

(Legislative Supplement No. 24)

LEGAL NOTICE No. 59

THE INCOME TAX ACT

(Cap. 470)

THE DOUBLE TAXATION RELIEF (MAURITIUS) NOTICE, 2012

IN EXERCISE of the powers conferred by section 41 of the Income Tax Act, the Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Government of Mauritius in the articles of an agreement set out in the Schedule and signed on the 7th May, 2012 with a view to affording relief from double taxation in relation to income tax and any other taxes of similar character imposed by the laws of Mauritius, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Government of the Republic of Kenya and the Government of Mauritius desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

*Personal Scope*

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

*Taxes Covered*

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income.
3. The existing taxes to which this Agreement shall apply are in particular:
  - (a) in Mauritius, the income tax; (hereinafter referred to as "Mauritius tax");
  - (b) in Kenya, the income tax charged in accordance with the provisions of the Income Tax Act, Cap 470 (hereinafter referred to as "Kenyan tax").
4. This Agreement shall also apply to any other taxes of a substantially similar character which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

5. The competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

### ARTICLE 3

#### *General Definitions*

1. In this Agreement, unless the context otherwise requires:
  - (a) the term "Mauritius" means the Republic of Mauritius and includes:
    - (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
    - (ii) the territorial sea of Mauritius; and
    - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised;
  - (b) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
  - (c) the terms "a Contracting State" and "the other Contracting State" mean Mauritius or Kenya, as the context requires;
  - (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - (e) the term "competent authority" means:
    - (i) in the case of Mauritius, the Minister responsible for finance or his authorised representative; and
    - (ii) in the case of Kenya, the Minister responsible for finance or his authorised representative.
  - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - (h) the term "national" means any individual having the nationality or citizenship of a Contracting State and any legal person, partnership (société)