related to the class of business to which such business belongs;

or

(iv) a sum paid to any university, college, research institute or other similar institution approved for the purposes of this paragraph by the Commissioner for such scientific research as is mentioned in subparagraph (iii) of this paragraph;

(n) any sum contributed in such year of income by an employer to a national provident fund or other retirement benefits scheme established for employees in the United Republic by the provisions of any written law;

(o) any sum contributed in such year of income by an employer to a provident fund or a pension fund approved for the purposes of Part V and the sum so deductible shall be determined in accordance with section 25;

(p) any expenditure on advertising in connection with any business to the extent that the Commissioner considers just and reasonable, and for this purpose "expenditure on advertising" includes any expenditure intended to advertise or promote whether directly or indirectly, the sale of the goods or services provided by such business;

(q) [Repealed by R. L. Cap. 356 s. 11(i)(a).]

(r) the monetary value of free housing or any housing allowances of employees in agricultural or livestock development farms;

(s) [Repealed by Act No. 9 of 1988 s. 14.]

(t) any expenditure incurred by any employer for providing his employees with transport for travelling to and from the office and their residences;

(u) any payroll levy paid;

(v) vocational education training levy;

(w) without prejudice to the provisions of the Second Schedule where any corporation carries on business and has incurred expenditure in any year of income, there shall be made in computing his gains or profits for that year of income deduction equal to the amount of that expenditure:

Provided that—

(i) the provisions of this subsection shall not apply to capital expenditure on buildings;

(ii) the provisions of this subsection shall apply to a corporation holding a certificate of incentives granted by the Tanzania Investment Centre not later than the 30th June, 2002;

(x) any sum not exceeding two percent of the chargeable gains or profits of a business contributed in such year of income to a public institution or charitable or religious institution for the purposes of provision of general public health, education, water and road construction or maintenance:

(y) any tax or levy paid by any person to a local government in connection with any business carried on by him;

Provided that, for the purpose of this paragraph, chargeable gains or profits shall be the amount determined before the deduction allowed under this paragraph;

(3) Without prejudice to subsection (1) of this section in ascertaining the total income of any person for any year of income the following amounts shall be deducted—

(a) the amount of interest paid in respect of such year of income by such person upon any money borrowed by him and employed wholly and exclusively in the production of income chargeable under this Act to the extent to which it is not expense deductible in ascertaining the gains or profits chargeable under paragraph (a) of subsection (2) of section 3;

(b) any amount paid during such year of income by such person which is chargeable under paragraph (d) of the said subsection (2) of section 3, or would be so chargeable if it were derived from the United Republic:

Provided that if such person was entitled during such year of income to any income which is not so charged, the deduction under this paragraph shall be such proportion of such amount as his total income under this Act ascertained before any deduction allowable under this paragraph bears to his income from all sources for such year of income;

(c) in the case of a partner, the amount of the excess, if any, of his share of any loss incurred by the partnership, calculated after deducting the total of any remuneration and interest on capital payable to any partner by the partnership and after adding any interest on capital payable by any partner to the partnership over the sum of any such remuneration and any such interest so payable to him less any such interest so payable by him;

(d) the amount of any loss arrived at in computing for such year of income gains or profits chargeable to tax under paragraph (a) of subsection (2) of section 3 other than any loss incurred in any business which, having regard to the nature of the business to the principal occupation of the owner, partners, shareholders or other persons having a beneficial interest therein, to the relationship of any such person or to any other relevant factor, the Commissioner considers reasonable to regard it as not being carried on mainly with a view to the realisation of profits; and, without prejudice to the generality of the foregoing, a business shall be deemed not to be carried on for any year of income with a view to the realisation of profits where more than one quarter of the amount of the revenue expenditure incurred in such business in such year relates to goods, services, amenities or benefits, or to the production of goods, services, amenities or benefits, which are of a personal or domestic nature enjoyed by the owner, partners, shareholders or other persons having a beneficial interest in the business or a member of the family or the domestic establishment of any such person.

(4) Subject to paragraph (b) of this subsection—

(a) where the ascertainment of the total income of any person results in a deficit for any year of income, the amount of such deficit shall be an allowable deduction in ascertaining the income of such person for the following succeeding year; and

(b) where such deficit arises in whole or in part in respect of ascertainment of income derived from mining operations the amount of such deficit which so arises shall not be allowable as a deduction for such person in respect of income other than income derived from mining

operations and no deficit arising in respect of any other business carried on by that person shall be allowable as a deduction in respect of income derived from mining operations.

(4A) The provisions of subsection (4) shall not apply to a partnership firm.

(5) A person to whom this subsection applies who has succeeded to any business or to a share therein, either as a beneficiary under the will or on the intestacy of a deceased person who carried on, solely or in partnership, that business shall be entitled to a deduction in the year of income in which he so succeeds in respect of such part of any deficit in the total income of the deceased for his last year of income as is attributable to any losses incurred by the deceased in the business in that year of income or in earlier years of income to the same extent as the deduction had he not died.

(6) Subsection (5) shall apply to a person who is the widow, widower or child of the deceased person and to a person who was an employee or partner of the deceased person in that business; and, where there are two or more such persons, each such person shall be entitled to a deduction of so much of the whole amount deductible as his share in the business under the will or on the intestacy bears to the sum of the shares of all such persons.

(7) For the purposes of this section—

(a) "scientific research" means activities in the fields of natural or applied science for the extension of human knowledge; and when applied to any particular business includes—

(i) any scientific research which may lead to, or facilitate, an extension of such business or of businesses of that class and exclusively incurred by him in the production of the income;

(ii) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or in businesses of that class;

(b) expenditure of a capital nature on scientific research does not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research but, subject thereto, does include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of scientific research.

[PCh332s17]17. Deductions not allowed Acts Nos. 16 of 1974 s. 13; 7 of 1976 s. 26; 18 of 1991; 27 of 1997 s. 7; 18 of 2002 s. 35

(1) Save as otherwise expressly provided, for the purposes of ascertaining the total income of any person for any year of income, no deduction shall be allowed in respect of—

(a) any expenditure or loss which is not wholly and exclusively incurred by him in the production of the income;

(b) any capital expenditure, or any loss, diminution or exhaustion of capital.

(2) No deduction shall be allowed in respect of—

(a) any expenditure incurred by any person in the maintenance of himself, his family or establishment, or for any other personal or domestic purpose;

(b) any expenditure or loss which is recoverable under any insurance, contract, or indemnity;

(c) save to the extent specifically provided for by or under this Act, any income tax or tax of a similar nature paid on income;

(d) any sums contributed to any pension, saving, or provident scheme or fund, except as provided in paragraphs (n) and (o) of subsection (2) of section 16;

(e) any premium paid under an annuity contract;

(f) any expenditure incurred in the production of income deemed under section 10 of this Act to have accrued in or to have been derived from the United Republic where such expenditure was incurred by a non-resident person not having a permanent establishment within the United Republic;

(g) any interest on capital, wages, salary, commission or any other remuneration paid to any partner, or drawings of a partner from the partnership, in the ascertainment of the partnership income;

(h) any expenditure other than the standard maintenance cost incurred as an expenditure on the maintenance of a rented residential house;

(i) [Repealed by Act No. 18 of 2002 s. 35.]

(j) any expenditure incurred in the provision of technical services to a person carrying on mining operations where, in respect of the payment for such technical services, tax

has been charged by withholding from the gross amount of such payment pursuant to subsection (3B) of section 33.

[PCh332s18]18. Ascertainment of income of corporations, partnerships, etc., from farming Acts Nos. 9 of 1977 s. 24; 12 of 1977 s. 15; 17 of 1990 s. 28; 18 of 1991 s. 30

(1) This section shall not apply to an individual.

(2) The provisions of this section shall apply subject to the provisions of section 16 and of Part IV of the Second Schedule.

(3) Every farmer shall include in his return of income for each year of income the value of all stock held and not disposed of by him (hereinafter referred to as "the value of stock held") at the beginning and end of each year of income.

(4) The value of stock held at the beginning of any year of income shall be deemed to be—

(a) where the farmer carried on farming operations on the last day of the previous year of income, the value of stock held on that date; and

(b) where the farmer commenced farming during the year of income, the cost to him of any stock acquired prior to commencement of farming.

(5) The value of stock held at the end of any year of income shall be deemed to be the purchase price or, where the stock was acquired otherwise than by purchase, such price as the Commissioner may determine to be the current market price.

(6) Except at the commencement of farming, the value of stock held by any farmer, other than a company, shall be reduced by such amount as, in the opinion of the Commissioner, is reasonable having regard to the risk of mortality of such stock.

(7) For the purposes of this section any stock which is the subject of an agreement between the owner and any other person whereby the owner retains the right of ownership of such stock or of any progeny thereof, shall be deemed to be stock held and not disposed of by such owner.

(8) Where any person discontinues farming operations during a year of income but does not dispose of his stock, the value of stock held at the end of the year of income shall be included in his income for that year of income.

(9) Where any farmer makes a donation of any stock during any such year of income to any other person there shall be included in the gross income of that farmer for the year of income an amount equal to the price which, in the opinion of the Commissioner, is the current market price of such stock.

(10) In this section "stock" means all livestock and produce, and crops which have been harvested.

[PCh332s19]19. Ascertainment of gains or profits of business in relation to certain non-resident persons Acts Nos. 9 of 1977 s. 24; 12 of 1977 s. 15; 12 of 1981 s. 15

(1) Where a non-resident person carries on any business in the United Republic which consists of manufacturing, growing, mining, or producing or harvesting, whether from the land or

from water, any product or produce and sells outside, or for delivery outside the United Republic such product or produce, whether or not the contract of sale is made within or without the United Republic, or utilises such product or produce in any business carried on by him outside the United Republic, then the gains or profits from such business carried on in the United Republic shall be deemed to be income derived from the United Republic and to be gains or profits of such amount as would have accrued if such product or produce had been sold wholesale to the best advantage.

(2) Where a non-resident person carries on business with a related resident person and the course of such business is so arranged that it produces to the resident person either no profits or less than the ordinary profits which might be expected to accrue from such business if there had been no such relationship, then the gains or profits of such resident person from such business shall be deemed to be of such an amount as might have been expected to accrue if the course of such business had been conducted by independent person dealing at arm's length.

(3) For the purpose of ascertaining the gains or profits of any business carried on in the United Republic, no deduction shall be allowed in respect of any expenditure incurred outside the United Republic by a non-resident person other than expenditure which the Commissioner determines that adequate consideration has been given; and, in particular no deduction shall be allowed in respect of expenditure—

(a) on remuneration for services rendered by the non-resident directors (other than whole-time service directors) of a non-resident company the directors of which company have a controlling interest in the company in excess of five percent of the total income of the company,

calculated before the deduction of that expenditure, or of twenty-five thousand shillings in respect of all those directors taken together, whichever is the greater, so, however, that in no case shall a deduction be allowed in excess of one hundred and fifty thousand shillings;

(b) on executive and general administrative expenses except to the extent that the Commissioner may determine the expenditure to be reasonable, having regard to all the circumstances.

(4) When a non-resident person carries on any business in the United Republic through a permanent establishment in the United Republic, the gains or profits of the permanent establishment shall be ascertained without any deduction in respect of any interest, royalties or management or professional fees, rent, premium or like consideration paid or purported to be paid by the permanent establishment to the non-resident person.

(5) For the purpose of subsection (2) of this section, a person is related to another if—

(a) either person participates directly or indirectly in the management, control or capital of the business of the other; or

(b) any third person participates directly or indirectly in the management, control, or capital of the business of both.

[PCh332s20]20. Ascertainment of income of insurance corporations

(1) Notwithstanding any other provisions of this Act, this section shall apply for the purpose of computing the gains or profits of insurance corporations from insurance business which is chargeable to tax; and for the purposes of this Act a mutual insurance corporation shall

be deemed to carry on an insurance business the surplus from which shall be ascertained in the manner provided for in this section for ascertaining gains or profits and which shall be deemed to be gains or profits which are charged to tax under this Act.

(2) Where an insurance corporation carries on life insurance business in conjunction with insurance business of any other class, the life insurance business of the corporation shall be treated as a separate business from any other class of insurance business carried on by the corporation.

(3) The gains or profits for any year of income from the insurance business, other than life insurance business, of a resident insurance corporation whether mutual or proprietary, shall be the amount arrived at after—

(a) taking, for such year of income, the aggregate of—

(i) the amount of the gross premiums from such business (less such premiums returned to the insured and such premiums held in connection with such business); and

(ii) the amount of other income from such business including any commission or expense allowance received or receivable from re-insurers and any income derived from investments held in connection with such business; and

(b) deducting from such sums a reserve for unexpired risks referable to such business at the percentage adopted by the corporation at the end of such year of income and adding to such sum the reserve deducted for unexpired risks at the end of the previous year of income; and

(c) deducting from the figure arrived at under paragraphs (a) and (b) of this subsection—

(i) the amount of the claims admitted in such year of income in connection with such business less any amount recovered in respect thereof under reinsurance; and

(ii) the amount of agency expenses incurred in such year of income in connection with such business; and

(iii) the amount of any other expenses allowable as a deduction in such year of income in computing the gains or profits of such business under this Act.

(4) The gains or profits for any year of income from the insurance business, other than life insurance business, of a non-resident insurance corporation, whether mutual or proprietary, shall be the amount arrived at after—

(a) taking for such year of income, the aggregate of—

(i) the amount received or receivable in the United Republic of the gross premiums from such business (less such premiums returned to the insured and such premiums paid on re-insurance as relate to such business); and

(ii) the amount of other income from such business, not being income from investments received or receivable in the United Republic including any commission or expense allowance received or receivable from reinsurance of risks accepted in the United Republic; and

(iii) such amount of income from investments as the Commissioner may determine to be just and reasonable as representing income from investment of the reserves referable to such business done in the United Republic; and

(b) deducting from such sum a reserve from unexpired risks outstanding at the end of such year of income in respect of policies for which the premiums are received or receivable in the United Republic at the percentage adopted by the corporation in relation to its insurance business as a whole, other than life insurance, but adding to such sum the reserve deducted for similar unexpired risks at the end of the previous year of income; and

(c) deducting from the figure arrived at under paragraphs (a) and (b) of this subsection—

(i) the amount of the claims admitted in such year of income in connection with such business less any amount recovered in respect thereof under reinsurance; and

(ii) the amount of agency expenses incurred in such year of income in connection with such business; and

(iii) an amount being such proportion as the Commissioner may determine to be just and reasonable of such of the expenses of the head office of such corporation as would have been allowable as a deduction in such year of income in computing its gains or profits if the corporation had been a resident corporation,

in so far as such amounts relate to policies the premiums in respect of which are received or receivable in the United Republic.

(5) The gains or profits for any year of income from the life insurance business of a resident insurance corporation, whether mutual or proprietary shall be the aggregate of the following—

(a) the difference between the amount of the investment income of its life insurance fund and the expenses of management (including commission) referable thereto; and

(b) the amount of any interest paid by such corporation from its annuity fund on surrender of policies or on the return of premiums, other than any such interest which relates to premiums paid under an approved pension scheme or an approved pension fund.

(6) The gains or profits for any year of income from the life insurance business of a non-resident insurance corporation, whether mutual or proprietary, shall be the amount arrived at after—

(a) taking the same proportion of the investment income of its life insurance fund as the life insurance premiums received in the United Republic bear to the total life insurance premiums received or, if the Commissioner so determines it to be just and reasonable, as the actuarial liability in respect of its life insurance business (other than its annuity business) in the United Republic bears to the actuarial liability in respect of its total life insurance business (other than its annuity business); and

(b) deducting from the amount arrived at under paragraph (a) of this subsection the life insurance expenses of agencies in the United Republic and such proportion as the

Commissioner may determine to be just and reasonable of such of the life insurance expenses of the head office of such corporation as would have been allowable as a deduction in such year of income in computing its gains or profits if the corporation had been a resident corporation; and

(c) adding thereto the amount of any interest paid by such corporation from its annuity fund on the surrender of policies the premiums in respect of which were received in the United Republic or on the return of premiums received in the United Republic other than any such interest which relates to premiums paid under an approved pension scheme or an approved pension fund:

Provided that the Commissioner may, if he determines it to be just and reasonable, substitute some basis other than that set out in paragraph (a) of this subsection for the purpose of ascertaining the portion of the income from investments to be charged as being income derived from business carried on in the United Republic.

(7) In this section—

"annuity fund" means, where any annuity fund is not kept separately from the life insurance fund of the company, such part of the life insurance fund as represents the liability of the company under its annuity contracts;

"corporation" includes a body of persons whether or not incorporated;

"life insurance fund" does not include the annuity fund, if any, nor such part of the life insurance fund as represents the liability of the company under any approved annuity contract, approved trust scheme, approved pension scheme or approved pension fund;

"life insurance premiums" means premium referable to the life insurance business other than annuity business.

(8) The amount of the gains or profits from insurance business, both from life insurance and from other classes of insurance business arrived at under this section, shall be taken into account together with any other income of the corporation charged to tax in ascertaining the total income of such company.

[PCh332s21]21. Members' clubs and trade associations

(1) A members' club shall be deemed to be carrying on a business and the gross receipts on revenue account (including entrance fees and subscriptions) shall be deemed to be income from a business:

Provided that where not less than three quarters of such gross receipts are received from the members of such club, such body of persons shall not be deemed to be carrying on a business and no part of such gross receipts shall be income.

(2) A trade association may elect, by notice in writing to the Commissioner, in respect of any year of income, to be deemed to carry on a business charged to tax, whereupon its gross receipts on revenue account from transactions with its members (including entrance fees and annual subscriptions) and with other persons shall be deemed to be income from business for that and succeeding years of income.

(3) In this section—

"member" means—

(a) in relation to a members' club, a person who, while he is such a member, is entitled to an interest in all the assets of such club in the event of its liquidation;

(b) in relation to a trade association, a person who is entitled to vote at a general meeting of such trade association;

"members' club" means a club or similar institution all the assets of which are owned by or held in trust for the members thereof.

PART V

SPECIAL PROVISIONS RELATING TO RETIREMENT BENEFITS (ss 22-26)

[PCh332s22]22. Construction

In this Part, except where the context otherwise requires—

"approved fund" includes an approved pension fund and an approved provident fund;

"approved pension scheme" means a scheme relating to an approved pension fund;

"gross remuneration" means, in relation to an employee, the gains or profits from his employment together with his employer's contribution to an approved fund in respect of him;

"service pension scheme" means a scheme or arrangement relating to service in a particular employment and having for its object or one of its objects to make provision in respect of persons serving therein against future retirement or partial retirement, against future termination of service through death or disability, or against similar matters being a scheme or arrangement under which any part of the cost of the provision so made is or has been borne

otherwise than by those persons by reason of their service (whether it is the cost or part of the cost of the benefits provided, or of paying premiums or other sums in order to provide those benefits, or of administering or instituting the scheme or arrangement);

"trustees" means the persons, by whatever name called, having the management or control of a fund which either is or was an approved fund or which is a fund in relation to which an application is made under section 23 or section 24 for the approval of the Commissioner.

[PCh332s23]23. Approval of pension funds Act No. 8 of 1998 s. 24

(1) Where an employer has established any scheme for payment, under regulations relating thereto, of pensions and other benefits to his employees in respect of service with him on the retirement of such employees from such service or to the dependants of such employees on the death of such employees, then application under section 26 may be made for such scheme to be so approved by the Commissioner; and where any scheme is so approved it shall be known as an approved pension fund and for any year of income in which such scheme continues to be so approved the amount which may be deducted under section 16 by the employer shall be the employer's deductible pension contribution.

(2) Subject to subsection (3), the Commissioner shall not approve any scheme unless he considers that the regulations relating thereto have as their main object the provision of pensions to employees on their retirement from the service of the employer on or after attaining a specified age and unless the Commissioner is satisfied—

(a) [Omitted.];

(b) that such scheme complies with the requirements of the Employees Terminal Benefits Schemes (Registration and Regulation) Act *;

(c) that such regulations do not—

(i) provide for the payment to any employee during his life of any sum except a pension, which may, subject to this section, be commuted or, in the event of such employee leaving such service in circumstances in which no pension is payable to him, any contributions to the scheme together with reasonable interest thereon made in respect of him;

(ii) provide for the payment of such pension otherwise than on the retirement of such employee from such service on or after attaining the age of fifty-five years or on earlier retirement on account of any infirmity of mind or body or of abolition of office;

(iii) provide for the payment of any other sums on the death of such employee except a lump sum, or sums payable by way of annuity to the widow or widower or dependants of such employee;

(iv) provide for the payment of such pension otherwise than during the life of such employee or for the payment to the widow or widower of such employee of an annuity otherwise than for a term certain or during the life of such widow or widower or during the minority of any dependant of such employee;

(v) provide for such pension, where such employee has been in such service for 30 years or more, to be in excess of two-thirds of the highest average remuneration over any three consecutive years of his service or, where such employee has been in such service for less

than 30 years, to be in excess of an amount which bears to two-thirds of his average remuneration over the last three years of his service the same proportion as the number of his completed years of service bears to 30;

(vi) provide for the payment on the death of such employee of any lump sum in excess of one hundred and twenty thousand shillings by way of death benefit; and any lump sum payable to the executors or administrators of such employee by way of the return of contributions together with reasonable interest thereon shall not be regarded as a lump sum for the purposes of this subparagraph;

(vii) provide for the annuity, if any, payable to such widow or widower to be of a greater annual amount than such pension; and

(d) that such regulations do—

(i) provide that any sums payable under the scheme shall be paid in the United Republic;

(ii) provide that no pension, annuity or other sum payable under it shall be capable of surrender or assignment;

(iii) provide that, where any pension payable under it to such employee exceeds two thousand five hundred shillings per annum, not more than one-quarter of such pension may be commuted and that not more than one hundred and twenty thousand shillings may be payable by way of such commutation;

(iv) provide that no contribution made to the scheme by the employer or the employee shall be returnable to either of them except in the event of such employee leaving such service in circumstances in which no pension is payable to him or in the event of the winding up of the scheme;

(v) provide that every employee who contributes to such scheme shall have a specific right to benefits therefrom and shall be informed of the nature of such benefits;

(vi) provide, in any case where the employer is a company the directors whereof have a controlling interest therein, that no director, or the widow or widower or any dependant of such director, of such company shall be entitled to any payment under such scheme in respect of his service while he is such a director and that no contributions shall be made to such scheme and in respect of the service of such director; and for the purposes of this subparagraph director does not include a whole-time service director;

(vii) provide that, in respect of any employee, the aggregate of the contributions for any year of income of the employer and employee shall not exceed, where benefits are payable only in respect of such employee, twenty percent of his gross remuneration for such year of income or five-sixths of twenty thousand shillings, whichever is the less and, where benefit are payable also in respect of the widow or widower or dependant of such employee, twenty-four percent of such gross remuneration for such year of income or twenty thousand shillings, whichever is the less;

(viii) provide that, if such scheme is wound up, the assets thereof shall be applied first in the purchase of annuities and other benefits of a like nature to the pension and

other benefits to which such employee and the widow or widower or dependants of such employee were entitled under such scheme immediately before it was wound up and then, if there are any surplus assets after such purchase, in the purchase of enhanced annuities and other benefits for such employee, widow, widower or dependants (so, however, that such enhanced annuities and other benefits shall be of a like nature to such pension and other benefits to which such persons were so entitled and shall not result in any of such persons receiving any benefit greater than that which they could have received if such scheme had not been wound up) or in the repayment of the employer.

(3) The Commissioner may, if he considers it fit and subject to any conditions he thinks proper to impose—

(a) approve a scheme, the regulations relating to which otherwise satisfy subsection (2) of this section notwithstanding that such scheme—

(i) is established outside the United Republic and provides that any sums payable under the scheme are payable outside the United Republic if the scheme is established by an employer in connection with any business the greater part of which is carried on outside the United Republic and if the employees in the United Republic in relation to whom the scheme is established are liable under the terms of their service to serve in countries outside the United Republic and were recruited or engaged outside the United Republic, are in the United Republic solely for the purpose of serving the employer and are not citizens of the United Republic;

(ii) is established in connection with a function exercised in the United Republic by the employer, which is not a business;

(iii) provides for a pension to be paid to an employee before he attains the age of 45 years, but not before he attains the age of 40 years, if the Commissioner is satisfied that the nature of the service of such employee is one in which persons customarily retire before attaining the age of 45 years;

(iv) provides, in the event of the death of an employee after he has commenced to draw a pension under the scheme, for the payment of such a sum as together with the total amount paid to him by way of pension does not exceed the contributions made to the scheme in respect of him together with reasonable interest thereon;

(v) does not provide that all sums payable under the scheme shall be paid in the United Republic;

(vi) provides for the employer to recover out of the amount standing to the credit of any employee any sum due by the employee under this Act and paid on his behalf by the employer;

(b) approve a scheme notwithstanding that the regulations relating thereto do not satisfy the other provisions of this section if, in his opinion, such regulations satisfy substantially those provisions;

(c) approve part of a scheme where the regulations relating to that part satisfy substantially the other provisions of this section; and in any such case the part so approved shall be the approved pension fund.

[PCh332s24]24. Approval of provident funds

(1) Where an employer has established any fund for the payment, under regulations relating thereto, of lump sums and other benefits to his employees in respect of service with him on such employees leaving such service after a specified period of service or to the dependants of such employees on the death of such employees while in such service, then application under section 26 may be made for such fund to be approved by the Commissioner; and where any fund is so approved it shall be known as an approved provident fund and for any year of income in which such fund continues to be so approved the amount which such employer may deduct under section 16 shall be the employer's deductible provident fund contribution.

(2) Subject to subsection (3), the Commissioner shall not approve any fund unless he considers that the regulations relating thereto have as their main object the payment of lump sums to employees on their leaving the service of the employer after a specified period of service and unless the Commissioner is satisfied—

(a) that such fund is established under an irrevocable trust in connection with any business carried on wholly or partly in the United Republic by the employer; and

(b) that the provisions of the Employees Terminal Benefits Scheme (Registration and Regulation) Act * have been complied with in respect of such fund;

(c) that such regulations do not—

(i) provide for the payment to any employee during such service of any sum;

(ii) provide for the payment to such employee of any sum other than a lump sum on such employee leaving such service after a specified period of service or, in the event of

such employee leaving such service prior to the expiry of such period, and of an amount less than the aggregate of his contributions to the fund together with reasonable interest thereon;

(iii) provide for the payment, in the event of the death of such employee, to the widow or widower or any dependant of such employee of any sum other than the sum standing to the credit of such employee in such fund at the time of his death;

(iv) provide for the payment to such employer of any sum other than his contributions to the fund, together with reasonable interest thereon in respect of any employee who has left such service in circumstances in which he is not entitled to the employer's contributions;

(v) provide for the payment to any person of any other sum; and

(d) that such regulations do—

(i) provide that no sum payable to such employee out of the fund shall be capable of surrender or assignment;

(ii) provide that such employer shall not have any charge or lien on, or right to, any contribution to such fund by such employee or any interest thereon;

(iii) provide that every employee who contributes to such fund shall have a specific right to benefit therefrom and shall be informed of the nature of such benefits;

(iv) provide that the contributions to the fund in respect of an employee shall be credited to the employee's individual account in the fund at intervals not exceeding one year;

(v) provide that the contribution in any year of income of such employer in respect of any employee shall not exceed ten percent of such employee's gross remuneration in such year of income or two thousand four hundred shillings, whichever is the less;

(vi) provide that the total of the contributions to any approved provident fund by such employer in respect of an employee for all years of income shall not exceed fifty thousand shillings;

(vii) provide that such fund shall comprise only contributions by the employer in respect of his employees and contributions by the employees and any reasonable interest paid on such contributions and any securities purchased out of the amount standing to the credit of such fund, together with the interest paid on such securities;

(viii) provide that any sum due to such employee out of such fund shall be paid to him as soon as practicable after he leaves such service or, in the event of his death, shall be paid to the person entitled thereto as soon as practicable after such death;

(ix) provide, in any case where the employer is a corporation, that no director, other than a whole-time service director, of such corporation shall be entitled to any payment from such fund, and that no contributions shall be made to such fund, in respect of his service as such a director;

(x) provide that, if such fund is wound up, the accumulated balance due to each such employee shall only be payable to him on his leaving such service or on such employer ceasing to carry on his business, whichever is the earlier.

(3) The Commissioner may, if he considers it fit and subject to any conditions he thinks proper to impose—

(a) approve a fund the regulations relating to which otherwise satisfy subsection (2), notwithstanding that such regulations provide—

(i) for the payment of a lump sum to such employee prior to the expiry of a specified period of service if such lump sum is payable on such employee leaving such service on account of any infirmity of mind or body;

(ii) for the payment to such employee during such service of an amount in the nature of an advance which is returnable to the fund by such employee where such amount is paid on account of his illness or the illness of his or her spouse or his children;

(iii) for the payment to such employer out of the amount standing to the credit of any employee of any sum due by the employee under this Act and paid on his behalf by the employer;

(b) approve a fund notwithstanding that the regulations relating thereto do not satisfy the other provisions of this section if, in his opinion, such regulations satisfy substantially those provisions;

(c) approve part of a fund where the regulations relating to that part satisfy substantially the other provisions of this section; and in any such case the part so approved shall be the approved provident fund.

(1) For any year of income–

(a) the employer's deductible pension contribution shall be the amount of his ordinary annual contribution for such year of income to an approved pension fund:

Provided that where an employer makes a contribution to an approved pension fund which is not his ordinary annual contribution thereto, the Commissioner may permit the whole or part of such contribution to be included within the employer's deductible pension contribution for such year of income and any succeeding year of income;

(b) the employer's deductible provident fund contribution shall be the amount of his ordinary annual contributions for such year of income to an approved provident fund or to any national provident fund or national social security fund established by the Government.

(2) For the purposes of this section, the ordinary annual contribution–

(a) of an employer to an approved pension fund or an approved provident fund shall be the annual contribution, fixed in amount or computed by reference to the number of his employees or to their earnings or to their ordinary annual contributions, made by such employer to any such fund;

(b) of an employee to an approved pension fund shall be the annual contribution, fixed in amount or computed on a pre-determined basis by reference to his remuneration, made by such employee to such fund.

(1) Where application is made for the approval of any scheme under section 23 or of any fund under section 24, then the trustees of such scheme or fund shall make such application in writing to the Commissioner; and such application shall be accompanied by two copies of any instrument under which the scheme or fund is established and of the regulations relating to such scheme or fund.

(2) After consideration of any application referred to in subsection (1), the Commissioner shall inform the trustees of the scheme or fund in writing of his decision and, if such decision is an approval of the scheme or fund, of the year of income in relation to which it is approved, whether the scheme or fund is approved in whole or in part and of any conditions to which such approval is subject; and where any scheme or fund or part thereof has been approved by the Commissioner for any year of income, such scheme or fund or part thereof shall, subject to subsection (3), be deemed to be approved for each subsequent year of income unless the Commissioner withdraws approval under subsection (4).

(3) Where there is any alteration to the instrument establishing any approved fund or to any regulations relating to any such fund, then the trustees of such fund shall immediately inform the Commissioner in writing of such alteration and if the Commissioner is not so informed the approval of such fund shall be deemed to have been withdrawn as from the date of such alteration.

(4) The Commissioner may at any time by notice in writing withdraw his approval of any approved fund if, in his opinion—

(a) the conditions on which the approval of such fund was granted have not been complied with; or

(b) there has been any alteration to the instrument establishing such fund or to any regulations relating to any such fund; or

(c) any requirement under the Employees Terminal Benefits Schemes (Registration and Regulation) Act * has been contravened.

(5) The accounts of an approved scheme or fund shall be maintained in such form and for such period as the Commissioner may determine.

PART VI

TRANSACTIONS DESIGNED TO AVOID TAX (ss 27-28)

[PCh332s27]27. Transactions designed to avoid liability to tax

(1) Where the Commissioner is of the opinion that the main purpose or one of the main purposes for which any transaction was effected (whether before or after the enactment of this Act) was the avoidance or reduction of liability to tax for any year of income, or the prevention or obstruction of the collection of the tax due, or that the main benefit which might have been expected to accrue from the transaction in the three years immediately following the completion thereof was the avoidance or reduction of liability to tax, or the prevention or obstruction of the collection of the tax due, he may, if he determines it to be just and reasonable, direct that such adjustments shall be made as respect liability to tax as he considers appropriate to counteract the

avoidance or reduction of liability to tax or the prevention or obstruction of the collection of tax due which could otherwise be effected by the transaction.

(2) Without prejudice to the generality of the powers conferred by subsection (1) of this section those powers shall extend—

(a) to the charging to tax of, or collection of tax from, persons who, but for the adjustments, would not be charged to the same or to any extent;

(b) to the charging of a greater amount of tax than would be charged but for the adjustments;

(c) to the taking of steps for the recovery of the tax due as if the transaction had not been effected.

(3) Any direction of the Commissioner under this section shall specify the transaction or transactions giving rise to the direction and the adjustments in respect of liability to, or payment of, tax which the Commissioner considers appropriate.

[PCh332s28]28. Avoidance of tax liability by non-distribution of dividends Act No. 8 of 1998 s. 25

(1) Where the Commissioner is of the opinion that a private company has not distributed to its shareholders as dividends within a reasonable period, not exceeding twelve months after the end of its accounting such part of its income for that period as could lawfully be so distributed without prejudice to the requirements of the company's business, he may, subject to any directions of the Minister in that behalf, direct that such part of the income of the company shall

be treated for the purposes of this Act as having been distributed as a dividend to the shareholders in accordance with their respective interests and shall be deemed to have been paid on a date twelve months after the end of such accounting period.

(2) When the Commissioner is of the opinion that it is desirable to do so, he may direct that a charge be made upon any company in respect of adjustments to the liability of any shareholder as a result of a direction under subsection (1) of this section:

Provided that—

(a) if such a charge is made, such company shall be entitled to recover from such shareholder the amount of tax attributable to the adjustment made in respect of such shareholder; and

(b) where an adjustment is made under this section relating to the distributable profits of a company and such profits are subsequently distributed, the proportionate share therein of any shareholder shall be excluded in computing the total income of such shareholder.

(3) A private company may at any time before making a distribution of a dividend to its shareholders inquire of the Commissioner whether such distribution would be regarded by him as sufficient for the purposes of subsection (1) of this section, and the Commissioner, after calling on the company for such information as he may reasonably require, shall advise the company whether or not he proposes to take action under this section.

(4) Where under this section part of the income of a company is treated as having been distributed and divided to its shareholders and, in consequence thereof, another company is treated as having received such dividend, then for the purpose of applying the provisions of subsection (1) of this section to such other company, the dividend which it is treated as having been received shall be deemed to be part of the income of such other company available for distribution by such other company to its shareholders as dividends.

(5) [Repealed by Act No. 8 of 1998 s. 25.]

PART VII

PROVISIONS RELATING TO SETTLEMENTS (ss 29-30)

[PCh332s29]29. Income settled on children

(1) Where under any settlement, any income is paid in any year of income during the life of the settlor to or for the benefit of a child of the settlor, such income shall be deemed to be income of the settlor for such year of income and not income of any other person:

Provided that this subsection shall not apply to any year of income in which—

- (a) the income so paid does not exceed fifty-five thousand shillings; or
- (b) the child attains the age of eighteen years.

(2) For the purposes of, but subject to, this section—

(a) income which is dealt with under a settlement so that it, or assets representing it, will or may become payable or applicable to or for the benefit of a child of the settlor in the

future (whether on the fulfilment of a condition or the happening of a contingency, or as the result of the exercise of a power of discretion, or otherwise) shall be deemed to be paid to or for the benefit of that child;

(b) any income so dealt with which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable;

(c) in relation to any settlor, only income originating from that settlor shall be taken into account as income paid under the settlement to or for the benefit of a child of the settlor.

(3) Where under subsection (1) of this section any tax is charged on and is paid by the person by whom the settlement was made, that person shall be entitled to recover from any trustee or other person to whom the income is payable under the settlement the amount of the tax so paid and, for that purpose, to require the Commissioner to furnish to him a certificate specifying the amount of the tax so paid, and any certificate so furnished shall be conclusive evidence of the facts stated therein.

(4) Where the amount of the tax chargeable upon any person for any year of income is, by reason of subsection (1) of this section, affected by any tax deducted from the income under Head B of Part IX, the amount by which the tax is affected shall, if the amount of tax is thereby reduced, be paid by him to the trustee or other person to whom the income is payable under the settlement or, where there are two or more such persons, it shall be apportioned among those

persons as the case may require; and if any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the Commissioner whose decision thereon shall be final.

(5) Any income which is deemed under this section to be the income of any person shall be deemed to be the highest part of his income.

(6) This section shall apply to every settlement, wheresoever it was made or entered into and whether it was made or entered into before or after the commencement of this Act, except a settlement made or entered into before 1st January, 1939, which immediately before that date was irrevocable, and shall (where there are two or more settlors or persons who made the settlement) have effect in relation to each settlor as if he were the only settlor.

(7) In this section—

(a) "child" means a child under the age of eighteen years and includes a step-child, an adopted child, and a child born out of wedlock;

(b) "settlement" includes any disposition, trust, covenant, agreement, arrangement, or transfer of assets, but does not include any such disposition, trust, covenant, agreement, arrangement, or transfer of assets resulting from an order of court unless such order is made in contemplation of this provision;

(c) "settlor", in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and any person who has provided or undertaken

to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement;

(d) reference to income originating from a settlor are references to—

(i) income from property originating from that settlor; and

(ii) income provided directly or indirectly by that settlor;

(e) references to property originating from a settlor are references to—

(i) property which that settlor has provided directly or indirectly for the purposes of the settlement; and

(ii) property representing that property; and

(iii) so much of any property which represents both property so provided and other property as, on such apportionment as the Commissioner may determine to be just and reasonable, represents the property so provided;

(f) references to—

(i) property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person;

(ii) property which represents other property include references to property which represents accumulated income from that other property.

(8) Where, under this section, income is deemed to be income of the settlor, it shall be deemed to be income received by him as a person beneficially entitled thereto under the settlement.

[PCh332s30]30. Income from certain settlements deemed to be income of settlor

(1) All income which in any year of income accrued to or was received by any person under a settlement from assets remaining the property of the settlor shall, unless such income is deemed under section 29 of this Act to be income of the settlor for an earlier year of income, be deemed to be income of the settlor for the year of income in which it so accrued to or was received by such person and not income of any other person whether or not such settlement is revocable and whether it was made or entered into before or after the commencement of this Act.

(2) All income which in any year of income accrued to or was received by any person under a revocable settlement shall be deemed to be income of the settlor for such year of income and not income of any other person.

(3) Where in any year of income the settlor, or any relative of the settlor, or any person, under the direct or indirect control of the settlor or any of his relatives or the settlor and any of his relatives, by agreement with the trustees of a settlement in any way, whether by borrowing or otherwise, makes use of any income arising, or for any accumulated income which has arisen, under such settlement to which he is not entitled thereunder, then the amount of such income or

accumulated income so made use of shall be deemed to be income of such settlor for such year of income and not income of any other person.

(4) For the purposes of this section, a settlement shall be deemed to be revocable if, under its terms, the settlor—

(a) has a right to reassume control, directly or indirectly, over the whole or any part of the income arising under the settlement or of the assets comprised therein; or

(b) is able to have access, by borrowing or otherwise, to the whole or any part of the income arising under the settlement or of the assets comprised therein; or

(c) has power, whether immediately or in the future and whether with or without the consent of any other person, to revoke or otherwise determine the settlement and in the event of the exercise of such power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property comprised in the settlement or to the income from the whole or any part of such property:

Provided that a settlement shall not be deemed to be revocable by reason only that under its terms the settlor has a right to reassume control, directly or indirectly, over any income or assets relating to the interest of any beneficiary under the settlement in the event that such beneficiary should predecease him.

(5) In this section—

"relative" of a person means—

(i) his spouse;

(ii) any ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, step-father, step-mother, step-child, adopted child, and, in the case of an adopted child, his adopter or adopters;

(iii) the spouse of any such relative as is mentioned in subparagraph (ii) of this definition;

"settlement" includes any disposition, trust, covenant, agreement arrangement, or transfer of assets, other than—

(i) a settlement made for valuable and sufficient consideration;

(ii) any agreement made by an employer to confer a pension upon an employee in respect of any period after the cessation of employment with such employer, or to provide an annual payment for the benefit of the widow or any relative or dependant of such employee after his death, or to provide a lump sum to an employee on the cessation of such employment.

(6) Where, under this section, any tax is charged on and is paid by the settlor, the settlor shall be entitled to recover from any trustees or other person to whom the income is payable under the settlement the amount of the tax so paid, and for that purpose to require the Commissioner to furnish to him a certificate specifying the amount of the tax so paid; and any certificate so furnished shall be conclusive evidence of the facts appearing therein.

(7) Where, under this section, income is deemed to be income of the settlor, it shall be deemed to be income received by him as a person beneficially entitled thereto under the settlement.

PART VIII

ACCOUNTING PERIODS AND CESSATION OF BUSINESS (ss 31-32)

[PCh332s31]31. Accounting periods not coinciding with year of income, etc.

(1) Where any person usually makes up the accounts of his business for a period of twelve months ending on any day other than 31st December, then for the purpose of ascertaining his total income for any year of income, the income of any such accounting period ending on such other date shall, subject to such adjustment as the Commissioner may consider appropriate, be taken to be income of the year of income in which the accounting period ends—

(a) in the case of a person other than an individual, as regards all income charged under section 3 of this Act; and

(b) in the case of an individual, as regards all income charged under that section other than gains or profits from any employment or services rendered.

(2) Where any person makes up the accounts of his business for a period greater or less than twelve months, the Commissioner may, subject to such adjustments as he may consider appropriate, including the assessment for any year of income which, but for any alteration in the date to which the accounts of the business are made up, would have been assessed for such year

of income, treat the income of any accounting period as income of the year of income in which the accounting period ends, and tax shall be charged accordingly.

[PCh332s32]32. Income and expenditure after cessation of business

(1) Where any sum is received by any person after the cessation of his business which, if it had been received prior to such cessation would have been included in the gains or profits from such business, then, to the extent to which such sum has not already been included in such gains or profits, such sum shall be income of such person for the year of income in which such sum is received.

(2) Where any sum is paid by any person after the cessation of his business which, if it had been paid prior to such cessation, would have been deductible in computing his gains or profits from such business, then, to the extent to which such sum has not already been deducted in computing such gains or profits, it shall be deducted in ascertaining his total income for the year of income in which it is paid and to the extent that such sum or remainder of such sum, as the case may be, cannot be so deducted, it shall be deducted in ascertaining his total income for the year of income in which such business ceased.

PART VIIIA

INSURANCE RELIEF (ss 32A-32D)

[PCh332s32A]32A. Insurance relief Acts Nos. 10 of 1986 s. 20; 13 of 1989 s. 20; 8 of 1998 s.

(1) A resident individual who, in any year of income—

(a) makes payments for insurance on his life or that of his spouse or dependent child and such insurance secures a capital sum on death, whether or not in conjunction with any other benefit, and that insurance is made with an insurance company usually carrying on the business of life insurance in the United Republic;

(b) has gains or profits in terms of section 5(2)(f); or

(c) makes current contributions to any approved pension or provident fund, for that year of income,

shall be entitled to a personal relief, in this Act referred to as "insurance relief".

(2) [Repealed by Act No. 13 of 1989 s. 20.]

(3) Nothing in this section shall be construed as providing for an insurance relief in respect of any premium paid under a policy of motor insurance.

[PCh332s32B]32B.-32D. Repealed

[Repealed by Act No. 8 of 1998 s. 26.]

PART IX

RATES, DEDUCTIONS AND SET-OFF OF TAX AND DOUBLE TAXATION RELIEFS (ss 33-45)

A. Rates of Tax (s 33)

[PCh332s33]33. Rates of tax Acts Nos. 16 of 1974 s. 14; 7 of 1976 s. 27; 18 of 1991 ss. 31 & 33; 14 of 1992 s. 24; 17 of 1995 s. 14; 1 of 1996 s. 12A; 13 of 1996 s. 27; 25 of 1997 s. 27; 27 of 1997 s. 8; 12 of 1999 s. 15; 11 of 2000 s. 25

(1) Subject to this section—

(a) (i) tax upon the total income of an individual, other than income received by a trustee in his capacity as trustee or of an individual who derives his income from carrying on a business the gross turnover of which is less than twenty million shillings per annum shall, subject to item (ii), be charged at the rates specified in Head B of the Third Schedule to this Act; and

(ii) tax upon the income of an individual who derives his income from carrying on a business the gross turnover of which is less than twenty million shillings per annum, shall be charged at the rates specified in paragraph 1A of Head B of the Third Schedule;

(b) tax upon the total income of a partnership shall be charged for any year of income at the partnership rates for such year of income; and

(c) tax upon the total income of the administrators of the estate of, or the executors of the will of, a deceased person received by such administrators or executors in their capacity as such (but not including any income forming part of a settlement under a will in respect of which the executors are the trustees) shall be charged for any year of income at the administration rates for such year of income;

(d) tax upon the total income of any person other than a person to whom paragraph (a) (b) or (c) applies shall be charged for any year of income at the corporation rates for such year of income.

(2) Tax upon the income of a non-resident person not having a permanent establishment in the United Republic, which consists of—

- (i) any management;
 - (ii) any professional fee which is not a fee for the provision of technical services;
 - (iii) any royalty;
 - (iv) any rent premium or like consideration for the use or occupation of property;
 - (v) any dividend;
 - (vi) any interest;
 - (vii) any pension or retirement annuity;
 - (viii) [Repealed by Act No. 25 of 1997 s. 27.];
 - (ix) any business insurance claim; or
 - (x) any fee for the provision of technical services to a person carrying on mining operations,
- shall be charged for any year of income at the appropriate non-resident rates for such year of income and shall not be charged to tax under subsection (1) of this section.

(2A) Tax upon the income of a resident or a person having a permanent establishment in the United Republic which consists of any dividend, interest or rent or payment for technical services provided to a person carrying on mining operations shall be charged for any year of income at the appropriate resident rates for such year of income and shall not be charged to tax under subsection (1) of this section:

Provided that the provisions of this subsection shall not apply to interest payable to a corporation.

(3) Tax upon capital gains income to which section 13 applies shall be charged for any year of income at the capital gains rates for such year of income and shall not be charged the tax under subsection (1) of this section.

(3A) Tax upon dividend, interest or rent to which section 3(2)(a)(iii) and 3(2)(b) applies shall be charged for any year of income at the appropriate withholding tax rate and shall not be charged to tax under subsection (1) of this section:

Provided that the provisions of this subsection shall not apply to interest payable to a corporation.

(3B) Tax on any payment for technical services provided to a person carrying on mining operations to which subsection (2)(a)(i) of section 33 applies shall be charged for any year of income at a rate of three percent of the gross amount and shall not be subject to tax under the provisions of subsection (1) of this section.

(4) Where the rates of tax are altered during any year of income—

(a) in the case of a person other than an individual, the tax payable in respect of that year of income shall be assessed in accordance with the rates in force on the date on which his accounting period expires;

(b) in the case of an individual whose income is not solely derived from employment, his income shall be deemed to have accrued equally during each month of the year of income and the tax in respect of the income in any month shall be assessed in accordance with rates in force during that month.

(5) Where the rates of tax are altered in any year of income, if any person so changes his accounting period in that year of income as to result in a reduction of the tax payable in respect of that accounting period, the change of the accounting period shall be deemed to be a transaction designed to avoid liability to tax within the meaning of that expression in section 27, unless the accounting period was changed with the consent in writing of the Commissioner.

(6) The Commissioner shall not consent to any change in any accounting period unless he is satisfied that such change is reasonably necessary for the efficient carrying on of the business and that such change would have been effected even if the rates of tax had not been altered.

B. Deductions of Tax (ss 34-40)

[PCh332s34]34. Deduction of tax from certain incomes Acts Nos. 9 of 1977 s. 25; 20 of 1978 s. 10; 18 of 1991 s. 32; 14 of 1992 s. 25; 10 of 1993 s. 17; 2 of 1994 s. 6; 1 of 1996 s. 34; 13 of 1996 s. 28; 25 of 1997 s. 28; 27 of 1997 s. 9; 2 of 1998 s. 27; 8 of 1998 s. 27; 12 of 1999 s. 16; 11 of 2000 s. 26; 14 of 2001 s. 15; 18 of 2002 s. 36

(1) Every person shall, upon payment of any amount to any non-resident person not having a permanent establishment in the United Republic in respect of–

- (a) any management fee;
- (b) any professional fee which is not a fee for the provisions of technical services;
- (c) any royalty;
- (d) any rent, premium or like consideration for the use or occupation of property;
- (e) any dividend;
- (f) any interest;
- (g) any pension or retirement annuity;
- (h) [Repealed by Act No. 25 of 1997 s. 28.];
- (i) business insurance claims;
- (j) the provision of technical services to a person carrying on mining operations;

(k) annual fees payable to a director other than a whole time service director of a corporation for serving as a member of the Board,

which is chargeable to tax, deduct therefrom tax at the appropriate non-resident withholding tax rate.

(2) Every person shall, upon payment of any amount to any person resident or having a permanent establishment in the United Republic in respect of–

- (a) any dividend; or
- (b) any interest other than interest on a loan from a deposit with a co-operative society;
- (c) any insurance commission;
- (d) [Repealed by Act No. 8 of 1998 s. 27.];
- (e) any rent;
- (f) technical services to any person carrying on mining operations;
- (g) annual fees payable to a director other than a whole time service director of a corporation for serving as a member of the Board,

which is chargeable to tax, deduct therefrom tax at the appropriate resident withholding tax rate.

(2A)(a) Every person shall, upon payment of any amount to any person resident or having a permanent establishment in the United Republic in respect of any fee, charge or like consideration for the carriage of goods by road, which is chargeable to tax, deduct from the amount tax at the rate of four percent of the gross amount payable:

Provided that this subsection shall not apply—

- (i) in any case where the amount is payable by an individual, unless the amount is in excess of ten thousand shillings;

(ii) in any case where the amount is payable to any person other than an individual, unless that person carries on transport business involving solely the carriage of goods by road for hire or reward;

(iii) in any case where the amount is payable to any person holding a certificate of Taxpayer Identification Number issued under section 3A(4).

(b) No deduction shall be made under paragraph (a) of this subsection from any payment which is income exempt from tax under this Act, or to which any order made under paragraph (c) of this subsection applies.

(c) The Minister may, by notice in the Gazette, exempt from the provisions of paragraph (a) of this subsection any payment or class of payments made by any person or category of persons resident or having a permanent establishment in the United Republic.

(2B) Every person shall upon payment of any amount exceeding one hundred thousand shillings per transaction to any person in respect of any fee, charge or like consideration for goods supplied or services rendered, which is chargeable to tax, deduct from that amount tax at a rate of two percent of the gross amount payable excluding Value Added Tax.

The provisions of subsection (2B) of this section, which relate to deductions of withholding tax on goods and services, shall not apply to holders of certificates of Tax Payer Identification Number issued under section 3A(4).

(2C) The requirement under subsection (2)(d) and (2B) shall only apply to payments made by the Government agency, a local government authority, a parastatal organisation, companies, banks, financial institutions and co-operative societies.

(2D) The requirements under subsection (2B) shall not apply to purchases of minerals from persons carrying on mining operations or in respect of payments of any amount to any person in respect of technical services provided to a person carrying on mining operations.

(3) No deductions shall be made under this section from any payment which is income exempt from tax under this Act, or to which any order made under subsection (6) or (7) of this section applies.

(4) Where any person deducts tax under this section he shall, within thirty days of making such deduction—

(a) remit the amount so deducted to the Commissioner together with a return in writing of the amount of the payment, the amount of tax deducted, the name of the person to whom payment is made and particulars of the consideration in respect of which the payment is made; and

(b) furnish the person to whom the payment is made with a certificate stating the amount of the payment and the amount of the tax deducted.

(5) Where any person who is required under this section to deduct tax—

(a) fails to make the deduction or fails to deduct the whole amount of the tax which he should have deducted; or

(b) fails to remit the amount of any deduction to the Commissioner within thirty days of the date on which such deduction was made or ought to have been made, the provisions of this Act relating to the collection and recovery of tax, and the payment of interest thereon, shall apply to the collection and recovery of such amount as if it were tax due and payable by such person, the due date for the payment of which was the date thirty days after the date on which such amount was or should have been deducted.

(6) The Minister may, by notice in the Gazette, exempt from the provisions of this section any payment or class of payments made by any person or class of persons resident or having a permanent establishment in the United Republic.

(7) The Minister may, by notice in the Gazette from time to time amend, vary or replace the Fourth Schedule.

[PCh332s34A]34A. Payment to include crediting Act No. 11 of 2000 s. 26

For the purposes of section 34, payment of any amount to any person shall include crediting of any amount in the account of that person in the books of accounts of any person.

[PCh332s35]35. Deduction of tax from annuities, etc., paid under a will, etc.

(1) The trustees of a will or settlement shall, upon payment of any annuity under such will or settlement, deduct therefrom tax at the rate paid or payable on the income out of which such annuity is payable:

Provided that—

(a) no deduction of tax shall be made from such part of an annuity as is paid out of income in respect of which no tax is payable;

(b) any such annuity directed to be paid free of tax shall be paid without deduction of tax, and any sums paid by the trustees to the annuitant to meet his liability to tax on the annuity shall also be paid without deduction of tax and the trustees shall be entitled to repayment of the tax paid by deduction or otherwise on such an amount of the income of the trust as is equal to the total of the annuity and the sums so paid;

(c) the Commissioner may authorise the trustees on payment of any annuity other than an annuity directed to be paid free of tax, to deduct from the amount of such annuity, tax at a rate lower than the rate paid or payable on such income, or no tax; and thereupon the trustees shall deduct from the amount of any such annuity so paid tax at such lower rate or no tax, as the case may be.

(2) For the purposes of this section where an annuity is not payable out of the income of specified assets, it shall be deemed to be payable out of income liable to tax under this Act to the extent to which such income is available for the payment thereof.

(3) In any case to which paragraph (a) of subsection (2) of section 11 of this Act applies, the trustee shall furnish each person to whom or on whose behalf any amounts are paid in any year of income with a certificate setting forth the gross amount of the payments, the amount of tax appropriate thereto and the net amount so paid in such year of income.

(1) An employer to whom this section applies shall, on the last day of every month, deduct from the salaries, wages and other moneys paid or payable by him to any person employed by him in respect of such person's employment with such employer during the month, the amount of tax payable by such employee on his income in respect of such employment and the employer shall remit to the Commissioner the amount so deducted within seven days from the date of the deduction.

(2) Where any employee of an employer to whom this section applies has a chargeable income in addition to the chargeable income in respect of his employment, the Commissioner may direct the employer to make deductions from the salaries, wages and other moneys payable to such employee, of the tax payable by such employee in respect of such additional chargeable income, and where an employer has been so directed, he shall, in addition to the deductions required to be made by subsection (1), make deductions of such amount and in such manner as the Commissioner may, in his directions, specify.

(3) This section shall not apply in respect of any employee who satisfies his employer that by virtue of the provisions of this Act or any order made thereunder, or by reason of the operation of any provisions of any other written law he is exempt from payment of tax.

(4) Where an employer who is required to deduct tax in respect of the income of his employee from the emoluments payable by him to the employee—

(a) fails to make the deduction or fails to deduct the whole amount of the tax which should have been deducted; or

(b) fails to remit to the Commissioner the amount of any deduction within seven days of the date on which such deduction was made,

the provisions of this Act relating to the collection and recovery of tax, and the payment of interest thereon, shall apply to the collection and recovery of such amount as if it were tax due and payable by such employer the due date for the payment of which was the date seven days after the date on which such amount was or should have been deducted.

(5) This section shall apply to employers of such number of persons or to such category or class of employers as the Minister may by order published in the Gazette direct.

(6) For the purposes of this section—

(a) "employer" includes his legal representative and any person who under any arrangement or by operation of law becomes liable to pay salaries, wages and other moneys due to an employee whose tax is to be recovered in the manner provided for by this section;

(b) where any employer to whom this section applies is paying any person any pension or other moneys in respect of such person's past employment with the employer or in respect of such person's past employment with any previous employer the person to whom such payment of pension or other moneys is made shall be deemed to be an employee of such employer, and this section shall apply to such person and the tax due from him accordingly as if such payment were payment of emoluments.

(7) Where in any case the salaries, wages or other moneys payable by an employer to an employee are payable at intervals of less than a month or at intervals of greater than a month, the provisions of this section shall apply as if such employee were entitled to monthly payments and—

(a) the chargeable income of such employee in respect of his employment for any month shall be deemed to be the income that would have accrued to the employee had the salaries, wages and other moneys been payable monthly;

(b) the employer shall pay the employee's tax in accordance with this section and make deduction of the payment made by him from any payment next to be made by him to the employee in respect of his employment or, where no further payment is to be made to the employee, the employer shall be entitled to recover the amount of the employee's tax paid by him under this section from the employee by way of a civil suit.

[PCh332s37]37. Repealed

[Repealed by Act No. 20 of 1978, s. 13.]

[PCh332s38]38. Repealed

[Repealed by Act No. 20 of 1978, ss. 14.]

[PCh332s39]39. Application to Government Act No. 8 of 1998 s. 28

The Provisions of this Part relating to deductions of tax shall bind the Government; and for avoidance of doubts it is hereby declared that the said provisions shall also bind the East Africa Development Bank.

[PCh332s40]40. Regulations and exemption Act No. 20 of 1978 s. 16

(1) The Minister may by regulations under this Act provide for the better carrying into effect of the objects and provisions of sections 34, 35, 36 and 39.

(2) The Minister may by an order in the Gazette exempt any person from any of the provisions of this Part which relate to deductions of tax.

C. Set-off of Tax (ss 41-45)

[PCh332s41]41. Set-off of tax deducted Act No. 20 of 1978 s. 10

Any amount of tax which—

(a) has been deducted under section 34, 35, 36 or 39;

(b) has been borne by any trustee in his capacity as such on any amount paid as income to any beneficiary,

shall be deemed to have been paid by the person chargeable with such tax and shall be set off for the purposes of collection against the tax charged on such person for the year of income in respect of which it was deducted, and where an assessment is made by the Commissioner on any person for any year of income under section 79 of this Act the amount of any tax which has already been paid under a provisional assessment on such person for such year of income shall be set off for the purpose of collection against the tax charged in the assessment made under the said section 79:

Provided that this section shall not apply in the case of any tax deducted at the administration rate on any payment by an executor or administrator in his capacity as such to any beneficiary.

[PCh332s42]42. Relief in respect of tax paid in another country Act No. 14 of 1992 s. 26

(1) If any resident person chargeable to tax for any year of income on income accrued in or derived from another country to which section 43 does not apply proves to the satisfaction of the Commissioner that he has paid tax in such country for such year of income in respect of the same income, he shall be entitled to relief by way of credit from the tax so charged on such income.

(2) The tax chargeable on the income of any person in respect of which credit is to be allowed under this section shall be taken to be the amount by which the tax chargeable (before allowance of credit under this section) in respect of his total income is increased by the inclusion of such income in his total income:

Provided that where tax is payable at different rates on different parts of such person's income, the tax chargeable on such income shall be apportioned on each such part in such amounts as the Commissioner may determine to be just and reasonable.

(3) Credit under this section shall not exceed the amount of the tax chargeable on the income in respect of which the credit is to be allowed, or upon each part of such income, as the case may be, computed in accordance with this Act.

[PCh332s43]43. Special arrangements for relief from double taxation

If arrangements have been made between the Government of the United Republic and the government of any other country with a view to affording relief from double taxation in relation to any income tax, or any tax of a similar character, imposed by the laws of that country; then such arrangements shall, notwithstanding anything in this Act, have effect as if such arrangements were provided for in this Act.

[PCh332s44]44. Computation of credits under special arrangements

(1) This section shall have effect where, under any special arrangement, foreign tax payable in respect of any income is to be allowed as a credit against tax chargeable in respect of such income.

(2) The amount of tax chargeable upon the income referred to in subsection (1) shall be reduced by the amount of the credit:

Provided that a credit shall not be allowed against tax for any year of income unless the person upon whose income the tax is chargeable was resident in the United Republic in such year of income.

(3) The tax chargeable upon the income of any person in respect of which a credit is to be allowed under a special arrangement shall be the amount by which the tax chargeable (before allowance of the credit) in respect of his total income is increased by the inclusion of such income in his total income:

Provided that where foreign tax is payable at different rates on different parts of the total income of such person, the tax chargeable on such income shall be apportioned to each such part in such amounts as the Commissioner may determine to be just and reasonable.

(4) A credit shall not exceed the amount of the tax chargeable upon the income in respect of which the credit is to be allowed or upon each part of such income, as the case may be, computed in accordance with this Act.

(5) Where—

(a) any special arrangement provides, in relation to dividends of some classes but not in relation to dividends of other classes, that foreign tax not charged directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so, what, credit is to be given against tax in respect of such dividends; and

(b) a dividend is paid which is not of a class to which such arrangement so applies, then, if such dividend is paid to a company which controls directly or indirectly, not less than one half of the voting power in the company paying the dividend, a credit shall be allowed as if such dividend were a dividend of a class in relation to which such arrangement so provided.

(6) A credit shall not be allowed under any special arrangement against tax chargeable upon the income of any person for any year of income if he elects by notice in writing to the Commissioner that credit shall not be allowed in the case of his income for such year of income.

(7) Where the amount of any credit or exemption given under any special arrangement is rendered excessive or insufficient by reason of any adjustment of the amount of any income tax,

or tax of a similar nature, payable either in the United Republic or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise; being an assessment or claim made within six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Republic or elsewhere, as are material in determining whether any and, if so, what credit is to be given.

(8) In this section "credit" means a credit mentioned in subsection (1).

[PCh332s45]45. Time limit

Subject to subsection (7) of section 44 of this Act any claim for an allowance by way or credit under this Part of the Act shall be made to the Commissioner within six years from the end of the year of income to which it relates.

PART X

SPECIAL PROVISIONS RELATING TO INCOMES OF HUSBAND AND WIFE (ss 46-47)

[PCh332s46]46. Wife's income from husband's business

(1) The income of a married woman derived from any employment—

(a) in any business carried on by her husband;

(b) with any partnership firm of which her husband is a partner,

shall be deemed to be the income of the husband and shall be chargeable to tax accordingly.

[PCh332s47]47. Application of provisions relating to deductions

Notwithstanding the provisions of section 46, the provisions of Part IX of this Act relating to deduction of tax from emoluments shall apply to any employment of a wife to which section 46 applies as if that section had not been enacted:

Provided that in assessing the tax payable by the husband on the aggregate of his income and the income of his wife to which section 46 applies a credit shall be allowed of the total tax recovered by deductions from the wife's emoluments.

PART XI

SPECIAL PROVISIONS RELATING TO INCOME OF EMPLOYEES OF THE COMMUNITY AND THE CORPORATIONS (ss 48-49)

[PCh332s48]48. Repealed

[Repealed by Act No. 8 of 1998 s. 29.]

[PCh332s49]49. Repealed

[Repealed by Act No. 8 of 1998 s. 30.]

PART XII

PERSONS ASSESSABLE (ss 50-56)

[PCh332s50]50. Income of a person assessed on him

Where under this Act the income of any person is chargeable to tax, then, subject to this Act, such income shall be assessed on, and the tax thereon charged on, such person.

[PCh332s51]51. Income of incapacitated person

The income of an incapacitated person shall be assessed on, and the tax thereon charged on, such person in the name of his trustee, guardian, committee or receiver appointed by a court in like manner and to the like amount such incapacitated person would have been assessed and charged if he were not an incapacitated person.

[PCh332s52]52. Income of non-resident person

(1) The income of a non-resident person shall be assessed on, and the tax thereon charged on, such person either in his name or in the name of his trustee, guardian or committee or of any attorney, factor, agent, receiver or manager.

(2) The master of any ship or the captain of any aircraft, owned or chartered by a non-resident person who is chargeable to tax under section 9 of this Act shall (though not to the exclusion of any other agent) be deemed the agent of such non-resident person for the purposes of this section.

(3) Nothing in this section shall render a non-resident person assessable or chargeable in the name of a broker, general commission agent or other agent where such broker, general commission agent, or agent is not the normal agent of the non-resident person.

[PCh332s53]53. Income of deceased person, etc.

(1) The income accrued to, or received prior to, the date of the death of a deceased person which, but for his death, would have been assessed and charged to tax on him for any year of income shall, subject to proviso (d) to subsection (1) of section 85 of this Act, be assessed on, and the tax charged on, his executors or administrators for such year of income.

(2) Any amount received by the executors or administrators of such deceased person which would, but for his death, have been his income for any year of income shall be deemed to be income of such executors or administrators and shall be assessed on, and the tax at the administration rate charged on, his executors or administrators for such year of income.

(3) Where any executors or administrators distribute the estate of a deceased person before any change in the rate of tax at which they are liable in respect of any year of income, then they shall not be liable in respect of any increased tax resultant from such change.

[PCh332s54]54. Liability of joint trustees

Where two or more persons are trustees, then any assessment made on the trustees in that capacity may be made on any one or more of them but each of such trustees shall be jointly and severally liable for the payment of any tax charged in any such assessment.

[PCh332s55]55. Liability of person in whose name income of another person is assessed

Any person in whose name the income of any other person is assessable under this Act shall be responsible, in relation to the assessment of such income, for doing all such things as are under this Act required to be done by a person whose income is chargeable to tax and shall be responsible for the payment of any tax so charged on him to the extent of any assets of such other

person which are in his possession on, or may come into his possession after, the date of the service of a notice of assessment on him.

[PCh332s56]56. Indemnification of representative

Every person responsible under this Act 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 is sufficient to pay such tax, and such person is hereby indemnified against any claim whatsoever for all payments so made by him.

PART XIII

RETURNS AND NOTICES (ss 57-78)

[PCh332s57]57. Return of income and notice of chargeability Acts Nos. 9 of 1988 s. 14; 17 of 1990 s. 29; 12 of 1999 s. 17

(1) The Commissioner may, by notice in writing, require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of income for any year of income containing a full and true statement of the income of such person, including income deemed to be his under this Act, liable to tax and of such particulars as may be required for the purposes of this Act; and such return shall include a declaration signed by such person, or by the person in whose name he is assessable, that such return is such a full and true statement:

Provided that in the case of a person carrying on a business who has made a provisional return of income, the return of income under this subsection may be made within a period not exceeding six months from the date to which he makes up the accounts of such business.

(2) In the case of the executors or administrators of the estate of a deceased person, or of the liquidator of a resident company, or partners of a firm being wound up or of a bankrupt, or of any person whom the Commissioner has reason to believe is about to leave the United Republic, the Commissioner may, by notice in writing, require him to furnish a return of income at any time whether before or after the end of the year of income to which such return relates.

(3) Every person chargeable to tax for any year of income who has not, within four months after the end of such year of income, been required to make a return of income for such year of income under subsection (1) of this section shall, within fourteen days after the expiration of such period of four months, give notice in writing to the Commissioner that he is so chargeable:

Provided that this subsection shall not apply in relation to—

(a) a person who carries on business the accounting period for which ends on some day other than 31st December and who has made a return of income for such year of income within four months of the end of such accounting period; or

(b) an employee—

(i) if such employee had no income chargeable to tax for such year of income other than his income from emoluments; and

(ii) if the tax payable in respect of such emoluments has been recovered by deduction under Part IX of this Act.

(4) Notwithstanding any other provision of this Act, the District Tax Advisory Committee may by notice in writing require any person who ordinarily resides within the district in relation to which the Committee is established, to furnish it with a statement of his income, including income deemed to be his under this Act along with such other particulars as are necessary for the purpose of enabling the Committee to discharge the functions conferred upon it by subsection (4) of section 129.

[PCh332s58]58. Provisional returns Acts Nos. 16 of 1974 s. 16; 25 of 1980 s. 8; 17 of 1990 s. 30; 18 of 1991 s. 34; 14 of 1992 s. 27

(1) Subject to this section, and without prejudice to his other powers under this Part, the Commissioner may, by notice in writing, require any person to furnish him for any year of income with a provisional return of income:

Provided that—

(a) an employee shall not be required to furnish such a return—

(i) if to the best of his knowledge and belief he will have no income chargeable to tax for such year of income other than from emoluments;

(ii) if he has reasonable grounds to believe that the whole of the tax payable by him in respect of such emoluments will be recovered by deduction under Part IX; and

(b) no person shall be required to furnish such a return if he has furnished a return under section 57.

(2) A provisional return of income for any year of income shall be furnished by any person—

(a) in a case to which subsection (1) of section 31 of this Act, applies, not later than three months after the commencement of the year of income to which such return relates;

(b) in any other case, not later than the 31st March in the year of income to which such return relates;

(3) A provisional return of income for any year of income shall contain an estimate—

(a) of the income of such person, including income deemed to be his under this Act, charged to tax, based on all the information, which he believes to be true, available to him at the date on which the return is made; but the estimate shall not be less than the finally settled income of that person for the preceding year of income; and

(b) of the tax chargeable on such income calculated by reference to the rates of tax appropriate to such person as are in force at the date of such return:

Provided that the Commissioner may, in each case, after considering all facts and circumstances relevant to the case, accept any estimate less than the finally settled income of that person for the preceding year of income.

(4) A provisional return of income for any year of income shall include a declaration by such person or by the person in whose name he is assessable that such provisional return contains full and true estimates of his income and tax to the best of his knowledge and belief.

(5) Any person who might be required to furnish a provisional return of income and who has not received a notice under subsection (1) of this section within the period specified in paragraph (a) of subsection (2) of this section shall, within fourteen days of the expiration of such period, notify the Commissioner in writing that he has not received such notice.

(6) Where—

(a) during the year of income any person discovers that the provisional return furnished under this section is likely to be substantially incorrect because of changed circumstances, he may furnish an amended provisional return; or

(b) any person is not satisfied with the estimated provisional assessment made under subsection (3) of section 80, he may submit a provisional return which will be deemed to be an amended provisional return under this subsection.

[PCh332s59]59. Documents to be included in return of income

(1) Where any person who carries on any business makes a return of income for any year of income and accounts of his business for any accounting period relating to such year of income have been prepared or examined by an auditor or accountant in a professional capacity, then he shall furnish with such return of income—

(a) a copy of such accounts signed by himself and by such auditor or accountant together with a certificate signed by such person—

(i) where such accounts were prepared by such auditor or accountant, specifying the nature of the books of accounts and documents from which such accounts were so prepared; and

(ii) stating whether and subject to what reservations, if any, he considers that such accounts present a true and fair view of the gains or profits from such business for such period;

(b) in the case of a corporation or partnership, with a certificate specifying the nature and amounts of all payments of whatsoever kind made, and the nature of any benefit, advantage, or facility of whatsoever kind granted to the director or, as the case may be, the partners, or to the employees whose emoluments are at the rate of twenty-four thousand shillings a year or more; and such certificate shall be signed by a majority of the directors or partners (of whom one shall be the partner who signed the return of income of the partnership), as the case may be, or, if there are less than three such directors or partners, by all such directors or partners.

(2) The Commissioner may, by notice in writing, require any person who has made a return of income and to whom subsection (1) of this section applies to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a certificate signed by the auditor or accountant who prepared or examined the accounts a copy of which was sent with such return—

(i) stating whether to the best of his knowledge and belief the certificate referred to in paragraph (b) of the said subsection is true and correct;

(ii) where such accounts were prepared by such auditor or accountant, recording the extent of his verification of the books of account and documents produced to him;

(iii) where such accounts were examined by such auditor or accountant, specifying the nature of the books of account and documents produced to him and the extent of his examination thereof.

(3) Where any auditor or accountant refuses to give any certificate referred to in subsection (1) or (2) of this section, he shall furnish to the person who made the return a statement in writing of such refusal and of the reasons therefor and the person who made such return shall send such statement to the Commissioner.

(4) Without prejudice to section 62, where any person who carries on any business makes a return of income for any year of income and accounts of his business for any accounting period relating to such year of income have not been prepared or examined by an auditor or accountant, then he shall furnish with such return of income such accounts of his business for the accounting period relating to such year of income as are necessary to support the information contained in such return together with a certificate signed by himself—

(i) specifying the nature of the books of account and documents from which such accounts were prepared;

(ii) stating whether such accounts reflect all the transactions of his business and present a true and fair view of the gains or profits from such business for such period.

(5) For the purposes of this section "accounts" means a balance sheet or a statement of assets and liabilities, and a trading account, profit and loss account, receipts and payments accounts, or other similar account however named.

[PCh332s60]60. Returns to be prepared and certified by qualified auditor or accountant Acts Nos. 26 of 1992 Sch.; 16 of 1994 s. 18; 8 of 1998 s. 19, s. 31 and s. 39; 11 of 2000 s. 27

(1) A return of income or a provisional return of income required to be submitted to the Commissioner by any person shall be deemed not to have been submitted unless such return was prepared or certified by a Certified Public Accountant in Public Practice or Certified Public Accountant.

(2) The provisions of subsection (1) shall not apply in the case of a return of the income of an individual or of a partnership firm—

(a) whose income is derived from employment; or

(b) whose gross annual income is less than seven million shillings, unless an individual elects by notice in writing to the Commissioner to be charged to tax at the rates applicable under section 33(1)(a)(i).

(3) Notwithstanding subsection (2) (b), an individual or a partnership firm shall, in each year of income, maintain simplified records of accounts as may be prescribed by the

Commissioner and which shall contain a full and true statement of income of such an individual or a partnership firm.

(4) For the purpose of this section, a Certified Public Accountant in Public Practice or a Certified Public Accountant shall not practise as a tax consultant without being so registered by the Commissioner.

(5) A Certified Public Accountant in Public Practice or Certified Public Accountant who practises as a tax consultant without fulfilling the conditions of the provisions of subsection (4), commits an offence.

(6) For the purpose of this section, a tax consultant to whom the provisions of subsection (4) apply includes any person who holds himself out to be or renders services as a tax consultant irrespective of whether or not such person is or is not a Certified Public Accountant in Public Practice or a Certified Accountant.

[PCh332s61]61. Books and accounts Acts Nos. 9 of 1977 s. 26; 26 of 1992 Sch.; 27 of 1997 s. 10

(1) The Commissioner may, by notice in writing, require any person or category of persons that carries on business to keep proper accounts and other records in relation to his business, and may further require that person or category of person to prepare statements of accounts in such form and in such manner as he may direct.

(1A) Where any person receives any payment of an amount of one thousand shillings or more in respect of goods sold or services rendered by him in the ordinary course of his business,

then, notwithstanding any custom in any trade or any provision to the contrary in this Act or any other written law or any agreement between the parties to the sale or the contract of services, as the case may be he shall issue a receipt to the person making the payment; and the person issuing the receipt shall enter or cause to be entered in the receipt and its duplicate copy the following particulars—

- (a) the date on which the payment is made;
- (b) the full name and address of the person who sold the goods or, as the case may be, rendered the services;
- (c) a full description of the goods sold or the services rendered and a statement of the quantity and value of goods or, in the case of services, the amounts charged in respect of the services rendered;
- (d) the full name and address of the person to whom the goods were sold or to whom the services were rendered, as the case may be;
- (e) such other particulars as the Commissioner may, by notice in writing, specify from time to time for the purposes of this section.

(1B) Every person who issues a receipt under section (1A) shall retain in his records the duplicate copy of every receipt issued by him and shall, unless the Commissioner directs otherwise, preserve that copy for a period of not less than seven years after the year of income to which the receipt relates.

(1C) Where a person appearing to be chargeable with tax fails or refuses to keep books of accounts which, in the opinion of the Commissioner, are adequate for the purpose of computing tax, then the Commissioner may, by notice in writing, require such person to keep such records, books, and accounts and to keep them in such language as may be specified in such notice.

(2) Every person carrying on business shall preserve every book of account and every document which is essential to the explanation of any entry in such book of account, relating to such business for a period of not less than ten years after the year of income to which such book of account or document relates:

Provided that, subject to section 62, this section shall not require the preservation of any document or book of account—

(a) in respect of which the Commissioner has notified that person in writing that preservation is not required; or

(b) in the case of a company which has gone into liquidation and has been finally dissolved or in the case of the cessation of a business other than one carried on by a company, for more than six months after the date on which the person having custody of the documents or books of account relating to such company or business, as the case may be, informs the Commissioner that he proposes to destroy them.

(3) [Repealed by R.L. Cap. 356 s. 11(1)(a).]

(4) A person carrying on mining operations shall maintain separate accounts and records in respect of such mining operations:

Provided that—

(a) a person carrying on mining operations may elect by notice in writing to the Commissioner given not later than the end of the year of income in which such mining operations commence to maintain and denominate such accounts and records in United States Dollars and such election shall be irrevocable; and

(b) where a person has so elected, income accrued or expenditure incurred in Tanzanian shillings or in foreign currency other than United States Dollars shall be entered in such accounts and records in United States Dollars in amounts calculated at the mid-point between the buying and selling rate of exchange between Tanzanian shillings or, as the case may be, foreign currency other than United States Dollars and United States Dollars quoted by the Bank of Tanzania on the date such income accrues or expenditure is incurred, or such other rate of exchange as may be approved by the Commissioner; and

(c) where a person has so elected, payment of any amount of tax assessed and denominated in United States Dollars shall be made on the due date in Tanzanian shillings in an amount equivalent to such amount of United States Dollars when converted at the buying rate for United States Dollars quoted by the Bank of Tanzania for transactions in like amounts upon such due date, unless by notice in writing to such person given not less than one month prior to the due date of any payment of tax assessed, the Commissioner determines that such payment shall be made in United States Dollars.

[PCh332s62]62. Production and preservation of books, attendances, etc.

(1) For the purpose of obtaining full information in respect of the income of any person or class of persons, the Commissioner may, by notice in writing, require, in the case of the income of any person, that person or any other person, and in the case of any class of persons, any person—

(i) to produce for examination by the Commissioner at such time and place as may be specified in such notice, any account, books of account, and other documents which the Commissioner may consider necessary;

(ii) to produce forthwith for retention by the Commissioner for such period as may be reasonable for their examination any accounts, books of account and other documents which the Commissioner may specify in such notice;

(iii) not to destroy, damage or deface on or after service of such notice any of the accounts, books of account and other documents so specified, without permission of the Commissioner in writing:

Provided that in the case of a financial institution listed in the Fourth Schedule to this Act the power of the Commissioner under this section shall be limited to the inspection of books or documents at the place at which they are kept and to the taking of copies of any relevant entries therein.

(2) The Commissioner may, by notice in writing, require any person entitled to or in receipt of any income, whether on his own behalf or as representative of any other person, to attend at such time and place as may be specified in such notice for the purpose of being

examined respecting his income or the income of any such other person or any transaction or matter appearing to be relevant thereto.

(3) The Commissioner may exercise the powers conferred on him by this section in relation to any year of income at any time prior to the expiry of seven years after such year of income:

Provided that, where the Commissioner has reasonable cause to believe that any fraud, any gross or wilful neglect has been committed in connection with, or in relation to, tax for any year of income, the Commissioner may exercise such powers in relation to any year of income.

[PCh332s63]63. Returns as to salaries, pensions, etc.

(1) The Commissioner may, by notice in writing, require any employer or any other person making the payment herein referred to, to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing—

(a) the names and addresses of all persons to whom or in respect of whom payments and allowances were made by him in respect of their employment, and the amounts of the payments and allowances made to each such person;

(b) the names and addresses of all persons to whom he paid pensions in respect of past employment with him or with any other person and the amount of the pension paid to each such person:

Provided that the Commissioner may by notice in writing exclude from such return any class of persons or payments or allowances.

(2) For the purposes of this section, references in subsection (1)–

(a) to payments and allowances made to persons in respect of their employment include all payments, and all benefits, advantages and facilities which are referred to in paragraphs (a), (b), (c) and (e) of subsection (2) of section 5;

(b) to persons employed include in relation to a corporation, a director of that corporation.

(3) By notice published in the Gazette, the Commissioner may require all employers, or any employer or class of employers, to furnish him within a reasonable time, not being less than thirty days from the date of the publication of such notice, with a written return containing the name and address of the employer and the number of his employees from whose emoluments tax is to be deducted in accordance with Part IX of this Act and with such other information as the Commissioner by such notice may require.

[PCh332s64]64. Returns as to fees, commissions, royalties, etc.

(1) The Commissioner may, by notice in writing, require any person carrying on any business to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of all payments made by such person of any kind specified in the notice, being–

(a) payments made in the course of the business for services rendered, or in anticipation of services to be rendered, by persons not employed in such business;

(b) payments for services rendered, or in anticipation of services to be rendered, in connection with the formation, acquisition, development, or disposal of the business or any part of it, by persons not employed in such business; or

(c) periodical or lump sum payments in respect of any royalty or management or professional fee.

(2) A return made under this section shall give the names and addresses of all persons to whom payments were made, the amounts of the payments and such other particulars as may be specified in the notice.

(3) For the purposes of this section—

(a) references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connection with the rendering of services;

(b) references to the making of payments include references to the giving of any form of valuable consideration,

and the requirement imposed by subsection (2) of this section to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.

[PCh332s65]65. Occupier's return of rent

The Commissioner may, by notice in writing, require any person who is the occupier of any premises to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing—

(a) the name and address of the owner or lessor of such premises or the person to whom the occupier pays any rent or other consideration in respect of the occupation by him of such premises; and

(b) a full and true statement of the rent or any other consideration payable for the occupation thereof.

[PCh332s66]66. Return of lodgers and inmates

The Commissioner may, by notice in writing, require any person who provides accommodation for any lodger or inmate to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing the name of every lodger or inmate who is at the date of the notice, or who was during any period specified in the notice, resident in his house, hotel or institution.

[PCh332s67]67. Return of income received on account of other persons

The Commissioner may, by notice in writing, at any time require any person who is in receipt of income as the representative of, or on behalf of, any other person who is chargeable to tax in respect thereof, or who would be so chargeable if he were a resident person, to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing—

- (i) a full and true statement of such income; and
- (ii) the name and address of the person to whom it belongs.

[PCh332s68]68. Returns as to income exempt from tax

The Commissioner may, by notice in writing, require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing a full and true statement—

(a) of all the income of such person which is exempt from tax or which such person claims to be so exempt;

(b) of all such particulars as the Commissioner may specify in such notice in relation to such income and in relation to any assets from which such income is derived.

[PCh332s69]69. Returns in relation to settlements

The Commissioner may, by notice in writing, require the trustees of, or any party to, a settlement referred to in section 29 or 30, to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return containing such particulars as he may consider necessary for the purposes of those sections.

[PCh332s70]70. Returns in relation to pension fund, etc.

The Commissioner may, by notice in writing, require the trustees of any pension fund or pension scheme and any employer who contributes to any such fund to furnish him within a

reasonable time, not being less than thirty days from the date of service of such notice, with a return containing—

(a) the name and place of residence of every person in receipt of any payment made under the regulations of such fund or scheme;

(b) the amount and nature of any such payment;

(c) a copy of the accounts of any such fund or scheme up to the last date prior to such notice to which such accounts have been made up; and

(d) such further information and particulars in connection with any such fund or scheme or the regulations relating thereto as the Commissioner may require.

[PCh332s71]71. Returns in relation to provident fund

The Commissioner may, by notice in writing at any time require any employer or trustees of a provident fund to furnish him within a reasonable time with a return giving such particulars relating to the provident fund as the Commissioner may in the notice specify.

[PCh332s72]72. Returns of resident company dividends

The Commissioner may, by notice in writing, at any time require any resident corporation which pays any dividend to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return giving the full name and address of each shareholder to whom such dividend was paid and, in respect of each shareholder, full particulars of his shareholding at the date of declaration of such dividend, the gross amount paid or payable to him, the tax deducted thereupon and such other particulars as the Commissioner may require,

and notified generally by a notice published in the Gazette or specified by notice in writing to any particular resident corporation.

[PCh332s73]73. Returns as to interest paid or credited by banks, etc.

(1) The Commissioner may, by notice in writing, require any person carrying on a business who, in the ordinary course of the operations thereof, receives or retains money in such circumstances that interest becomes payable thereon, and in particular, any financial institution in the Fourth Schedule to this Act, to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of all interest paid or credited by such person in the course of his business during a year specified in such notice or any such part of his business as may be specified, on money received or retained in the Partner States, giving the names and addresses of the persons to whom the interest was paid or credited and stating in each case, the amount of the interest:

Provided that the year specified in such notice shall not be a year ending more than three years before the date of the service of the notice.

(2) Without prejudice to the powers conferred by subsection (1) of this section, a separate notice may be served under that subsection as respects the transactions carried on at any such branch of a business as may be specified in such notice, and any such separate notice shall, if served on the manager or other person in charge of such branch, be deemed to have been duly served on the person carrying on the business; and where such a separate notice is so served as respects the transactions carried on at any branch, any notice subsequently served under the said

subsection on the person carrying on the business shall not be deemed to extend to any transactions to which such separate notice extends.

(3) This section shall apply in relation to any financial institution and shall have effect notwithstanding anything in any written law precluding the disclosure of any information in relation to any deposit with such financial institution.

[PCh332s74]74. Access to official information

The Commissioner may, by notice in writing, require any public officer—

(a) to permit the Commissioner or any person authorised by him to examine all registers, books, accounts, or records in the possession or control of such officer and to take such notes and extracts as may be considered necessary by the Commissioner; and

(b) to supply such particulars as may be required for the purposes of this Act which may be in the possession of such officer:

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

[PCh332s75]75. Further returns

The Commissioner may, by notice in writing, require any person to furnish him within a reasonable time specified in the notice, not being less than thirty days from the date of service of such notice, with further returns or particulars in relation to any matter contained in a return made

under this Act, or in relation to any transaction or matters appearing to the Commissioner to be relevant to the ascertainment of the income of any person.

[PCh332s76]76. Extension of time

Where any notice has been served under this Part requiring any return to be made within a specified number of days, the Commissioner may, by a further notice in writing served on the person, extend the period in which such return is to be made.

[PCh332s77]77. Returns deemed to be furnished by authority

A return, statement, or form, purporting to be furnished under this Act 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 contained therein.

[PCh332s78]78. Additional tax in event of failure to furnish a return or fraud in relation to a return Acts Nos. 16 of 1993 s. 16; 17 of 1990 s. 31; 8 of 1998 s. 40

(1) Any person who, in relation to any year of income, fails—

(a) to furnish a return of income or to give a notice to the Commissioner, as required by section 57 of this Act shall, for each period of one month or part thereof during which such failure continues, be charged with additional tax equal to two and one half percent of the normal tax; or

(b) to furnish a provisional return of income or to give a notice to the Commissioner, as required by section 58 shall, for each month or part thereof from the commencement of such

failure up to the date on which the Commissioner makes a provisional assessment for such year of income under subsection (3) of section 80 or an assessment under section 79, whichever is the earlier, be charged with additional tax equal to two percent per month of the normal tax in such provisional assessment or assessment, as the case may be:

Provided that—

(i) such additional tax shall not be less than five thousand shillings in the case of an individual, or ten thousand shillings in any other case;

(ii) if the Commissioner is satisfied that owing to absence from the United Republic, sickness or other reasonable cause the person was prevented from furnishing the return or giving notice within the required period, the Commissioner may at any time remit the whole or any part of such additional tax.

(2) Any person who, in relation to any year of income, omits from his return of income any amount which should have been included therein or claims any deduction to which he is not entitled, or at any time makes any incorrect statement in relation to any matter affecting his liability to tax shall, where such omission, claim or statement was due to any fraud or to any gross neglect, be charged for such year of income with an amount of tax equal to three times the difference between the normal tax chargeable on the basis of the return made by him, the deduction claimed by him or the statement affecting his liability to tax, as the case may be, and the normal tax properly chargeable in respect of his total income under this Act; and any person who, in his return of income for any year of income, deducts or sets off any amount the deduction or set-off whereof is not allowed under this Act, or shows as an expenditure or loss any amount

which he has not in fact expended or lost, shall be deemed for the purposes of this subsection to have omitted such amount from his return of income.

(3) Where any such failure, omission, claim, statement, deduction or set-off as is referred to in subsections (1) and (2) of this section has been made in connection with a return of income required under this Act to be furnished by any person on behalf of another person, both such person and such other person shall be jointly and severally liable for any additional tax charged under this section.

(4) Where any such failure, omission, claim, statement, deduction or set-off as is referred to in subsections (1) and (2) has been made in a return prepared or certified by a Certified Public Accountant in Public Practice or Certified Public Accountant such Certified Public Accountant in Public Practice as well as the person to whom the return relates, shall be jointly and severally liable for any additional tax charged under this section:

Provided that no liability under this section shall arise against a Certified Public Accountant in Public Practice or Certified Public Accountant who prepared or certified the return if he satisfies the Commissioner that he was not aware of and could not by the exercise of reasonable professional diligence have been aware of, such failure, omission, claim, statement, deduction or set-off.

(5) The additional tax charged under this section—

(a) shall be charged in an assessment or provisional assessment made under this Act whether or not any proceedings are commenced for any offence against this Act arising out of the same facts; and

(b) shall be payable in addition to the normal tax and shall be levied and collected as if it were normal tax:

Provided that such additional tax shall be deemed not to be tax paid or payable for the purposes of sections 11, 35, 41, 43 or 44, or of calculating any fine under subsection (1) of section 118.

(6) Notwithstanding anything in Part XV, where in any appeal against an assessment which includes additional tax one of the grounds of appeal relates to the charge of such additional tax, the decision of the Appeals Board or the Tribunal in relation to such ground of appeal shall be confined to the question—

(a) where additional tax has been charged under subsection (1) of this section, as to whether or not there was any failure within the meaning of that subsection; or

(b) where additional tax has been charged under subsection (2) of this section, as to whether or not the omission, claim, statement, deduction or set-off which gave rise to the charge was due to any fraud or to any gross neglect; or

(c) where an authorised accountant or auditor is made liable for the additional tax, whether reasonable professional diligence was exercised,

and where any such question is decided in favour of the person concerned no such additional tax shall be payable.

(7) The Minister may, in his discretion, at any time remit the whole or part of any additional tax imposed under subsection (2) of this section and a refusal to make a remission under this subsection shall not be questioned in any court.

(8) In this section "normal tax" means tax charged under this Act apart from this section and "additional tax" means tax charged under this section in addition to the normal tax.

PART XIV

ASSESSMENTS (ss 79-87)

[PCh332s79]79. Assessments

(1) Save as otherwise provided, the Commissioner shall assess every person who has income chargeable to tax as expeditiously as possible after the expiry of the time allowed to such person under this Act for the delivery of a return of income.

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

(a) accept such return and assess him on the basis thereof; or

(b) if he has reasonable cause to believe that such return is not true and correct, determine, according to the best of his judgment, the amount of the income of such person and assess him accordingly.

(3) Where a person has not delivered a return of income for any year of income, whether or not he has been required by the Commissioner so to do, and the Commissioner considers that such person has income chargeable to tax for such year, he may, according to the best of his judgment, determine the amount of the income of such person and assess him accordingly, but such assessment shall not affect any liability otherwise incurred by such person under this Act in consequence of his failure to deliver such return:

Provided that in the case of a person whose income in any year of income has been ascertained by a District Advisory Committee under subsection (4) of section 57, the Commissioner shall proceed to assess tax on the basis of such ascertainment.

[PCh332s80]80. Provisional assessments Act No. 18 of 2002 s. 37

(1) Without prejudice to his powers under section 79, the Commissioner shall proceed to make a provisional assessment in respect of every person as expeditiously as possible after the expiry of the time allowed to such person under this Act for the delivery of a provisional return of income.

(2) When a person has furnished a provisional return of income, he shall thereupon be deemed to have been provisionally assessed under this section on the basis of the estimates contained in such return.

(3) Where a person has not submitted a provisional return of income for any year of income, whether or not he has been required by the Commissioner so to do, and the Commissioner considers such person has or will have income chargeable to tax for such year, he

may, according to the best of his judgment, estimate the income of such person and make a provisional assessment upon him accordingly.

(4) Notwithstanding the provisions of this section, an individual commencing a business shall be issued with a business licence tax clearance certificate without the requirement of paying provisional tax and shall—

(a) in case of an individual commencing a business of gross turnover of less than seven million shillings per annum, be required to file a return to the Commissioner after the elapse of twelve months from the date of issue of the business licence; or

(b) in case of an individual commencing a business of gross turnover of seven million shillings per annum or more, be required to file a provisional return to the Commissioner after the elapse of three months from the date of issue of the business licence.

(5) The provisions of subsection (4) shall apply—

(a) within the period of twelve months from the date of issue of any business licence in case of individual person under paragraph (a); and

(b) within the period of three months from the date of issue of any business licence in case of any individual under paragraph (b).

[PCh332s81]81. Assessment of person about to leave or having left the United Republic

Where the Commissioner has reasonable cause to believe that any person is about to leave the United Republic or has left the United Republic and his absence is unlikely to be only temporary, and such person has not been assessed to tax on income chargeable to tax for any year

of income, then, the Commissioner may, according to the best of his judgment, determine the amount of the income of such person for such year of income and assess him accordingly, but such assessment shall not affect any liability of such person otherwise arising under this Act.

[PCh332s82]82. Assessment not to be made on certain employees

The Commissioner shall not assess an employee for any year of income—

(a) if such employee had no income chargeable to tax for such year of income other than income consisting of emoluments; and

(b) if on the basis of such emoluments the tax payable by such employee in respect of such emoluments has been recovered by deduction under section 36,

unless, prior to the expiry of seven years after such year of income, such employee applies to the Commissioner to be assessed, whether in connection with any claim for repayment of tax or otherwise, or the Commissioner considers an assessment to be necessary or expedient so as to arrive at the correct amount of the tax to be charged upon or to be payable by such employee for such year of income.

[PCh332s83]83. Additional assessment

Where the Commissioner considers that any person has been assessed at a lesser amount, either in relation to the income assessed or to the amount of tax payable than that at which he ought to be assessed, the Commissioner shall, by an additional assessment, assess such person at such additional amount as, according to the best of his judgment, such person ought to be assessed.

[PCh332s84]84. Service of notice of assessment, etc.

The Commissioner shall cause a notice of an assessment or provisional assessment to be served on each person assessed, and such notice shall state the amount of income assessed and the amount of tax payable and shall inform the person assessed of his rights under section 91 of this Act:

Provided that no such notice need be served in the case of a person deemed to have been assessed under subsection (2) of section 80.

[PCh332s85]85. Time limit for making assessment Act No. 11 of 2000 s. 28

(1) An assessment may be made under this Act at any time prior to the expiry of three years after the year of income to which the assessment relates:

Provided that—

(a) where any fraud or any gross or wilful neglect has been committed by or on behalf of any person in connection with or in relation to tax for any year of income, an assessment in relation to such year of income may be made at any time;

(b) in the case of income consisting of gains or profits from employment or services rendered, an assessment in relation thereto may be made at any time prior to the expiry of three years after the year of income in which the gains or profits are received;

(c) in any case to which—

(i) the proviso to paragraph (c) of section 4; or

(ii) the proviso to paragraph 22 of the Second Schedule,

applies, an assessment in relation thereto may be made at any time prior to the expiry of three years after the year of income in which the circumstances which gave rise to the assessment occurred;

(d) in the case of an assessment made upon the executors or administrators of the estate of a deceased person in respect of the income of such person, the assessment shall be made prior to the expiry of three years after the year of income in which such deceased person died;

(e) where the return is not furnished in accordance with section 57, the assessment shall be made within three years from the date on which the return was furnished.

(2) Any person who disputes an assessment made upon him under this Act may appeal to the Commissioner in accordance with the provisions of the Tax Revenue Appeals Act *.

[PCh332s86]86. Assessment list

(1) As soon as is reasonably practicable after the expiry of the time allowed under this Act for the delivery of returns of income in respect of each year of income, the Commissioner shall cause to be prepared a list of persons assessed to tax in respect of that year, and each such list shall contain in relation to each person so assessed—

(a) his name and address;

(b) the amount of income upon which assessment has been made; and

(c) the amount of tax payable.

(2) In any proceedings, whether civil or criminal, under this Act, a document purporting to be an extract from an assessment list and certified by the Commissioner to be a true copy of the relevant entry in the list shall be prima facie evidence of the matters stated therein.

[PCh332s87]87. Inconsequential errors, etc., in assessments or notices

(1) No assessment, warrant or other document purporting to be made, issued or executed under this Act 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 it is in substance and effect in conformity with or according to the intent and meaning of this Act and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected by reason of any—

(a) mistake therein as to—

(i) the name of the person assessed; or

(ii) the description of any income;

(b) variance between the assessment and the duly served notice thereof, which is not likely to deceive or mislead any person affected by the assessment.

PART XV

OBJECTIONS, APPEALS AND RELIEF FOR MISTAKE (ss 88-98)

A: Appeals Boards and Appeals Tribunal (ss 88-90)

[PCh332s88]88.-90. Repealed

[Repealed by Act No. 15 of 2000 s. 36.]

B: Objections (ss 91-97)

[PCh332s91]91.-97. Repealed

[Repealed by Act No. 15 of 2000 s. 36.]

C: Relief for Errors (s 98)

[PCh332s98]98. Relief in respect of error or mistake

(1) Where for any year of income, a person who, having made a return of income, has been assessed to tax under paragraph (a) of subsection (2) of section 79, and alleges that the assessment was excessive by reason of some error or mistake of fact in such return, then he may, not later than seven years after the expiry of such year of income, make an application to the Commissioner for relief.

(2) On receiving any such application the Commissioner shall inquire into the matter and, after taking into account all relevant circumstances, shall give such relief by way of repayment as is reasonable and just:

Provided that no relief shall be given in respect of an error or mistake as to the basis on which the liability of an applicant should have been computed where the return of income was in fact made on the basis of, or in accordance with, the practice generally prevailing at the time such return of income was made.

PART XVI

COLLECTION, RECOVERY AND REPAYMENT OF TAX (ss 99-113)

[PCh332s99]99. Time within which payment to be made Acts Nos. 16 of 1974 s. 17; 7 of 1976 s. 28; 9 of 1977 s. 27; 18 of 1991 s. 35; 16 of 1994 s. 20; 15 of 2000 s. 36

(1) Save as otherwise provided in this Act, or any subsidiary legislation made hereunder, tax charged in any assessment shall be payable in accordance with this section.

(1A) A return of income required to be furnished to the Commissioner under section 57 in respect of the income of any person shall, for the purposes of the collection of tax, constitute a final self-assessment and the tax thereon shall be payable—

(i) in a case to which the provisions of subsection (1) of section 57 apply, on the date specified to be the date on or before which such a return is required to be furnished to the Commissioner; and

(ii) in all other cases, within thirty days from the date of service of a notice to furnish such return of income to the Commissioner.

(2) The tax charged in any assessment, other than a provisional assessment, shall be payable within thirty days from the date of service of notice of such assessment:

Provided that where any person is assessed under section 79(2)(b) or 79(3) or 83 after the expiry of the aforesaid specified due date or the due date specified in subsection (1A) of this

section, the due date upon such assessment shall be the date on which the service of such assessment is deemed to have been effected under subsection (3) of section 135 of this Act.

(a) in the case of an individual, within thirty days from the date of service of notice of such assessment;

(b) in the case of a person other than an individual—

(i) where a return has been submitted under section 57 and assessment made under section 79 before 31st March in the year following the year of income in respect of which the tax is charged, the whole tax on or before 31st March in such following year; and

(ii) in all other cases, within thirty days from the date of service of notice of such assessment:

Provided that where any person is assessed under section 79(2)(b), 79(3) or 83, and the due date, if the assessment has been made under section 79(2)(a), would have passed at the time such assessment under the said section 79(2)(b), 79(3) or 83, the due date upon such assessment shall be the date on which the notice of assessment is served on such person.

(3) [Repealed by Act No. 18 of 1991 s. 35.]

(4) Where a provisional assessment is made on any person in accordance with section 80, the tax charged shall be payable in four equal quarterly instalments—

(a) in any case to which section 31 applies, not later than three months, six months, nine months and twelve months, respectively, from the beginning of the accounting period; or

(b) in any other case, not later than 31st March, 30th June, 30th September, and 31st December, respectively.

(5) In the case of a company which is being wound up, the due dates for payment of tax on any income chargeable for the year of income in which the winding up commences and for the preceding year of income shall be deemed for the purpose of priority of debts, but for that purpose only, to be the date next before the date of the winding-up order or the resolution, special resolution or extra-ordinary resolution, as the case may be, passed for the winding up of the company and whether or not assessments have been made before that date.

(6) [Repealed by Act No. 15 of 2000 s. 36.]

(7) The Commissioner may, in his discretion, extend the period within which tax is payable and may specify a later due date for payment.

(8) [Repealed by Act No. 15 of 2000 s. 36.]

[PCh332s100]100. Repealed

[Repealed by Act No. 15 of 2000 s. 36.]

[PCh332s101]101. Interest on unpaid tax Acts Nos. 16 of 1983 s. 76; 17 of 1990 s. 32

(1) Where any amount of tax is unpaid after the due date, interest of twenty-five percent shall immediately become due and payable on the amount.

(2) Where any amount of tax is still unpaid six months after the due date, interest at the rate of five percent shall immediately become due and payable on the amount and similar interest

shall so become due and payable at the expiration of each succeeding period of five months on any amount of tax still unpaid at each such expiration.

(3) Any interest charged under this section shall, for the purposes of subsection (2) of this section and of all other provisions of this Act relating to the collection and recovery of tax, be deemed to be tax.

(4) The Commissioner may, in his absolute discretion, remit the whole or any part of any interest charged under this section.

[PCh332s102]102. Interest on underestimated tax Acts Nos. 9 of 1977 s. 28; 5 of 1983 s. 16; 16 of 1994 s. 21

(1) If, for any year of income, the amount of tax assessed on the income finally declared by any person is more than twenty percent of the estimate of the tax chargeable contained in a provisional return of income made by that person in respect of such year, interest at the rate of one and half percent per month shall be payable, on the whole of such difference, from the due date of payment of the second instalment specified in subsection (4) of section 99 to the date on or before which the whole such difference falls due for payment.

(2) [Repealed by Act No. 16 of 1994 s. 21.]

(3) Where the Commissioner is satisfied that a difference referred to in subsection (1) of this section was due to some reasonable cause, he may remit the whole or any part for the interest payable under this section, and where for any year of income any such difference arises wholly or partly from an estimate of tax to be charged made before a change in any allowance, relief or rate

of tax, the Commissioner shall remit the interest thereon to the extent to which it is attributable to such change.

[PCh332s102A]102A. Penalty for failure to deduct or remit tax Acts Nos. 9 of 1977 s. 29; 17 of 1990 s. 32

If any person fails to deduct or remit to the Commissioner the whole or any part of tax in accordance with section 34 or section 36, the Commissioner may, by order in writing, impose a penalty not exceeding fifty thousand shillings, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of that penalty as if it were tax due by that person.

[PCh332s103]103. Appointment and duties of agent

(1) In this section—

"agent" means a person appointed as such under subsection (2) of this section;

"appointment notice" means a notice issued by the Commissioner under that subsection appointing an agent;

"moneys" includes any debt, deposit or credit, any salary, wages and pension payments and any other remuneration whatsoever;

"principal" means the person in respect of whom an agent is appointed.

(2) The Commissioner may, in his discretion, by written notice addressed to any person—

(a) appoint him to be the agent of another person for the purposes of the collection and recovery of tax due from such other person; and

(b) specify the amount of such tax to be collected and recovered.

(3) An agent shall pay the tax specified in his appointment notice out of any moneys which may, at any time during the twelve months following the date of the notice, be held by him for, or become due from him to, his principal.

(4) Where an agent claims to be, or to have become, unable to comply with subsection (3) of this section by reason of the lack of moneys held by, or due from him, he shall, as soon as may be practicable, notify the Commissioner accordingly in writing setting out fully the reasons for his inability so to comply, and the Commissioner may—

(a) accept the notification and cancel or amend the appointment notice accordingly; or

(b) if he is not satisfied by such reasons, reject the notification.

(5) Unless and until a notification is given by an agent under subsection (4) of this section—

(a) sufficient moneys for the payment of the tax specified in his appointment notice shall be presumed to be held by him for, or due from him to, his principal; and

(b) in any proceedings for the collection or recovery of such tax, he shall be estopped from asserting the lack of such moneys.

(6) For the purposes of this section, the Commissioner may, by notice in writing, at any time require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return showing any moneys which may be held by such person for, or become due to him by, any other person from whom tax is due.

(7) Where an agent fails to pay any amount of tax specified in his appointment notice within thirty days—

(a) of the date of service of such notice on him; or

(b) of the date on which any moneys come into his hands for, or become due by him to his principal, whichever is the later, and—

(i) he has not given notification under subsection (4) of this section; or

(ii) he has given such notification which has been rejected by the Commissioner,

the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such amount as if it were tax due and payable by the agent, the due date for the payment of which was the date upon which such amount should have been paid to the Commissioner under this subsection.

(8) An agent who has made any payment of tax under this section shall, for all purposes, be deemed to have acted therein with the authority of his principal and of all other persons concerned, and shall be indemnified in respect of such payment against all proceedings, civil or

criminal, and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

(9) Any person who, in giving notification under subsection (4) of this section, wilfully makes any false or misleading statement, or wilfully conceals any material fact, shall be guilty of an offence.

(10) For the purposes of this section, cases where moneys are held by an agent for, or due by him to, his principal, shall include cases where the agent—

- (a) owes or is about to pay or becomes liable to pay money to the principal; or
- (b) holds money for or on account of the principal; or
- (c) holds money on account of some other person for payment to the principal; or
- (d) has authority from some other person to pay money to the principal.

[PCh332s104]104. Tax on assessed income of deceased persons

Where any person dies, then, to the extent to which—

- (a) any tax charged in an assessment made upon him has not been paid; or
- (b) his executors are charged to tax in an assessment made under section 53,

the amount of tax unpaid or charged, as the case may be, in any such assessment as finally determined shall be a debt due and payable out of his estate.

[PCh332s105]105. Collection of tax from persons leaving or having left the United Republic

(1) Notwithstanding anything to the contrary in this Act, where the Commissioner has assessed any person under section 81 he may, by notice in writing served on the person assessed, require that payment of the whole of the tax assessed or such part thereof as remains unpaid be made within such time as may be specified in the notice or that security to his satisfaction be given for such payment.

(2) Notwithstanding anything to the contrary in this Act, where the Commissioner has reason to believe that any person who has been assessed to tax otherwise than under section 81 or by whom any tax is payable under any provision of this Act—

(i) is about to leave the United Republic without having paid such tax; or

(ii) has left the United Republic without having paid such tax and his absence is unlikely to be only temporary,

he may, whether or not the due date for the payment of such tax has arrived, by notice in writing served on such person, require—

(a) that payment of the whole, or such part as remains unpaid, of the tax assessed or payable be made within such time as may be specified in the notice; or

(b) that security to his satisfaction be given for such payment.

(3) Where any notice has been served on any person under this section the amount of the tax assessed or payable and required to be paid, shall, notwithstanding that a notice of objection to, or appeal against, the assessment has been given or is pending, be deemed to be due and payable on the date specified in such notice, and in default of compliance with such notice the

Commissioner shall, in addition to any action taken under subsection (4) of this section or under section 103, be entitled forthwith to recover the tax by suit or distress under this Act:

Provided that, if subsequent to the commencement of any suit under this section compliance is made with such notice, any such suit shall be discontinued.

(4) Where any person has failed to comply with a notice served personally on him under this section, the Commissioner may apply to a resident magistrate for the arrest of such person, and if the resident magistrate is satisfied by affidavit or otherwise—

(a) that an amount of tax is due and payable by such person; and

(b) that such person has failed to comply with such notice; and

(c) that there is reason to believe that such person is about to leave the United Republic,

he may issue a warrant to arrest such person and bring him before the court to show cause why he should not pay such tax or give security therefor to the satisfaction of the Commissioner:

Provided that such person shall not be arrested if he pays to the officer entrusted with the warrant the amount of the tax due.

(5) Where any person brought before a court under subsection (4) of this section fails to show cause as thereby required, the magistrate may order him either forthwith to pay the amount of tax due or forthwith to give security therefor to the satisfaction of the Commissioner and in

default of compliance, to be committed to prison until either such tax due is paid or such security given:

Provided that—

- (a) no such person shall be detained in prison for a longer period than six months;
- (b) the detention in prison of any such person shall not release such person from the liability to pay such tax.

(6) In any proceedings under subsection (4) or (5) of this section the production of a certificate signed by the Commissioner giving the name and address of the person and the amount of tax due and payable by him shall be sufficient evidence that such amount of tax is due and payable by such person.

(7) The compliance by any person with a notice served on him under subsection (1) or (2) of this section shall not prejudice his right to give notice of objection to, or to appeal against, the assessment and if, after the assessment has been finally determined, the amount of tax due and payable by such person is—

(a) less than the amount paid, then the amount overpaid shall be refunded under section 112, together with interest thereon at such rate as the Court may order;

(b) more than the amount paid, then the amount underpaid shall be payable under section 100 as if it were a balance of tax charged referred to in subsection (6) of section 99.

[Repealed by Act No. 13 of 1996 s. 29.]

[PCh332s107]107. Collection of tax from guarantor

(1) Where any security has been given under subsection (1) or (2) of section 105 and such security consists of a form of guarantee under which, in default of payment of tax in terms of the security, a person (in this section referred to as "the guarantor") is obliged to pay such tax, the Commissioner may, in default of payment of the tax, by notice in writing served on the guarantor require him to pay within ninety days of the notice, such amount of tax (not exceeding the amount guaranteed by him) as shall be specified in such notice.

(2) The provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of the amount of tax specified in a notice issued under this section as if that amount were tax due and payable by the guarantor and as if the due date for the payment of that amount were the date upon which the amount was due for payment under the notice.

[PCh332s108]108. Collection of tax by suit Act No. 13 of 1996 s. 30

(1) Where—

(a) payment of any tax has not been made on or before the due date; or

(b) a notice which has been served on any person under section 105 has not been complied with,

the tax due by such person may be sued for and recovered as a debt due to the Government in a court of competent jurisdiction by the Commissioner in his official capacity.

(2) In any suit under this section the production of a certificate signed by the Commissioner giving the name and address of the person concerned and the amount of tax due and payable by him shall be sufficient evidence that such amount of tax is due and payable by such person.

(3) Notwithstanding the provisions of subsection (1) and before the commencement or during the continuation of the suit under this section, the Commissioner may, by other means of recovery provided for under this Act, recover the tax due and payable by a person under this Act.

[PCh332s109]109. Collection of tax by distraint

(1) In any case in which tax is recoverable in the manner provided by section 108 the Commissioner may, instead of suing for such tax, recover the same by distress, and for that purpose may by order under his hand authorise any public officer or an officer of a court to execute such distress upon the goods and chattels of the person from whom such tax is recoverable and such officer may, at the cost of the person from whom such tax is recoverable, employ such servants or agents as he may think necessary to assist him in the execution of the distress:

Provided that—

(a) where the full amount of the tax due and payable is not recovered by such distress, the Commissioner may forthwith recover the deficiency in the manner provided by section 108;

(b) where the full amount of tax due and payable has been paid after the issue of an order under this section and before the execution of distress, any costs and expenses incurred by

the Commissioner prior to the payment of the tax shall be deemed to be a debt due and payable to the Government by the person in respect of whom the order was issued and may be recovered by the Commissioner as tax under this Act.

(2) For the purposes of levying any distress under this section, an officer authorised under subsection (1) of this section together with such servants or agents as such person may consider necessary, may break open in the daytime any premises, and any such officer may require any police officer to be present while such distress is being levied and any police officer so required shall comply with such requirement.

(3) A distress levied under this section shall be kept for ten days, either at the premises at which such distress was levied or at such other place as the authorised officer may consider appropriate, at the cost of the person from whom the tax is recoverable.

(4) If the person from whom tax is recoverable by distress does not pay such tax together with the costs of the distress within the period of ten days referred to in subsection (3) of this section, the goods and chattels distrained upon shall be sold by public auction for payment of the tax due and payable and all such costs and the proceeds of such sale shall be applied first towards the cost of taking, keeping and selling the goods and chattels distrained upon and then towards the tax due and payable and any remainder of such proceeds shall be restored to the owner of the property distrained.

[PCh332s110]110. Security on property for unpaid tax

(1) Where any person being the owner of land or of any premises situated in the United Republic, fails to make payment of any tax due by him on or before the due date or fails to

comply with a notice served on him under section 105, the Commissioner may by notice in writing notify such person of his intention to apply to the Registrar of Titles for such land or premises to be the subject of security for tax of an amount specified in the notice.

(2) If any person on whom a notice has been served under this section fails to make payment of the whole of the amount of the tax specified in the notice within thirty days of the date of the service of the notice, the Commissioner may by notice in writing direct the Registrar of Titles that the land or building, to the extent of the interest of such person therein, be the subject of security for tax of a specified amount and the Registrar shall, without fee, register such direction as if it were an instrument of mortgage over or charge on, as the case may be, such land or premises and thereupon such registration shall, subject to any prior mortgage or charge, operate while it subsists in all respects as a legal mortgage over or charge on such land or premises to secure the amount of the tax.

(3) The Commissioner shall, upon the payment of the whole of the amount of the tax secured under subsection (2) of this section by notice in writing to the Registrar of Titles cancel the direction made under that subsection and the Registrar shall, without fee, record such cancellation and thereupon such direction shall cease to subsist.

[PCh332s111]111. Collection of tax from ship-owner, etc.

(1) In addition to any other powers of collection of tax provided in this Act, the Commissioner may, in any case where tax recoverable in the manner provided by section 108 has been charged on the income of any person who carries on the business of ship-owner, charterer or air transport operator, issue to the proper officer of Customs by whom clearance may be

granted, a certificate containing the name of such person and the amount of the tax due and payable and on receipt of such certificate the proper officer of Customs shall refuse clearance from any port or airport in the United Republic to any ship or aircraft owned by such person until such tax has been paid.

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

[PCh332s112]112. Refund of tax overpaid Acts Nos. 7 of 1976 s. 29; 11 of 2000 s. 29

(1) If it is proved to the satisfaction of the Commissioner that, in respect of any year of income, any tax has been paid by or on behalf of any person, whether directly or by deduction or otherwise, which is in excess of the amount payable by such person as finally determined in respect of that year of income, the Commissioner shall refund the amount of such excess, together with any interest which may be payable thereon under this Act, to the person entitled to such refund:

Provided that the Commissioner may, in his discretion, apply the amount of tax refundable towards the satisfaction of tax (if any) which may become due from such person in the next ensuing year of income to the extent of such tax.

(2) When any tax is due and payable by any person in respect of any assessment, any amount refundable to such person under this section shall be applied towards the satisfaction of

the tax so due and payable to the extent of such tax and the amount so applied shall not be refunded.

(3) Every claim for repayment under this section shall be made within three years after the expiry of the year of income to which the claim relates:

Provided that in any case to which proviso (c) to subsection (1) of section 85 of this Act applies, a claim for repayment may be made within the period in which an assessment may be made.

[PCh332s112A]112A. Payment of interest where amount of tax refundable is determined by Tribunal Act No. 9 of 1977 s. 30

Where the amount of tax refundable under section 112 is determined by the Tribunal under section 93, the Commissioner shall pay interest on that amount at the rate of 4.5 per centum.

[PCh332s113]113. Repayment of tax in respect of income accumulated under trusts Act No. 11 of 2000 s. 29

(1) Where under any settlement, other than a settlement to which section 29 or 30 of this Act applies, any income (in this section referred to as "the trust income") arising from any fund is accumulated for the benefit of any person contingently on his attaining some specified age or on marrying, then, if such person proves to the satisfaction of the Commissioner that such contingency has happened, he shall, on making to the Commissioner a claim for that purpose, be entitled to have repaid to him a sum equal to the amount by which the total amount of tax borne

by the trust income during the period of accumulation exceeds the total amount of additional tax which would have been borne by him during such period if such trust income and the income from any other fund subject to the like trust for accumulation had been included in his total income; but in calculating such sum a deduction shall be made in respect of any tax borne by the trust fund and already repaid to him.

(2) Every claim for repayment under this section shall be made in writing to the Commissioner within three years after the expiry of the year of income in which the contingency happened.

PART XVII

OFFENCES AND PENALTIES (ss 114-128)

[PCh332s114]114. General provisions relating to offences Act No. 16 of 1983 s. 16

(1) Any person guilty of an offence under this Act for which no other penalty is specifically provided shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(2) Where any offence under this Act is committed by a person as an agent or employee then, as well as the agent or employee, the principal or employer shall be guilty of the offence and be liable to be proceeded against and punished accordingly unless he proves to the satisfaction of the court that he had no knowledge, and could not by the exercise of reasonable diligence have had knowledge of the commission of the offence.

(3) Where a person is convicted of an offence under this Act by a court of a resident magistrate the resident magistrate may, notwithstanding any other written law, impose the maximum fine prescribed for such offence.

[PCh332s115]115. Repealed

[Repealed by Act No. 13 of 1996 s. 31.]

[PCh332s116]116. Failure to comply with notice, etc. Acts Nos. 9 of 1977 s. 31; 12 of 1981 s.

16

(1) Any person who, without reasonable excuse—

(a) fails to furnish a return or give a certificate as required by subsection (4) of section 34; or

(b) fails to furnish a full and true return in accordance with the requirements of any notice served on him under this Act or fails to give notice to the Commissioner as required by subsection (3) of section 57; or

(c) fails to furnish, within the time prescribed, to the Commissioner or to any other person any document information or any particulars which under this Act, or under any notice served on him under this Act, he is required to furnish; or

(d) fails to keep any records, books or accounts in accordance with the requirements of any notice served on him under section 61, or fails to keep any such records, books or accounts in such language as may be specified in any such notice; or

(e) fails to preserve any record, document or book of account as required by subsection (2) of section 61; or

(f) fails to produce any documents for the examination of the Commissioner in accordance with the requirements of any notice served on him under this Act; or

(g) destroys, damages or defaces any accounts or other documents in contravention of any notice served on him under subsection (1) of section 62 of this Act; or

(h) fails to attend at the time and place in accordance with the requirements of any notice served on him under this Act;

(i) fails or refuses to comply with the provisions of section 61(1A) or (1B) in relation to the issue or receipts for payment received or keeping of the duplicate copies of the receipts issued,

shall be guilty of an offence.

(2) No prosecution for an offence under this section shall be instituted at any time subsequent to five years after the date of the commission of the offence or after the date on which the fact of the commission of such offence came to the knowledge of the Commissioner, whichever is the later date.

[PCh332s117]117. Incorrect returns, etc.

(1) Any person who, without reasonable cause—

(a) makes any incorrect return of income by omitting therefrom or understating therein any income which should have been stated therein; or

(b) makes any incorrect statement in any return made in compliance with a notice served on him under this Act; or

(c) gives any incorrect information in relation to any matter or thing, affecting the liability to tax of himself or any other person,

shall be guilty of an offence.

(2) No prosecution for an offence under this section shall be instituted at any time subsequent to six years after the date of the commission of the offence.

[PCh332s118]118. Fraudulent returns, etc. Acts Nos. 16 of 1983 s. 16; 13 of 1996 s. 32

(1) Any person who makes any fraudulent claim for the repayment of any tax or who, with intent to evade tax—

(a) makes a false return of income by omitting therefrom or understating therein any income which should have been stated therein; or

(b) makes any false statement in any return made under this Act or in compliance with a notice served on him under this Act; or

(c) gives any false information in relation to any matter or thing affecting his liability to tax; or

(d) prepares or maintains, or authorises the preparation or maintenance of, any false books of account or other records, or falsifies, or authorises the falsification of, any books of account or records; or

(e) makes use of any fraud, or authorises the use of any fraud,

shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or double the amount of tax for which he is liable under this Act for the year of income in respect of which the offence was committed, whichever is greater, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

(2) Any person who, with intent to assist any other person to evade tax—

(a) omits from any return of income made by him on behalf of such other person or understates therein any income which should have been stated therein; or

(b) makes any false statement in any return made by him on behalf of such other person in compliance with a notice served on such other person under this Act; or

(c) gives any false information in relation to any matter or thing affecting the liability to tax of such other person; or

(d) prepares any false books of account or other records relating to such other person or falsifies any such books of account or other records; or

(e) does any other fraudulent act,

shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(3) Any person to whom the provisions of subsection (2) of section 78 applies, who fails or refuses to comply with that subsection, commits an offence and upon conviction, is liable to both a fine of two million shillings and imprisonment for a term of two years and shall in addition to that penalty, pay the evaded tax which would otherwise have been paid had the offence under this subsection not been committed.

(4) Any person who knowingly or wilfully, with intent to assist or to abet, another person to commit an offence under subsection (3) of this section, commits an offence and shall upon conviction be liable to both a fine of one million shillings and imprisonment for a term of twelve months.

(5) Whenever in any proceedings under this section it is proved that any false statement or entry is made by any person in any return of income or other return furnished under this Act by such person or on behalf of any other person or in any books of account or other records prepared or maintained by such person or on behalf of any other person, the person making such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to evade tax or to assist or enable such other person to evade tax.

[PCh332s119]119. Obstruction of officer

Any person who in any way obstructs or attempts to obstruct an officer in the performance of his duties or in the exercise of his powers under this Act shall be guilty of an offence.

[PCh332s119A]119A. Publication of list of persons who commit certain offences Act No. 12 of 1999 s. 18

(1) Notwithstanding the provisions of section 132 the Commissioner may publish a notice in the Government Gazette or any other newspapers circulating in Tanzania a list of persons who—

- (a) fail to comply with the provisions of section 99;
- (b) have been convicted of any offence against sections 116, 117, 118, 119 paragraph 5 of the First Schedule; or
- (c) have conducted themselves in a manner which amounts to an offence which corresponds materially to an offence referred to under paragraph (b).

[PCh332s120]120. Provisions relating to evidence

(1) In any proceeding for an offence under this Act the burden to prove that—

- (a) a return is a true return of income or of particulars stated therein;
- (b) that any tax has been paid;
- (c) that the accused is a person not liable to pay any tax;

(d) that any amount of tax deducted under Part IX was remitted to the Commissioner within the time within which it is required to be so remitted, shall be on the person charged.

(2) Notwithstanding anything to the contrary in any other written law, statements made or documents produced by or on behalf of a person shall not be inadmissible in any proceedings to which this section applies by reason only that such person was led to believe that—

(a) in relation to tax, the Commissioner might accept pecuniary settlement instead of sanctioning the institution of a prosecution; or

(b) though no undertaking could be given as to whether or not the Commissioner would accept pecuniary settlement in the case of any particular person, it is the practice of the Commissioner to be influenced by the fact that a person has made a full confession of any fraud or default to which he has been a party and has given full facilities for investigation, and that he was or may have been induced thereby to make the statement or produce the documents.

(3) Subsection (2) shall apply to—

(a) any criminal proceedings against the person in question for any form of fraud, neglect or default in connection with, or in relation to, tax; and

(b) any proceedings for the recovery of any sum due under this Act.

[PCh332s121]121. Power of Commissioner to compound offences

(1) Where any person has committed any offence under this Act other than an offence under section 133 the Commissioner may, subject to such directions as the Minister may give on that behalf, at any time prior to the commencement of the hearing by any court of any charge in relation thereto, compound such offence and order such person to pay such sum of money, not exceeding one half of the amount of the fine to which such person would have been liable if he had been convicted of such offence, as he may think fit:

Provided that the Commissioner shall not exercise his powers under this section unless the person concerned admits in writing that he has committed such offence under this section.

(2) Where the Commissioner compounds an offence under this section, then the order referred to in subsection (1) of this section—

(a) shall be reduced to writing and there shall be attached to it the written admission and request referred to in the proviso to the said subsection and a copy of such order shall be given, if he so requests, to the person who committed the offence; and

(b) shall specify the offence committed, the sum of money ordered to be paid, and the date or dates on which payment is to be made; and

(c) shall be final and shall not, subject to the provisions of subsection (3), be subject to any appeal; and

(d) shall not be invalid by reason only of non-compliance with any direction given by the Minister; and

(e) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order.

(3) Where any person is aggrieved by any order made under subsection (1), he may, within thirty days of such order being made, appeal against such order to the High Court, and the provisions of Part X of the Criminal Procedure Act * shall apply, *mutatis mutandis*, to every such appeal as if it were an appeal against sentence passed by a district court in the exercise of its original criminal jurisdiction.

(4) Where the Commissioner compounds any offence under this section, the person concerned shall not be liable to any prosecution in respect of such offence; and if any such prosecution is brought it shall be a good defence for such person to prove that such offence has been compounded under this section.

[PCh332s122]122. Place of trial

Any person charged with any offence under this Act may be proceeded against, tried and punished, by any court in Tanzania within the jurisdiction of which he may be in custody for that offence or to which he may be brought after arrest on a warrant issued by that court, as if the offence had been committed within the jurisdiction of such court and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial or punishment thereof, be deemed to have been committed within the jurisdiction of that court.

[PCh332s123]123. Liability of firms, partners, directors and officers of firms and corporations

(1) A partnership firm may, notwithstanding any other written law, be charged with and tried, convicted and punished for an offence under this Act as if it were a corporation.

(2) Where any offence under this Act is committed by a corporation or a partnership firm then, as well as the corporation or the firm, as the case may be, any person who, at the time of the commission of the offence, was concerned, as a director, partner or an officer, with the management of the affairs of such body corporate or firm, shall be guilty of the offence and be liable to be proceeded against and punished accordingly unless he proves to the satisfaction of the court that he had no knowledge, and could not, by the exercise of reasonable diligence, have had knowledge of the commission of the offence.

[PCh332s124]124. Officer may appear for the prosecution

Notwithstanding anything contained in any written law, any officer duly authorised in writing in that behalf by the Commissioner may appear in any court on behalf of the Commissioner in any proceedings to which the Commissioner is a party and, subject to the directions of the Director of Public Prosecutions, any such officer may conduct any prosecution for an offence under this Act and for such purpose shall have all the powers of a public prosecutor appointed under the Criminal Procedure Act *.

[PCh332s125]125. Tax charged to be payable notwithstanding prosecution

The amount of any tax or interest due and payable under this Act shall not be abated by reason only of the conviction or punishment of the person liable for the payment thereof for an offence under this Act or of the compounding of such offence under section 121 of this Act.

[PCh332s126]126. Power to search and seize

(1) If an officer authorised by the Commissioner to inquire into the affairs, under this Act, of any person satisfies a magistrate that such person has committed, or is reasonably suspected of committing, an offence under this Act, the magistrate may by warrant authorise the officer to exercise all or any of the following powers—

(a) to enter any premises between sunrise and sunset to search for money, documents or other articles relevant to such inquiry;

(b) to open, or remove from the premises and open, any container, box or package in which it is suspected that money, documents or relevant articles are contained;

(c) to seize any money, documents or relevant articles which may be necessary for such inquiry or for the purpose of any civil or criminal proceedings and to retain them for as long as they are so required:

Provided that in the case of documents held by any financial institution listed in the Fourth Schedule to this Act, the powers of such officer under this section shall be limited to making copies or extracts therefrom.

(2) In the exercise of any powers authorised by warrant under subsection (1) of this section, the officer shall if practicable, require a police officer to be present during the exercise thereof and any police officer so required shall comply with such requirement.

(3) For the purposes of subsection (1) of this section, the magistrate may require the officer or any other person to give such evidence on oath as may be necessary to satisfy him that

the person whose affairs are the subject of inquiry has committed, or is reasonably suspected of committing, the offence concerned.

[PCh332s127]127. Power to inspect books and documents

(1) Notwithstanding anything to the contrary in any provision or rule of law, any officer authorised by the Commissioner to inquire into the affairs of any person for any of the purposes of this Act shall, at all times, have full and free access to all lands, buildings, and places, and all books and documents, whether in the custody or control of a public officer, a body corporate or of any other person whatsoever, for the purposes of inspecting any books and documents or for any other purpose he may consider relevant to such inquiry, and may make extracts from or copies of any such books or documents.

(2) An officer acting under subsection (1) of this section may require the owner or manager of any property or business, or any person employed in connection with such property or business, or any other person, to give him all reasonable assistance and to answer all proper questions relating to such inquiry, either orally or in writing and for that purpose may require the owner or manager, or in the case of a company any officer of the company, or such other person, to attend at the premises with him.

[PCh332s128]128. Admissibility of documents

Notwithstanding any written law or any provision or rule of law to the contrary—

(a) any document, or copy of or extract from any document, relating to the affairs of any person which has been seized or obtained by an officer in accordance with the provisions of this Act; or

(b) any statement by any person relating to his affairs which is made to an officer in accordance with the provisions of this Act,

shall be admissible in any proceedings, civil or criminal, under this Act to which such person is a party.

PART XVIII

ADMINISTRATION (ss 129-133)

[PCh332s129]129. Appointment of Commissioner and other officers Act No. 17 of 1990 s. 34

(1) There shall be appointed a Commissioner of Income Tax and such other officers as may be necessary for the proper and efficient administration of this Act; and the Commissioner of Income Tax so appointed shall, subject to the control of the Minister and general supervision of the Permanent Secretary to the Treasury, be responsible for the assessment, collection and recovery of, and for the accounting for, tax.

(2) There is hereby established in respect of each district a District Tax Advisory Committee the membership of which shall be constituted, and all of its members shall be appointed, by the Minister, subject to subsection (3).

(3) The constitution of the District Tax Advisory Committee in relation to any district of Tanzania Zanzibar and the appointment of its members shall be made by the Minister only after consultation with the Minister for Finance of the Revolutionary Government of Zanzibar.

(4) Every District Tax Advisory Committee shall, in relation to the district for which it is established, be the principal advisor to the Commissioner in all matters concerning tax surveys, the registration of taxpayers, facilitation of the determination of taxable income of any taxpayer who ordinarily resides within the district for which the Committee is established and shall perform such other functions as the Minister may by regulations published in the Gazette prescribe.

[PCh332s130]130. Commissioner's discretion to abandon or remit tax

(1) Notwithstanding other provisions of this Act, in any case where he is of the opinion that he should refrain from assessing to tax, or recovering tax from, any person by reason of—

- (a) uncertainty as to any question of law or fact; or
- (b) considerations of hardship or equity; or
- (c) impossibility, or undue difficulty or expense, of recovery of tax,

the Commissioner may elect to refrain from assessing or recovering the tax in question and thereupon liability to such tax shall be deemed to be extinguished or such tax shall be deemed to be abandoned or remitted, as the case may be, and the provisions of this Act other than this section shall no longer apply thereto:

Provided that the Commissioner shall not proceed to act under this section where the amount of such tax would have exceeded five thousand shillings.

(2) Where the Commissioner has elected to refrain from assessing or recovering tax under the provisions of subsection (1) of this section he shall report such election in writing to the Minister as soon as may be after such election and shall set out in full in such report the circumstances and reasons leading to such election.

(3) In any case which has been referred to him and where he considers it appropriate, the Minister may direct the Commissioner to take such action under this section as he deems fit.

(4) The refusal or failure of the Commissioner to elect to refrain from exercising his powers under this section shall not be called into question in any court.

[PCh332s131]131. Exercise of powers, etc.

(1) Subject to any express direction by the Commissioner to the contrary, any of the powers and duties of the Commissioner under this Act, other than his powers under section 121 thereof, may be exercised by any public officer authorised in writing in that behalf by the Commissioner:

Provided that the Minister may, subject to such restrictions and limitations as he may specify, confer upon any public officer the powers of compounding an offence under section 121.

(2) In the absence of the Commissioner the powers of the Commissioner may be exercised by any officer appointed as Acting Commissioner or, where no Acting Commissioner

has been appointed, by the officer nominated in that behalf by the Minister; and references in this Act to the Commissioner shall include references to any such officer.

[PCh332s132]132. Official secrecy

(1) Every officer and every other person employed in carrying out the provisions of this Act shall regard and deal with all documents and information relating to the income of any person and all confidential instructions in respect of the administration of this Act which may come into his possession or to his knowledge in the course of his duties as secret.

(2) No officer and no other person employed in carrying out the provisions of this Act, shall be required to produce in any court any document, or to communicate to any court any information, which has come into his possession or to his knowledge in the performance of his duties under this Act except as may be necessary for the purposes of carrying into effect the provisions of this Act or in order to bring or assist in a prosecution for any offence committed in relation to tax.

(3) Nothing in this section shall prevent—

(a) any officer or person from revealing any document or information relating to the income of any person or any confidential instructions, in respect of the administration of this Act to any other such officer or person so employed in the course of his duties, or to any person authorised in that behalf by the Minister in relation to any person resident in the United Republic or to income accruing in or derived from the United Republic or to any court or person for the purposes of this Act;

(b) any officer from revealing any such document or information solely for revenue or statistical purposes to any person in the service of the Government in a revenue or statistical department where such document or information is needed for the purposes of the official duties of such last mentioned person and where such last mentioned person has made and subscribed a declaration of secrecy in relation to any information coming to his knowledge in the course of his official duties;

(c) any officer from revealing any such document or information to the Controller and Auditor-General, or to any authorised member of his Department, where such document or information is needed for the performance of his official duties;

(d) any officer from revealing any such document or information to the Treasury Registrar where such document or information is required by the Treasury Registrar for the performance of his functions under any written law.

(5) Where under this Act or any law in force in any country, or under any special arrangement, provision is made for the allowance of relief from income tax in respect of the payment of tax in the United Republic, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government of the place to which such provision of this Act applies or with which such arrangement is made, of such facts as may be necessary for the obtaining of such relief or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to such taxes.

[PCh332s133]133. Offences by or in relation to officers, etc.

(1) Any officer or any other person employed in carrying out the provisions of this Act who—

(a) directly or indirectly asks for, or takes, in connection with any of his duties any payment or reward whatsoever, whether pecuniary or otherwise or any promise or security for any such payment or reward, not being a payment or reward which he is lawfully entitled to receive; or

(b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the tax revenue is or may be defrauded, or which is contrary to the provisions of this Act or to the proper execution of his duty hereunder; or

(c) in contravention of the provisions of section 132 of this Act, and without lawful excuse, reveals to any person any document or information which has come into his possession or to his knowledge in the course of his official duties, or permits any other person to have access to any document in the possession or custody of the Commissioner in his official capacity,

shall be guilty of an offence and be liable on conviction to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding three years or to both such fine and imprisonment; and in addition thereto such person shall be liable for any loss of revenue resulting wholly or partly from the offence of which he is convicted, which amount of loss shall be recoverable from him in accordance with the provisions of this Act (including the provisions relating to payment of interest in default of payment of tax on due date) as if such amount of loss were tax due under this Act the due date for which was the date of such conviction, and in any proceedings relating to the recovery of such amount of loss a certificate under the hand of the

Commissioner to the effect that the amount of loss specified in the certificate was incurred as a result of the offence committed by such person shall be admissible in evidence and shall be prima facie evidence of the truth of the statements contained therein.

(2) Any person who—

(a) directly or indirectly offers or gives to any officer, or to any other person employed in carrying out the provisions of this Act any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward; or

(b) proposes or enters into any agreement in order to induce such officer or person to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the tax revenue is or may be defrauded, or which is contrary to the provisions of this Act, or to the proper execution of the duty of such officer or person,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(3) No proceedings for an offence under this section shall be commenced without the consent in writing of the Director of Public Prosecutions.

(4) Where a transaction, act or omission which constitutes an offence under this section also constitutes an offence under any other written law, the accused may, notwithstanding any other written law, be charged with, convicted of and punished for, the offence under such other written law notwithstanding that he has been convicted of and punished for, or acquitted of, the

offence under this section in respect of the same transaction, act or omission; or, if the accused has been convicted of and punished for the offence under such other written law he may, notwithstanding such conviction or acquittal, be charged with, convicted of and punished for, an offence under this section in respect of the same transaction, act or omission.

PART XIX

MISCELLANEOUS PROVISIONS (ss 134-140)

[PCh332s134]134. Form of notices, etc.

(1) The Commissioner may specify the form of any notice, return of income, or other form or return, required for the purposes of this Act, and where any form has been so specified the notice, return of income, or other form or return shall be in the form so specified.

(2) Notices given by the Commissioner under this Act may be signed by any officer authorised by him in that behalf, and any notice purporting to be signed by order of the Commissioner shall, unless the contrary is proved, be presumed to have been signed by an officer so authorised.

(3) Every form, notice or other document issued, served or given by the Commissioner under this Act shall be sufficiently authenticated if the name or title of the Commissioner or of the officer authorised in that behalf, is printed, stamped, or written thereon.

[PCh332s135]135. Service of notices, etc.

(1) Where under this Act any notice or notices, etc. or other document is required or authorised to be served on or given to the Commissioner, then such notice or other document may be so served or given—

- (a) by delivering it to a public officer in the office of the Commissioner; or
- (b) by leaving it at the office of such public officer; or
- (c) by sending it by post addressed to such public officer in his official capacity.

(2) Where under this Act any notice or other document is required or authorised to be served on or given to any person by the Commissioner, an Appeals Board or the Tribunal then such notice or other document may be so served or given by addressing it to such person or, where such person is a corporation or a firm, to the principal officer, director, partner or secretary of such corporation or firm, and—

- (a) delivering it personally to him; or
- (b) leaving it at his usual or last known place of address or the address shown on the latest return of income furnished by him or on his behalf to the Commissioner; or
- (c) sending it to him addressed in his name and by the office held by him in the corporation or firm, by post to his usual or last known place of address or to any post office box rented in the name of such person or of the corporation or firm or other employer or to the address shown on the latest return of income furnished by him or on his behalf to the Commissioner.

(3) Where a notice or other document is served or sent by post, service shall, in the absence of proof to the contrary, be deemed to have been effected—

(a) where it is sent to any address in the United Republic, ten days after the date of posting;

(b) where it is sent to any address outside the United Republic, at the time at which the notice would be delivered in the ordinary course of post,

and in proving such service it shall be sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted:

Provided that where the person to whom a notice or other document has been sent by registered post is informed of the fact that there is a registered letter awaiting him at a post office, and such person refuses or neglects to take delivery of such letter, and such letter consists of such notice or other document, then service of such notice or other document shall be deemed to have been effected.

(4) Where the income of any person is assessable and chargeable in the name of any other person, then if any notice or document which is required or authorised to be served on or given to such first mentioned person is served on or given to such other person such notice or document shall be deemed also to have been served on or given to such first mentioned person.

[PCh332s136]136. Liability of manager of corporate body

Where any obligation is imposed by or under this Act on any corporation, the general manager or other principal officer of such corporation shall be responsible for performing such obligation.

[PCh332s137]137. Regulations

The Minister may make regulations prescribing anything which is to be prescribed under this Act and generally for the better carrying out of the provisions of this Act.

[PCh332s138]138. Exemption from stamp duty

All securities of whatsoever nature over property, movable or immovable, and all transfers of such property in favour of or by the Commissioner shall be exempt from stamp duty.

[PCh332s139]139. Repeals and transitional provisions

[Repeals and transitional provisions.]

[PCh332s140]140. Application to Zanzibar Act No. 12 of 1979 s. 26

[Transferred to s. 1.]

FIRST SCHEDULE

EXEMPTIONS

(Section 14)

PART I

INCOME ACCRUED IN, DERIVED FROM OR RECEIVED IN THE UNITED REPUBLIC WHICH IS EXEMPT FROM TAX Acts Nos. 20 of 1978 s. 17; 12 of 1979 s. 27; 19 of 1984 s. 11; 13 of 1996 s. 33(a) and (b); 2 of 1998 s. 33; 12 of 1999 s. 19; 11 of 2000 s. 30; 18 of 2002 s. 38

1. So much of the income of any person as is expressly exempted from income tax by or under the provisions of any written law for the time being in force, to the extent provided by such written law.

2. The income of any person who, or organisation which, is exempt from income tax by or under any written law for the time being in force, to the extent provided by such written law.

3. That part of the income of the President of the United Republic derived from salary, duty allowance and entertainment allowance paid or payable to him from public funds in respect of or by virtue of his office as President of the United Republic.

4. The income of any local government authority.

5. Subject to section 29 of this Act, the income of any institution, body of persons, or irrevocable trust, of a public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion, education or to a public institution or charitable or religious institution for the purposes of the provision of general public health, water and road construction or maintenance, in so far as the Commissioner is satisfied that such income is to be expended either within the United Republic or in circumstances in

which the expenditure of such income is for purposes which result in the benefit of the residents of the United Republic:

Provided that any such income which consists of gains or profits from a business shall not be exempt from tax unless such gains or profits are applied solely to such purposes and either—

(i) such business is carried on in the course of the actual execution of such purposes;
or

(ii) the work in connection with such business is mainly carried on by beneficiaries under such purposes;

(iii) such charitable organisation files returns as if their incomes were taxable;

(iv) that the management of a charitable organisation undertakes to furnish the Commissioner with the information that its funds and income have been expended for the purpose of the charitable organisation;

(v) if the information furnished in accordance with paragraph (iv) above is proven incorrect, the charitable organisation shall be guilty of an offence and a fine of two hundred thousand shillings shall be imposed upon it and in addition to that fine it shall be disqualified from exemption.

6. The income of any person from any management or professional fee, royalty or interest when the Minister certifies that it is required to be paid free of tax by the terms of an agreement to which the Government is a party either as principal or guarantor or that it is in the public interest that such income shall be exempt from tax.

7. The income of any approved pension scheme.

8. The income of any approved pension fund.

9. The income of any approved provident fund.

9A. Half of the gratuity or commuted pensions gratuity payable to any resident individual.

10. The income from the investment of an annuity fund, as defined in section 20 of this Act, of an insurance company.

11. Pensions or gratuities granted in respect of injury or disabilities caused in war and suffered by the recipients of such pensions or gratuities.

12.-15. inclusive

[Omitted.]

16. That part of the income of any officer of the Government accrued in or derived from the United Republic which consists of foreign allowances paid to such officer from public funds in respect of his office:

Provided that where any person to whom such an allowance is paid is granted a deduction under section 16 of this Act in respect of any expenditure incurred in relation to any activity for which the allowance is paid, then the exemption conferred by this paragraph shall not apply to so much of such allowance as is equal to the amount of such deduction.

17. [Omitted.]

18. The income of the East African Development Bank.

19. [Omitted.]

20. The emoluments of any officer of the Desert Locust Survey who is not resident in the United Republic.

21. The emoluments of any person in the public service of the Government of another country in respect of his office under that Government where such person is resident in the United Republic solely for the purpose of performing the duties of his office where such emoluments are payable from the public funds of such other country.

22. The emoluments payable out of foreign sources in respect of duties performed in the United Republic in connection with any technical assistance agreement, to which the Government or a parastatal organisation is a party, to any non-resident person or to any person who is resident solely for the purposes of performing duties, in any case where such agreement provides for the exemption of such emoluments and the Minister has, where the Government is not a party to the agreement, approved such provision by a writing under his hand.

23. Any education grant paid by the Government of the United Kingdom under any agreement between that Government and the Government and received by any person who is employed in the public service of the United Republic.

24. (i) The income of a primary co-operative society engaged in agricultural activities, including activities related to marketing and distribution.

(ii) The income of a primary co-operative society engaged in activities related to the construction of houses for its members.

(iii) The income of a primary co-operative society engaged in the distribution trade for the benefit of its members.

(iv) The income of a primary cooperative society engaged in business as a Savings and Credit Society.

25. The income of an Ujamaa Village.

26. Interest on tax reserve certificate deposits.

27.-28. [Repealed by Act No. 8 of 1998 s. 33.]

29. The income of the Local Authority Provident Fund.

30. The income of the Government Employees Provident Fund.

31. The income of a Price Stabilisation and Agricultural inputs Trust Fund.

32. [Repealed by Act No. 12 of 1999 s. 19.]

33. Interest on long term bonds of not less than three years maturity period issued and listed in the Dar es Salaam Stock Exchange in the fiscal year 2002/2003.

PART II

SECURITIES AND LOANS, THE INTEREST ON WHICH IS EXEMPTED FROM TAX

1. Interest payable to non-resident persons not being citizens of the United Republic on the following securities—

- (a) Tanganyika 5 3/4 Inscribed Stock 1978/82.
- (b) Tanganyika 5 3/4 Government Development Bonds Series A.
- (c) Tanganyika 5 1/4 Government Development Bonds Series B.
- (d) Tanganyika 5 1/2 Stock 1975/79 where and to the extent covered by Finance Minister's Certificates of Exemption.

2. Interest on loans made to the United Republic by a foreign Government, a financial institution wholly owned by a foreign Government or an international financial institution wholly owned by a foreign Government or foreign Governments or the Government of the United Republic and any foreign Government or foreign Governments, to the extent that such interest is exempt under the provisions of the agreement.

SECOND SCHEDULE

(Sections 4, 5 and 16)

ARRANGEMENT OF PARAGRAPHS

Paragraph

Title

PART I

DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON CERTAIN BUILDINGS

1. Deductions.
2. Increase of deductions.
3. Ascertainment of residue of expenditure.
4. Sale of building prior to use.
5. Meaning of "industrial building".
6. Interpretation.

PART II

DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON MACHINERY

7. Wear and tear deductions.
8. Ascertainment of written-down value.
9. Application to lessors.
10. Expenditure on buildings in connection with the installation of machinery.
11. Balancing deductions and balancing charges.
12. Effect in certain successions, transfers, etc.

- 13. Special provisions as to certain sales.
- 14. Private use of machinery.
- 15. Expenditure on private vehicles.

PART III

DEDUCTIONS IN RESPECT OF MINING OPERATIONS

- 16. Definitions for Part III.
- 17. Deductions.
- 18. Apportionment of deductions.
- 19. Operations on separate mines treated separately.
- 20. Expenditure incurred by person not engaged in business of mining, etc.
- 21. Sum received by vendor treated as trading receipt.
- 21A. Transitional provisions.

PART IV

DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON AGRICULTURAL LAND

- 22. Deductions in respect of capital expenditure on farm works.
- 23. Definitions for Part IV.

PART V

INVESTMENT DEDUCTIONS

- 24. Buildings and machinery.
- 24A. Deductions from capital expenditure on agricultural land.
- 25. Deductions from capital expenditure relating to ships.
- 26. Sales of buildings prior to use.

PART VI

MISCELLANEOUS PROVISIONS

- 27. Apportionment of consideration for sale, exchanges, etc., of any property or of leasehold interests.
- 28. Interpretation of certain references to expenditure, etc.
- 29. Subsidies.
- 30. Prevention of double allowances.

31. Increase of deductions.
32. Other provisions as to interpretation.

PART I

DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON CERTAIN BUILDINGS (ss 1-6)

1. Deductions Acts Nos. 8 of 1998 s. 34; 12 of 1999 s. 20

(1) Subject to this Schedule where a person incurs capital expenditure on the construction of an industrial building to be used in a business carried on by him or his lessee, a deduction equal—

(a) in any case where the amount of the deduction has not been increased under this Schedule and which is not a case referred to in item (c), to one-twentieth; and

(b) in any case where such amount has been so increased, to such fraction as so increased; and

(c) in any case referred to in item (c) of subparagraph (1) of paragraph 5, to one-twentieth,

of that expenditure shall be made in computing the gains or profits of such person for any year of income in which such building is so used:

Provided that where such building was so used for part only of such year of income the deduction shall be proportionately reduced.

(2) Notwithstanding anything in this Part, in no case shall the amount of deduction for any year of income exceed that which, apart from the making of such deduction, would be the residue of expenditure at the end of such year of income.

(3) Notwithstanding any provision of this Schedule, where in respect of a hotel which was first used as a hotel prior to the commencement of this Act and no deduction under this Part of this Schedule has been claimed in respect of its construction, the Minister may, by order under his hand, direct that such deduction be allowed, and where such order is made such deduction will be allowed and will be deducted from the gains and profits in the year of income specified in the order and any subsequent years of income in which the building was or is used as a hotel, and the person entitled to such deductions shall have the right conferred by paragraph 24(1) to make the election as to the apportionment of the total amount of deductions in relation the year of income in which the order is made and any previous years of income to which the order applies, as if such deductions were an investment deduction.

2. Increase of deductions

Notwithstanding item (a) of subparagraph (1) of paragraph 1 where the Commissioner is satisfied that, having regard to the type of construction or to the use to which any industrial building is put, its life is likely to be substantially less than forty years, he may, upon the application of the person entitled to claim a deduction under this Part, increase the amount of the

deduction to such an amount as he may consider just and reasonable; and all the provisions of this Part shall apply accordingly.

3. Ascertainment of residue of expenditure

In this Part, the residue of expenditure at any time shall be—

(a) in relation to a building which had not been used before the year of income 1974, the capital expenditure incurred on the construction of the building less any deductions made under this Part and any deductions which would have been made had the building been an industrial building when first used;

(b) in relation to a building which at the end of the year of income 1973 was an industrial building for the purposes of the East African Income Tax Management Act *, the residue of expenditure as ascertained under paragraph 3 of the Second Schedule to that Act, less any deductions made under this Part;

(c) in relation to a building which had been used before the end of the year of income 1973 but was not an industrial building for the purposes of the East African Income Tax Management Act at the end of that year of income, the amount which would have been the residue of expenditure as ascertained under item (b) of this paragraph if the building had always been an industrial building.

4. Sale of building prior to use

(1) Where capital expenditure is incurred on the construction of a building and, before that building is used, it is sold, any such expenditure actually incurred on the construction thereof

shall be left out of account for the purposes of this Schedule; except that only the person who purchases the building shall be deemed to have incurred capital expenditure on the construction thereof equal to the capital expenditure actually incurred on the construction of the building or to the amount paid by him, whichever is the less:

Provided that where the building is sold more than once before it is used, only the person who last purchased the building shall be deemed to have incurred capital expenditure on its construction equal to the capital expenditure actually incurred on its construction or to the amount paid by him, whichever is the less.

(2) Where the expenditure incurred on the construction of a building was incurred by a person carrying on a business which consists, as to the whole or any part thereof, in the construction of buildings with a view to their sale and before the building is used, he sells it in the course of that business or such part thereof, the exception provided for in subparagraph (1) of this paragraph shall have effect as if the reference to the capital expenditure actually incurred on the construction of the building were a reference to the price on such sale.

5. Meaning of "industrial building" Act No. 10 of 1993 s. 18

(1) Subject to this paragraph, in this Schedule "industrial building" means—

(a) a building in use—

(i) for the purposes of a business carried on in a mill, factory or other similar premises; or

(ii) for the purposes of a transport, dock, bridge, tunnel, inland navigation, water, electricity or hydraulic power undertaking; or

(iii) for the purposes of a business which consists in the manufacture of goods or materials or the subjection of goods or materials to any process; or

(iv) for the purposes of a business which consists in the storage of goods—

(A) which are to be used in the manufacture of other goods or materials; or

(B) which are to be subjected, in the course of a business, to any process; or

(C) which, having been manufactured or produced or subjected, in the course of a business, to any process, have not yet been delivered to any purchaser; or

(D) on their arrival into any part of the United Republic;

(v) for the purposes of a business consisting of ploughing or cultivating agricultural land as defined in paragraph 22 (other than land in the occupation of the person carrying on the business) or doing any other operation on such land, or threshing the crops of another person; or

(vi) for the purposes of any business which may be declared by the Minister by notice in the Gazette as being within the provisions of this paragraph either generally or in relation to a particular class or in a particular instance within such class;

(b) a prescribed dwelling-house, that is to say a dwelling-house constructed for and occupied by employees of a business carried on by the person owning such dwelling-house, and which conforms with such conditions as may be prescribed;

(c) a building which is in use as a hotel or part of a hotel;

(d) a building in use for the welfare of workers employed in any business or undertaking referred to in item (a) of this subparagraph.

(2) Item (a) of subparagraph (1) of this paragraph shall apply in relation to a part of a business or undertaking as it applies in relation to a business or undertaking:

Provided that, where part of a business or undertaking complies with the conditions set out in such item, a building shall not, by virtue of this subparagraph, be an industrial building unless it is in use for the purpose of such part of such business or undertaking.

(3) Notwithstanding subparagraphs (1) and (2) but subject to subparagraph (4) of this paragraph, the expression "industrial building" does not include any building in use as, or as part of, a retail shop, showroom, office or dwelling-house, or for any purpose ancillary to the purposes of a retail shop, showroom or office:

Provided that this subparagraph shall not apply to a prescribed dwelling-house, or to, or to part of, a building which is a dwelling-house constructed for the occupation by persons employed in any business or undertaking referred to in subparagraph (1) of this paragraph or to a building constructed for the welfare of such persons, if such building will cease to belong to the person carrying on such business or undertaking or if the building would have little or no value to

such person if he ceased to carry on such business or undertaking on the termination of, or had little or no value to such person where such business or undertaking ceased to be carried on during the year of income in respect of which any claim for a deduction has been made under this Part.

(4) Where part of a building is, and part thereof is not, an industrial building and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-tenth of the total capital expenditure which has been incurred on the construction of the building, the whole building shall be treated as an industrial building.

(5) In this paragraph—

"bridge" means any bridge, the use of which is subject to a charge or toll; and "bridge undertaking" shall be construed accordingly;

"crop" includes any form of vegetable produce;

"dock" includes any harbour, wharf, pier or jetty or other work in or at which vessels can ship or unship merchandise or passengers, not being a pier or jetty primarily used for recreation; and "dock undertaking" shall be construed accordingly;

"electricity undertaking" means an undertaking for the generation, transformation, conversion, transmission or distribution of electrical energy;

"hydraulic power undertaking" means an undertaking for the supply of hydraulic power;

"retail shop" includes any premises of a similar character where a retail business (including repair work) is carried on;

"undertaking" does not include an undertaking not carried on by way of trade;

"water undertaking" means an undertaking for the supply of water for public consumption.

6. Interpretation

(1) Any reference in this Part to the incurring of capital expenditure on the construction of a building does not include capital expenditure on the provision of machinery or on any asset which has been treated for any year of income as machinery.

(2) References in this Part to capital expenditure incurred on the construction of a building do not include any capital expenditure on the acquisition of, or of rights in or over, any land.

PART II

DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON MACHINERY (ss 7-15)

7. Wear and tear deductions Acts Nos. 13 of 1996 s. 34 ; 12 of 1999 s. 20; 18 of 2002 s. 39

(1) Subject to this Part, where, during any year of income, any person incurs capital expenditure on purchase of any machinery which is owned and used by him for the purposes of his business, there shall be made in computing his gains or profits for that year of income a deduction (in this Part referred to as a "wear and tear deduction").

(2) The amount of the wear and tear deduction for any year of income shall be an amount equal to fifty percent of the amount of such expenditure for the year of income in which the machinery is first so used or the appropriate percentage of the written down value at the end of each other year, before making such deduction, of the machinery classified as follows:

(a) computers, heavy industrial machinery, tractors, combined harvesters, heavy earth-moving equipment and such other heavy self-propelling machines of a similar nature as in his discretion the Commissioner, having regard to the likely usage and depreciation in any particular case, may agree;

(b) other self-propelling vehicles, including aircraft;

(c) all other machinery, including ships;

and the appropriate annual percentage after the first year shall be 37½ percent for class (a), 25 percent for class (b) and 12½ percent for class (c).

(3) For the purpose of subparagraph (2)(a), "heavy industrial machinery" means heavy industrial machinery qualifying for investment deduction under paragraph 24 of this Schedule.

8. Ascertainment of written-down value

(1) The written-down value of each class of machinery referred to in subparagraph (2) of paragraph 7 shall be calculated separately as at any time and shall be the amount still unallowed of any capital expenditure on machinery of such class as construed in paragraph 7 of this Schedule, with the addition of the costs of any capital expenditure on any machinery of that class purchased and the deduction of the amount realised on the sale of any machinery of that class

sold in the year of income 1974, or any succeeding year of income, less any deductions made under this Part; and where the amount realised for machinery of any class sold in any year of income exceeds that which, but for the deduction of such amount, would be the written-down value of machinery of that class at the end of such year of income, the excess shall not be deducted but shall be treated as a trading receipt.

(2) Subject to this Part, where machinery is brought into use for the purposes of a trade without being purchased or ceases permanently to be so used without being sold, it shall be deemed to have been purchased or sold, as the case may be, and the cost or amount realised shall be deemed to be the price which it would have fetched if sold in the open market.

9. Application to lessors

Where machinery is let upon such terms that the burden of the wear and tear thereof falls directly upon the lessor, this Part shall apply in relation to him as if the machinery were, during the period of the letting, in use for the purposes of a business carried on by him.

10. Expenditure on buildings in connection with the installation of machinery

Where a person carrying on a business incurs capital expenditure on alterations to an existing building incidental to the installation of machinery for the purposes of the business, this Schedule shall have effect as if such expenditure were capital expenditure on the provision of such machinery and as if the works representing such expenditure formed part of that machinery.

11. Balancing deductions and balancing charges

(1) Where wear and tear deductions have been made in computing the gains or profits of any person under paragraph 7 and that person ceases to carry on the business for the purposes of which the machinery was used and the machinery ceases to be owned by him, there shall be made in computing his gains or profits for the year of income in which such cessation occurs, a deduction or charge (in this Part referred to as a "balancing deduction" or a "balancing charge"):

Provided that—

(a) for the purpose of this paragraph a partnership shall be deemed not to have ceased to carry on a business unless all the partners who carried it on cease to carry it on; and

(b) where the machinery is sold by the liquidator of a company which is in the course of being wound up, the balancing deduction or balancing charge shall be made in computing the gains or profits of such company for the year of income in which the winding-up commenced; and

(c) where, in the case of a balancing deduction, the total income for such year of income before taking account of such deduction is less than the amount of the deduction, the excess may be carried back and allowed in calculating the total income of the next preceding year of income, and so on for as long as is necessary for such deduction to be absorbed by the total income of preceding years not exceeding in all six in number.

(2) Subject to this Part, where on the cessation of a trade a balancing deduction or a balancing charge is to be made under this paragraph and—

(a) no sale moneys are received by the person owning such machinery, or the written-down value at the time of such cessation exceeds those moneys, the balancing deduction shall be the written-down value at the time of such cessation, or the excess thereof over such moneys, as the case may be;

(b) the sale moneys exceed the written-down value, if any, at the time of such cessation, the balancing charge shall be the amount of such excess or, where written down value is nil, the amount of such moneys, as the case may be.

12. Effect in certain successions, transfers, etc.

Where a person succeeds to any business which until that time was carried on by another person, and machinery which, immediately before the succession was in use for the purposes of the business without being sold is, immediately after such succession, in use for the purposes of the business, such machinery shall, for the purposes of this Schedule, be treated as if it had been sold at the date of the succession to the person or persons carrying on the business immediately thereafter and as if the net proceeds of the sale had been the written-down value of the machinery.

13. Special provisions as to certain sales Act No. 8 of 1998 s. 34

(1) This paragraph shall have effect in relation to sales of any machinery where either—

(a) the buyer is a body of persons over whom the seller has control or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; or

(b) it appears, with respect to the sale or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from this paragraph, might have been expected to accrue to the parties or any of them was the obtaining of a deduction under this Schedule.

(2) Where the machinery is sold at a price other than that which it would have fetched if sold in the open market, then, subject to this paragraph, the like consequences shall ensue for the purposes of this Schedule to all persons concerned as would have ensued if the machinery had been sold for the price which it would have fetched if sold in the open market.

(3) Where the sale is one to which item (a) of subparagraph (1) of this paragraph applies and item (b) of that subparagraph does not apply, and is a sale which would give rise to a balancing charge, and the parties to the sale by notice in writing to the Commissioner so elect, then subparagraph (2) of this paragraph shall not have effect but the like consequences shall ensue to the buyer and seller as would have ensued if the price for which the machinery was sold had been the written-down value:

Provided that no such election shall be made in any case where either the buyer or the seller is at the time of the sale a non-resident person.

(4) [Repealed by Act No. 8 of 1998 s. 34.]

14. Private use of machinery

Where any machinery owned by a person is, during any year of income, used by him for the purposes of a business carried on by him and also used by him for other purposes, then in determining the amount of any wear and tear deduction or any balancing deduction or balancing

charge or any amount treated as a trading receipt of the written down value of such machinery for any year of income, regard shall be had to all the relevant circumstances of the case and in particular to the extent of the use for such other purposes and the Commissioner shall make such adjustments as he may determine to be just and reasonable.

15. Expenditure on private vehicles Acts Nos. 16 of 1974 s. 18; 17 of 1990 s. 35; 27 of 1997 s. 12

(1) For the purposes of this Schedule, where capital expenditure in excess of five million shillings was incurred on or after 1st January, 1961, in respect of a road vehicle other than a commercial vehicle or vehicles whose purchaser is a person whose main business is the transport of goods or persons or the hire or sale of vehicles, such capital expenditure shall be deemed to be five million shillings; and where any such road vehicle is sold, the sale price shall be deemed to be such proportion of the proceeds of sale as the Commissioner may determine to be just and reasonable, having regard to the original purchase price and the proportion thereof deemed under this paragraph to be capital expenditure.

(2) For the purposes of this paragraph the term "commercial vehicle" shall have the meaning assigned to it by the Road Traffic Act *.

PART III

DEDUCTIONS IN RESPECT OF MINING OPERATIONS (ss 16-21A)

16. Definitions for Part III Acts Nos. 27 of 1997 s. 16; 18 of 2002 s. 39

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

"additional capital allowance" has the meaning ascribed to it in paragraph 18 of this Schedule;

"allowance base" has the meaning ascribed to it in paragraph 18 of this Schedule;

"development capital expenditure" means capital expenditure incurred wholly and exclusively for the purpose of development operations;

"development operations" means operations carried out for or in connection with the development of a mine and includes operations to add to, alter or improve an existing mine;

"expenditure" means the sum of prospecting capital expenditure and development capital expenditure, incurred in the United Republic of Tanzania by any person carrying on mining operations and any amount of additional capital allowance computed for the year of income in accordance with the provisions of paragraph 18 of this Schedule:

Provided that the expression "expenditure" shall not include—

(i) any expenditure on the acquisition of the site of deposits of minerals or the site of buildings or works, or of right in or over any such site;

(ii) any expenditure on works constructed wholly or mainly for subjecting raw products of such deposits to any process except a process designed for preparing the raw product for use as such;

"mine" when used as a noun, means any place, excavation or working in or on which any operation connected with mining is carried on together with all buildings, premises, erections and appliances belonging or appertaining thereto, above or below the ground for the purposes of

mining, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores;

"prospecting capital expenditure" means capital expenditure incurred wholly and exclusively for the purpose of prospecting and includes expenditure incurred in the acquisition of rights in or over deposits of minerals;

"qualifying capital expenditure" has the meaning ascribed to it in paragraph 18 of this Schedule.

(2) Any reference in this part to assets representing any expenditure includes, in relation to prospecting capital expenditure any results obtained from any search, exploration or inquiry upon which the expenditure was incurred.

17. Deductions Act No. 27 of 1997 s. 16

Subject to this Schedule, where a person carrying on mining operations incurred expenditure in any year of income there shall be made, in computing his gains or profits for such year of income, a deduction equal to the amount of such expenditure.

18. Apportionment of deductions Acts Nos. 27 of 1997 s. 16; 2 of 1998; 18 of 2002 s. 39

(1) For the purposes of deduction of development capital expenditure in ascertaining the income of a person derived from mining operations, an additional capital allowance of fifteen per centum per annum shall be applied to the balance of unredeemed qualifying capital expenditure forming part of any deficit brought forward and allowable as a deduction for such person at the commencement of each year of income:

Provided that the provisions of this paragraph shall apply where at any time before the 1st day of July, 2001 the Minister responsible for mining has entered into an agreement binding on the Government with any person carrying on mining operations, the provisions of paragraph 16 and 18 of this Part shall, unless otherwise agreed, apply to mining operations carried on by that person as they would have applied immediately before the 1st day of July, 2001.

(2) "Qualifying capital expenditure" for the purpose of additional capital allowances shall mean development capital expenditure and not include prospecting capital expenditure or any interest or financing charges.

(3) The accumulated qualifying capital expenditure in relation to a mine at the end of a year of income for the purpose of application of the additional capital allowance, that is, the "allowance base", is the sum of—

(a) unredeemed qualifying capital expenditure brought forward from the year preceding the year of income;

(b) plus the additional capital allowance calculated thereon;

(c) plus qualifying capital expenditure incurred during the year of income;

(d) minus any such qualifying capital expenditure set off against the income of another mine;

(e) minus gains for profits chargeable to tax in relation to such mine for the year of income calculated before any deduction in respect of qualifying capital expenditure and including any proceeds of disposals of assets previously included as qualifying capital expenditure.

(4) Where at the end of any year of income the allowance base becomes negative the unredeemed qualifying capital expenditure carried forward to the subsequent year of income shall be set at zero.

(5) Where unredeemed qualifying capital expenditure is carried forward from any year of income, to the subsequent year of income, additional capital allowances shall be applied to qualifying capital expenditure incurred during such year of income, provided that the additional capital allowance so applied shall be treated as expenditure only in such subsequent year of income.

(6) Where a person ceases to carry on mining the balance of unredeemed qualifying capital expenditure including additional capital allowance accumulated to the date of such cessation may be carried forward for deduction against other income derived from mining operations, if any, of such person, provided that no further additional capital allowance shall be applied to such balance unless such person is engaged in commercial production of minerals from a mine.

(7) Additional capital allowance shall not be applied to the qualifying capital expenditure incurred in respect of any mine during any period when mining operations in relation to such mine are suspended other than for reasons of force majeure.

19. Operations on separate mines treated separately Act No. 27 of 1997 s. 16

When a person "the transferor", is entitled to a deduction under paragraph 17 in respect of any expenditure, and his interest in the asset represented by such expenditure or in any part of

such asset is rendered, whether by operation of law or otherwise, to some other person "the transferee"—

(a) the amount of the deduction if any, for the year of income in which the transfer takes place, shall be apportioned in such manner as the Commissioner may determine to be just and reasonable as between the transferee and the transferor and

(b) the transferee shall to the exclusion of the transferor, be entitled, where the interest transferred is in the whole to the deduction for any subsequent year of income, and where the interest transferred is in part only of the asset, so much of the deduction as the Commissioner may determine to be just and reasonable.

20. Expenditure incurred by person not engaged in business of mining, etc. Acts Nos. 27 of 1997 s. 16; 2 of 1988

Where any person incurs expenditure to which this Part applies and sells any assets representing such expenditure, then if the purchaser carries on mining operations, such purchaser shall, for the purposes of ascertainment of income derived from such mining operations, be deemed to have incurred prospecting capital expenditures or as the case may be, development capital expenditure equal to the price paid by him for such assets.

21. Sum received by vendor treated as trading receipt Act No. 27 of 1997 s. 16

Where under paragraph 20, the purchaser of any assets representing expenditure is deemed to have incurred expenditure to which this Part applies equal to the price paid to him for such assets, then the sum received by the vendor as the price for such assets, after deducting

therefrom any expenditure incurred by him in selling such assets and any prospecting capital expenditure and development capital expenditure, so far as such expenditure has not been otherwise deducted in ascertaining his total income for any year of income, shall be treated as a trading receipt for the year of income in which the sale took place.

21A. Transitional provision Act No. 27 of 1997 s. 16

Where at any time before 9th day of May, 1997 the Minister responsible for mining has entered into an agreement binding on the Government with any person carrying on mining operations, the provisions of paragraph 16, 17, 18, 19, 20 and 21 of this Part shall, unless otherwise agreed, regard being had to a right of election offered by the Government to any such person, apply to mining operations carried on by that person as they would have applied immediately before the 9th day of May, 1997 under the provisions of this Act which would on that date have been applicable to those mining operations.

PART IV

DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON AGRICULTURAL LAND (ss 22-23)

22. Deductions in respect of capital expenditure on farm works

(1) Subject to this Schedule, where in any year of income the owner or tenant of any agricultural land incurs capital expenditure on the construction of farm works, there shall be made, in computing his gains or profits for such year of income and the four following years of income, a deduction equal to one-fifth of such expenditure.

(2) No capital expenditure shall be taken into account for the purposes of this paragraph unless it is incurred for the purposes of husbandry on the agricultural land in question.

(3) Where the capital expenditure—

(a) is on a farm-house, one-third only of such expenditure shall be taken into account or, if the accommodation and amenities of the farm-house are out of due relation to the nature and extent of the farm, such lesser proportion thereof as the Commissioner may determine to be just and reasonable;

(b) is incurred on any assets other than a farm-house, being an asset which is to serve partly the purposes of husbandry and partly other purposes, then only such proportion thereof as the Commissioner may determine to be just and reasonable shall be taken into account for the purposes of this paragraph.

(4) Where a person ("the transferor") would, if he continued to be the owner or tenant, as the case may be, of any agricultural land, be entitled to a deduction under this paragraph in respect of any capital expenditure and the whole of his interest in the land in question, or in any part of such land, is transferred, whether by operation of law or otherwise, to some other person ("the transferee")—

(a) the amount of the deduction, if any, for the year of income in which the transfer takes place, shall be apportioned in such manner as the Commissioner may determine to be just and reasonable between the transferor and the transferee; and

(b) the transferee shall, to the exclusion of the transferor, be entitled, where the interest transferred is in the whole of the land, to the whole of the deduction for any subsequent year of income, and where the interest transferred is in part only of the land, to so much of the deduction as the Commissioner may determine to be just and reasonable.

(5) For the purposes of subparagraph (4) of this paragraph where an interest in land is a leasehold interest and that leasehold interest comes to an end, then such interest shall be deemed to have been transferred—

(a) if an incoming tenant makes any payment to the outgoing tenant in respect of assets representing the expenditure in question, to the incoming tenant; and

(b) in any other case, to the owner of the interest in immediate reversion on the leasehold interest.

(6) Where the amount of a deduction under this Part has been in any manner varied for any year, then deductions for subsequent years of income shall be so adjusted that the sum of deductions for all years of income shall not exceed the expenditure.

23. Definitions for Part IV

In this Part—

"agricultural land" means land occupied wholly or mainly for the purposes of a trade of husbandry;

"farm works" means farm-houses, labour quarters, any other immovable buildings necessary for the proper operation of the farm, fences, ditches, drains, water and electricity supply

works other than machinery, windbreaks, and other works necessary for the proper operation of the farm.

PART V

INVESTMENT DEDUCTIONS (ss 24-26)

24. Buildings and machinery Acts Nos. 9 of 1977 s. 32; 20 of 1978 s. 18; 10 of 1986 s. 22; 18 of 2002 s. 39

(1) Subject to this Schedule, where—

(a) a person incurs capital expenditure to which this Schedule applies on the construction of an industrial building which is to be used by him or by a lessee for the purposes of an approved business or on the purchase of machinery which has been installed and is used solely in that building for the purposes of such business; or

(b) a person, being a lessee of such building as is referred to in subparagraph (a) of this paragraph, incurs capital expenditure to which this Schedule applies on the purchase of machinery which has been installed or used solely in such building for the purposes of an approved business; or

(c) a person incurs capital expenditure to which this Schedule applies on—

(i) the construction or extension of a building subsequently in use as an hotel and such building or extension is certified by the Minister to which this Part or this Schedule applies; or

(ii) the purchase of machinery which has been installed and is used solely in the hotel; or

(d) the owner or lessee of a building other than an industrial building incurs, after the 1st January, 1974, capital expenditure to which this Schedule applies on the purchase of machinery which has been installed and is used solely in such building which building and machinery are subsequently used for the purposes of an approved business and such expenditure has not been incurred substantially for the replacement of machinery previously in use in an existing business carried on by such owner or lessee;

(e) a person incurs capital expenditure to which this Schedule applies on the establishment of, or investment in, an agricultural or livestock development farm;

(f) a person incurs capital expenditure to which this Schedule applies on the purchase of telecommunication machinery and towers, constructed, erected, installed or laid out and used solely in telecommunications service which is an approved business,

an amount equal to twenty percent of such capital expenditure shall be deducted in computing his gains or profits for the year of income in which the building is first so used or, at the election of such person, for any subsequent year of income; and it shall be lawful for such person to elect that the amount of such deduction be deducted in such portions from the gains or profits for such year and such subsequent years as he may appoint.

24A. Deductions from capital expenditure on agricultural land Act No. 10 of 1986 s. 22

Subject to this Schedule where in any year of income, the owner or tenant of any agricultural land used for the purposes of husbandry incurs capital expenditure to which this Schedule applies on—

(A) the construction of, or extension to, any immovable building on such land erected for the purpose of—

(a) processing in any way the produce of such land or of any livestock;

(b) storing—

(i) feeds, fertilizers, insecticides and inputs;

(ii) agricultural machinery;

(iii) produce before or after processing whether or not requiring to be processed;

(c) providing accommodation for livestock held on such land;

(B) the installation of any power or water supply for irrigation including boreholes and water conservation;

(C) the clearing of land not previously cultivated or previously neglected or abandoned and the planting thereon of permanent or semi-permanent crops,

an amount equal to twenty percent of such expenditure shall be deducted in computing his gains or profits for such year of income or, at his election, for any subsequent year of income and it

shall be lawful for such deduction to be in such portions and from the gains or profits for such year and such subsequent years as he may appoint.

25. Deductions from capital expenditure relating to ships

Subject to this Schedule, where a resident person carrying on the business of a ship-owner incurs capital expenditure to which this Schedule applies—

(a) on the purchase of a new and hitherto unused power-driven ship of more than 495 tons gross; or

(b) on the purchase, and subsequent refitting for the purposes of such business, of a used power-driven ship of more than 495 tons gross,

an amount equal to forty percent of such capital expenditure shall be deducted in computing his gains or profits for the years of income in which the ship is first so used or, at the election of such person, for any subsequent year of income; and it shall be lawful for such person to elect that the amount of such deduction be deducted in such portions from the gains and profits for such year or such subsequent years as he may appoint:

Provided that—

(a) not more than one shipping investment deduction shall be allowed in respect of the same ship;

(b) no shipping investment deduction shall be allowed in respect of the purchase and refitting of a used ship unless the expenditure on refitting represents not less than twenty-five percent of the total capital expenditure incurred; and

(c) where a ship in respect of which a shipping investment deduction has been given is sold within a period of five years from the end of the year of income in which such deduction was given, the deduction shall be withdrawn and treated as income of the vendor for the year of income in which the sale takes place.

26. Sales of buildings prior to use

Where capital expenditure is incurred on the construction of an industrial building to which paragraph 24 applies and which is sold before it is first used then the provisions of paragraph 4 shall apply.

PART VI

MISCELLANEOUS PROVISIONS (ss 27-32)

27. Apportionment of consideration for sale, exchanges, etc., of any property or of leasehold interests

(1) Any reference in this Schedule to the sale of any property includes a reference to the sale of that property together with any other property; and, where property is sold together with other property, so much of the net proceeds of the sale of the whole property as the Commissioner may determine to be just and reasonable as property attributable to the first mentioned property shall, for the purposes of this Schedule, be deemed to be net proceeds of the

sale of the first mentioned property, and references to expenditure incurred on the provision or the purchase of property shall be construed accordingly.

(2) For the purposes of this paragraph all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are, or purport to be, agreed for separate items of that property or that there are, or purport to be, separate sales of separate items for that property.

(3) Subparagraph (1) of this paragraph shall, with the necessary adaptations, apply in relation to other sale moneys as they apply in relation to the net proceeds of sale.

(4) This Schedule shall have effect as if any reference therein to the sale of any property included a reference to the exchange of any property and, in the case of a leasehold interest, also included a reference to the surrender thereof for valuable consideration; and any provisions of this Schedule referring to sales shall have effect accordingly with the necessary adaptations and, in particular with the adaptations that references to the net proceeds of sale and to the price shall be taken to include references to the consideration for the exchange or surrender and references to capital sums included in the price shall be taken to include references to so much of the consideration as would have been a capital sum if it had taken the form of a money payment.

28. Interpretation of certain references to expenditure, etc. Act No. 9 of 1988 s. 16

(1) Unless the context otherwise requires, references in this Schedule to capital expenditure and capital sums in relation to the person incurring such expenditure, or paying such sums, do not include any expenditure or sum which is deductible otherwise than under this Schedule for the purpose of ascertaining his total income but it includes any additional

expenditure incurred as a result of foreign exchange fluctuations in connection with a capital loan obtained for the purpose of financing such expenditure.

(2) Any reference in this Schedule to the date on which expenditure is incurred shall be construed as a reference to the date when the sum in question becomes payable.

29. Subsidies

(1) Expenditure shall not be regarded for any of the purposes of this Schedule as having been incurred by any person in so far as it has been, or is to be, met directly or indirectly by any Government or a local government authority, or by any person, whether in the United Republic or elsewhere, other than the first mentioned person.

(2) In considering whether, for the purposes of this Schedule, any expenditure has been met or is to be met directly or indirectly by anyone other than the person incurring the expenditure, there shall be left out of account—

(a) any insurances, moneys or other compensation moneys payable in respect of any asset which has been demolished, destroyed or put out of use; and

(b) any expenditure met, or to be met, by any person, other than a Government or a local government authority, being expenditure in respect of which, apart from the item, no deduction could be made under subparagraph (3) of this paragraph.

(3) Where a person, for the purposes of a business carried on or to be carried on by him or by a tenant of land in which he has an interest contributes a capital sum (hereinafter referred to as "a contribution") to expenditure on the provision of an asset being expenditure which, apart from

subparagraph (1) of this paragraph, would have been regarded as wholly incurred by another person and in respect of which, apart from such subparagraph, a deduction would have been made under this Schedule, then, subject to this paragraph, such deduction, if any, shall be made to the contributor as would have been made to him if his contribution had been expenditure on the provision, for the purposes of that business, of a similar asset.

(4) Subject to this Schedule, the amount of the deductions and the manner in which they are to be made shall be determined on the following basis—

(a) the asset shall be deemed to continue at all material times to be in use for the purposes of the business;

(b) where the asset is machinery and, when the contribution was made, the business was carried on or was to be carried on by a tenant of land in which the contributor has an interest, the contributor shall be deemed to have let the machinery to such tenant on such terms that the burden of the wear and tear thereof falls directly on the contributor.

(5) Where, when the contribution was made, the business for the purposes of which it was made was carried on or was to be carried on by the contributor, then, on any transfer of the business or any part thereof—

(a) where the transfer is of the whole business, the deductions thereafter shall be made to the transferee; or

(b) where the transfer is of part only of the business, item (a) shall have effect with respect to so much of the deduction as the Commissioner may determine is properly referable to the part of the business transferred.

(6) Where, when the contribution was made, the business was carried on or was to be carried on by a tenant of land in which the contributor had an interest, the deduction for any year of income shall be made to the person who is entitled to the contributor's interest in the land.

30. Prevention of double allowances

If deduction is made under any Part in respect of any property or in respect of capital expenditure on any property, in computing the gains or profits of any person for any year of income then, to the extent to which such a deduction has been made, no further deduction shall be made under that Part or any other Part or under any other provision of this Act in respect of, or in respect of capital expenditure on, that property in ascertaining the total income of that person for the same or any previous or subsequent year of income:

Provided that this paragraph shall have no application to an investment deduction.

31. Increase of deductions

The amount of any deduction made under this Schedule may be increased to such an amount as may be prescribed by the Minister either generally, or in relation to any particular class of business, or in a particular instance.

32. Other provisions as to interpretation

(1) In this Schedule, except where the context otherwise requires—

"approved business" means a business declared by the Minister, by notice in the Gazette, to be approved for the purposes of Part V of this Schedule;

"concession" means a right or privilege granted by the Government, or any local government or other authority;

"control" in relation to a body corporate, means the power of a person to secure, by means of the holding of shares or the possession of, voting power in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person; and, in relation to a partnership, means the right to a share of more than one-half of the assets or of more than one-half of the income of the partnership;

"hotel" has the meaning assigned to that expression in the Hotels Act *;

"income" includes any amount on which a charge to tax is authorised to be made under this Act;

"lease" includes an agreement for a lease where the term to be covered by the lease has begun and any tenancy but does not include a mortgage and "lessee", "lessor" and "leasehold interest" shall be construed accordingly;

"machinery" includes ships and plant used in carrying on any business;

"sale moneys" means, in relation to—

- (a) a sale of any property, the net proceeds of the sale;
- (b) the coming to an end of an interest in property, any compensation payable in respect of that property;
- (c) the demolition or destruction of any property, the net amount received for the remains of the property, together with any insurance or salvage money, received in respect of the demolition or destruction and any other compensation of any description received in respect thereof, in so far as that compensation consists of capital sums.

(2) Any reference in this Schedule to any building, machinery, works, asset or farm-house shall, except where the reference is to the whole of a building, be construed as including a reference to a part of any such building, machinery, works, assets or farm-house.

(3) Any reference in this Schedule to the time of any sale shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

(4) For the purposes of this Schedule the price which any property would have fetched if sold in the open market shall be determined by the Commissioner.

(5) Where any income of an accounting period ending on some day other than the last day of any year of income is taken into account for the purposes of ascertaining total income for any year of income, then any reference in this Schedule to a year of income shall be construed as a reference to such accounting period:

Provided that where any deduction under this Schedule is related to a year of income and any income of an accounting period is so taken into account then, if such accounting period is more or less than twelve months, the amount of such deduction shall be proportionately increased or decreased, as the case may be.

THIRD SCHEDULE

(Sections 2(1) and 33)

HEAD A

INSURANCE RELIEF FOR RESIDENTS Acts Nos. 8 of 1998 s. 35; 10 of 1999; 12 of 1999; s. 21; 11 of 2000 s. 31

Insurance Relief:

(a) This provision shall be deemed to have come into operation on the 1st day of July, 1986.

(b) Subject to subparagraph (c), the amount of the insurance relief shall be—

(i) in the case to which section 32E(1)(a) or (b) applies, the monthly premium or four hundred shillings, whichever is the lesser amount;

(ii) in the case to which section 32E(1)(c) applies, the monthly contribution of five percent of a person's monthly salary or four hundred shillings, whichever is the lesser amount.

(c) No person shall, in respect of any year of income, be entitled to claim insurance relief in respect of premiums or contributions for more than one life insurance policy or approved pension or provident fund.

HEAD B

RATES OF TAX Acts Nos. 7 of 1976 s. 30; 20 of 1978 s. 19; 20 of 1981 s. 19; 15 of 1985 s. 12; 6 of 1986 s. 7; 12 of 1986 s. 17; 9 of 1988 s. 17; 18 of 1991 s. 36; 14 of 1992 s. 28; 17 of 1995 s. 15; 13 of 1996 s. 35; 27 of 1997 s. 12; 11 of 2000 s. 31; 18 of 2002 s. 40

1. The individual rates of tax shall be—

MONTHLY INCOME	RATE PAYABLE
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Where such income does not exceed Shs. 50,000.00 NIL

Where such income exceeds Shs. 50,000.00 but does not exceed Shs. 180,000.00 18.5% for the amount in excess of 50,000.00

Where such income exceeds Shs. 180,000.00 but does not exceed Shs. 360,000.00 Shs. 24,050.00 + 20% for the amount in excess of Shs. 180,000.00

Where such income exceeds Shs. 360,000.00 but does not exceed Shs. 540,000.00 Shs. 60,050.00 + 25% for the amount in excess of Shs. 360,000.00

Where such income exceeds Shs. 540,000.00 Shs. 105,050.00 + 30% for the amount in excess of Shs. 540,000.00.

1A.

Tax rates on income of an individual from business of gross turnover of less than twenty million shillings shall be—

Businesses

Turnover	Tax
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Payable

Where the gross turnover is less than Shs. 7,000,000 per annum	Shs. 50,000.00
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Where the gross turnover is Shs. 7,000,000 and less than Shs. 14,000,000 per annum	Shs. 165,000.00
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Where the gross turnover is Shs. 14,000,000 and less than Shs. 20,000,000 per annum	Shs. 385,000.00
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2. Notwithstanding the provisions of paragraph (1) of this Schedule, the rates in this Part shall apply to all business enterprises holding a certificate of incentives granted by the Tanzania Investment Centre.

3. (1) The Corporation rate of tax shall be six shillings in each twenty shillings of the total income of the corporation.

(2) Where at any time before 9th of May, 1997 the Minister responsible for mining has pursuant to section 15 of the Mining Act, 1979 entered into an agreement binding on the Government with any person carrying on mining operations, the provisions of paragraph 3(1) of this Part shall, unless otherwise agreed pursuant to a right of election offered by the Government to any such person, apply to mining operations carried on by that person as they would have applied immediately before the 9th of May, 1997 under the provisions of this Act which would on that date have been applicable to those mining operations.

(3) Where the Minister responsible for mining has, pursuant to section 15 of the Mining Act, 1979 or pursuant to any other written law which replaces the Mining Act, 1979, entered into an agreement, binding on the Government, with any corporation under which the maximum corporation rate of tax is specified, the corporation rate of tax applicable to income derived from mining operations to which that agreement refers shall, if the corporation rate of tax which would otherwise apply, exceeds the specified rate, be the rate so specified.

4. (1) Save in the case of any person carrying on mining operations, the non-resident withholding tax rate shall be—

- (a) in respect of any dividend, twenty percent of the amount payable;
- (b) in respect of any interest, twenty percent of the amount payable;

(c) in respect of any rent, premium or like consideration for the use of occupation of property, ten percent of the gross amount payable;

(d) in respect of any dividend ten percent of the gross amount payable;

(e) in respect of any interest, fifteen percent of the gross amount payable;

(f) in respect of any pension or retirement annuity, fifteen percent of that portion of the gross amount payable which exceeds five thousand shillings in any year of income:

Provided that where the amount is payable to a non-resident who is a resident of a country with whom the Government of the United Republic has arrangements for the relief of double taxation whereby such pension or retirement annuity payable to such non-resident in such a country would be eligible for relief of double taxation then the whole of the pension shall be taxed at the rate of twelve and one half percent;

(g) in respect of any branch dividend, ten percent of the amount payable;

(h) in respect of income from leased aircraft, zero percent of the amount payable;

(i) in respect of annual fees payable to a director other than whole time service director of a corporation for serving as a member of the Board, ten percent of the gross amount payable.

(2) In the case of persons carrying on mining operations the non-resident withholding tax rate providing technical services to a person carrying on mining operations, the non-resident withholding tax rate shall be—

Nature of Payment	Tax rate
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(i) Any management fee where the total of such management fees in any year does not exceed 2% of the amount claimed by the person as a deduction from income in respect of operating expenses incurred in mining operations	3% of the gross amount payable
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(ii) Any management fee in excess of the amount specified in paragraph 4(2)(i)	20% of the gross amount payable
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(iii) Any professional fee as provided in paragraph 4(1)(a)	
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(iv) Any payment for technical services	3% of the gross amount payable
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(v) Any rent, premium or like consideration for the use or occupation of property as provided in paragraph 4(1)(e)	
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(vi) Any dividend	10% of gross amount payable
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(vii) Any interest on loans in foreign currencies from third parties	Nil
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(viii) Any interest other than interest on loans in foreign currencies from third parties as provided in paragraph 4(1)(e)	
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- (ix) Any pension or retirement annuity as provided in paragraph 4(1)(f)
- (x) Any distribution of branch profits 10% of the amount of such distribution

5. The resident withholding tax rates shall be *–

- (a) in respect of any dividend, ten percent of the amount payable;
- (b) in respect of any interest, fifteen percent of the gross amount payable;
- (c) in respect of any insurance commission, seven and half percent;
- (d) in respect of any business insurance claim, thirty percent of the gross amount payable;
- (e) in respect of any rent, where the gross rental income exceeds five hundred thousand shillings, fifteen percent of the amount payable;
- (f) in respect of any payment for technical services provided to any person carrying on mining operations three percent of the gross amount payable;
- (g) in respect of any dividend payable by companies listed under the Dar es Salaam Stock Exchange, five percent of the amount payable;
- (h) in respect of income from leased aircraft, ten percent of the amount payable;

(i) in respect of annual fees payable to a director other than whole time service director of a corporation for serving as a member of the Board, ten percent of the gross amount payable.

6. For avoidance of doubt, the amount of tax withheld by a person carrying on mining operations in respect of services rendered shall qualify as final settlement of the income tax liability of the person providing technical services in respect of that year of income.

7. The capital gains tax rate shall be ten percent of the capital gains.

8. [Repealed by Cap. 356 s. 11(1)(a).]

9. Notwithstanding paragraph 5(b), the resident and non-resident withholding tax rate on interest applicable to all business enterprises holding certificates of incentives granted by the Tanzania Investment Centre before the 1st day of July, 2000, and carrying on business in priority sectors, shall continue to be zero percent.

DEDUCTIONS IN RESPECT OF HOLDERS OF CERTIFICATE OF INCENTIVES Act No.
27 of 1997 s. 13

1. Subject to this Schedule, where a person holding a certificate of incentives granted by the Tanzania Investment Centre under the Tanzania Investment Act *, carries on business and incurs expenditure in any year of income, there shall be made, in computing his gains or profits for that year of income, a deduction equal to the amount of that expenditure.

HEAD C

SPECIFIED WINDFALL TAX RATES

[Repealed by Act No. 11 of 2000 s. 31.]

THIRD SCHEDULE NO. 2

DEDUCTIONS IN RESPECT OF WITHHOLDING TAX ON DIVIDEND AND INTEREST ON LOANS

[Repealed by Act No. 8 of 1998 s. 36.]

FOURTH SCHEDULE

FINANCIAL INSTITUTIONS

(Section 34)

- (a) The Bank of Tanzania;
- (b) The National Bank of Commerce;
- (c) The Tanzania Investment Bank;
- (d) The Tanzania Co-operative and Rural Development Bank;
- (e) The Tanganyika Development Finance Company Limited;
- (f) The Post Office Savings Bank;
- (g) The National Insurance Corporation Limited;
- (h) The National Provident Fund;

- (i) The Karadha Company Limited;
- (j) The National Development Credit Agency;
- (k) The Government Employees Provident Fund;
- (l) The Local Government Employees Provident Fund;
- (m) The Public Trustee Reserve Fund.

FIFTH SCHEDULE

(Sections 48 and 49)

[Omitted.]

SIXTH SCHEDULE

TRANSITIONAL PROVISIONS

(Section 139)

[Repealed by Act No. 8 of 1998 s. 38.]

SEVENTH SCHEDULE

TRANSACTIONS FOR WHICH TAXPAYER IDENTIFICATION NUMBER (TIN) IS
REQUIRED Act No. 9 of 2000 s. 30

(Section 3E)

Institution Purpose of Transaction

Commissioner for Lands Registration of title upon transfer of ownership

Central and Local Government Trade licence

Registrar of Motor Vehicles Registration of motor vehicles or transfer of vehicles under the Road Traffic Act, 1973 and licensing of motor vehicles under the Transport Licensing Act, 1973

Registrar of Corporations New registrations

Business names

Patents and Trade and Service Marks

Ministry of Industry and Commerce Trade licensing and industrial licensing

Commissioner for VAT Application for registration

Commissioner for Customs and Excise Importation of goods; customs clearing and forwarding

All Government Ministries, Government Agencies, Local Government Authority, Parastatal Organisation, Corporations, Bank, Financial Institution, Co-operative Societies and public bodies. All contracts, including contracts of service and employment, supply of goods and service

Immigration Department Resident permit

Ministry of Labour All working permits

[PCh333]CHAPTER 333

THE ANTIQUITIES ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

Section

Title

PART I

PRELIMINARY PROVISIONS

1. Short title.
2. Interpretation.

PART II

MONUMENTS

3. Declaration of monuments and conservation areas.
4. Control of monuments.
5. Restriction on certain activities in relation to monuments.

6. Acquisition of monuments and conservation areas.
7. Owners may require Minister to acquire monument.

PART III

RELICS AND PROTECTED OBJECTS

8. Relics discovered in Tanzania to be property of Republic.
9. Protected objects.

PART IV

DISCOVERY AND EXCAVATION

10. Discovery of relics and monuments.
11. No excavation or collection without a licence.
12. Persons to whom licence may be granted.
13. Conditions of licence.

PART V

EXPORT AND SALES

14. Exports.

15. Sales.

PART VI

POWERS OF LOCAL GOVERNMENT AUTHORITIES

16. Powers of local government authorities relating to monuments.

PART VII

MISCELLANEOUS PROVISIONS

17. Relics found in Tanzania before the appointed day.

18. Burden of proof.

19. Exchange of illicit antiquities.

20. Establishment of the Council.

21. Functions of the Council.

22. Establishment of National Fund for Antiquities.

23. Power to erect notice or tablet.
24. Power to hand over relics to museums, etc.
25. Power to appoint Honorary Antiquities Wardens.
26. Arrest.
27. Penalty.
28. Rules.
29. Application of the Land Acquisition Act.
30. [Repeal of R.L. Cap. 233 and amendment of Cap. 118.]

SCHEDULE