

THE INSURANCE (AMENDMENT) ACT, 1987**No. 12 of 1987***Date of Assent: 30th July, 1987**Date of Commencement: 1st July, 1987***An Act of Parliament to amend the Insurance Act, 1984, to impose tax on gross direct premiums and for purposes incidental thereto**

ENACTED by the Parliament of Kenya, as follows:—

Short title and commencement.

1. This Act may be cited as the Insurance (Amendment) Act, 1987 and shall be deemed to have come into operation on the 1st July, 1987.

Amendment of section 2 of No. 1 of 1985.

2. Section 2 (1) of the Insurance Act, 1984, in this Act referred to as the principal Act, is amended by inserting the following definitions in their appropriate alphabetical sequence—

“gross direct premium” means the premium after deductions of discounts, refunds and rebates of premium written by an insurer excluding any reinsurance premium accepted and before deduction of—

(a) any premium payable in respect of mandatory cessions falling under section 145 of this Act; and

(b) any other reinsurance premium ceded;

“tax” means the premium tax payable under this Act.

Amendment of section 10.

3. Section 10 of the principal Act is amended—

(a) in subsection (1), by deleting the expression “the Commissioner may direct” and inserting “the Commissioner may, with the approval of the Minister, direct”;

(b) in subsection (3), by inserting the expression “with the prior approval of the Minister” immediately after the words “he may”.

Amendment of section 31.

4. Section 31 of the principal Act is amended—

(a) by deleting the expression “the Commissioner” and inserting “the Minister”;

(b) by deleting the proviso at the end thereof.

Amendment of section 113.

5. Section 113 (1) of the principal Act is amended by deleting the words “in the latter case, shall apply to the Commissioner for” and inserting “in the latter case, shall apply to the Minister, through the Commissioner, for”.

6. Section 123 (1) of the principal Act is amended—

Amendment of section 123.

(a) by inserting the words “with the prior approval of the Minister” immediately after the expression “The Commissioner may”;

(b) by inserting the following paragraph (g) immediately after paragraph (f)

(g) on the ground that the insurer has failed to pay tax that is due and outstanding.

7. Section 187 of the principal Act is amended by deleting the expression “cancel the registration” and inserting “cancel the registration, except that, in the case of an insurer, such cancellation shall be made only with the prior approval in writing of the Minister.”

Amendment of section 187.

8. The principal Act is amended by repealing section 195 and inserting the following—

Replacement of section 195.

Refusal to register.

195. Where the Minister, in case of an insurer, and the Commissioner in case of all other members of the insurance industry, refuses to register an applicant for registration or renewal of registration or alteration of registration, the Minister or Commissioner, as the case may be, shall record the reasons for his decision and furnish a copy thereof to the applicant.

9. Section 196 of the principal Act is amended—

Amendment of section 196.

(a) in subsection (2) (g), by deleting the expression “Commissioner” and inserting “Minister”;

(b) in subsections (4), (5) and (6), by inserting the words “with the prior approval of the Minister” immediately after the words “The Commissioner may”.

10. The principal Act is amended by inserting the following new Part XXA immediately after Part XX—

Insertion of new part XXA.

PART XXA—IMPOSITION OF PREMIUM TAX

Imposition of tax.

197A. (1) Subject to this Act, there shall be charged, levied and collected a tax, to be known as a premium tax, in respect of the gross direct premiums written by all insurers registered or authorized under this Act to carry on insurance business in Kenya.

(2) The tax shall be computed as a percentage of the gross direct premiums written by a registered insurer or an insurer authorized to carry on insurance business in Kenya.

(3) The rate of tax shall be one per cent of the gross direct premiums written by such insurers.

Liability
to pay
tax.

197B. (1) Subject to this Act, the tax shall be computed and paid by every insurer registered or authorized under this Act to carry on insurance business in Kenya.

(2) Every insurer registered or authorized to carry on insurance business in Kenya shall, after the end of each calendar month prepare, in accordance with the prescribed form, a monthly premium tax return showing the total premium tax due from the insurer for that particular month.

(3) Notwithstanding subsection 3 of section 60, the statement on the monthly premium tax return shall be signed by the principal officer and an auditor.

(4) The tax payable under subsection (1) of section 197A shall become payable at the end of each month in which the premium was received by the insurer and shall be payable by such insurer not later than the last day of the first month succeeding that in which the tax so becomes due:

Provided that where the payment of the premium by instalments is permitted by this Act or regulations made thereunder tax shall become due in respect only of the amount of each such instalment paid to the insurer in the particular month.

Payment
of
penalty.

197C. (1) Where any amount of tax remains unpaid after the last day of the first month succeeding the month in which the tax became due, a penalty equal to five per cent per month of the unpaid tax or part thereof shall become due and payable.

(2) Any penalty payable under this section shall be deemed to be tax for the purposes of the provisions of this Act relating to the calculation and collection of tax.

(3) The Minister may, where in his opinion it is in the public interest to do so, by order published in the Gazette, remit wholly or in part, and subject to such conditions, if any, as he may think fit to impose, tax payable by an insurer under this Act.

Mode
of
payment
of tax.

197D. Any tax or penalty payable under this Act shall be paid by crossed banker's draft drawn in favour of "*The Permanent Secretary to the Treasury*" which shall be submitted, together with the form on the monthly premium tax return prescribed under subsection (2) of section 197B, to the Commissioner.

Offences
and
penalty.

197E. (1) Any insurer who fails to pay any tax or penalty due from him on or before the day upon which the tax is payable shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings and, if the offence is a continuing one, to a further fine of one thousand shillings for every day during which the offence continues.

(2) Where an insurer is guilty of an offence under this section, then, notwithstanding the imposition of any penalty under section 197C, the commission of that offence shall constitute grounds whereby the Commissioner may apply to the Court under section 123 (g) for the winding-up of that insurer.

(3) The amount of any tax or penalty payable under this Act shall not be abated by reason only of the conviction of the insurer liable for the payment or by reason of any payment of a fine imposed by the court on the insurer for an offence under subsection (1).

Recovery
of tax.

197F. Without prejudice to any other remedy, any tax or penalty due and payable under this Act may be recovered by the Commissioner as a civil debt due to the Government, and, where the amount of such tax or penalty does not exceed fifty thousand shillings the debt shall be recoverable summarily.

Powers of
the
Commis-
sioner to
obtain
information.

197G. (1) For the purpose of obtaining full information in respect of the tax liability of any insurer, the Commissioner may require the production for examination and retention for such period

as may be reasonable for the examination and at such time and place as he may specify, any records, books of account, statements and other documents which he may consider necessary for such purpose.

(2) The Commissioner may require any person to attend, at such time and place as may be specified, for the purpose of being examined respecting any matter or transaction appearing to be relevant to the tax liability of any insurer.

Miscellaneous
amendments.

11. Sections 33, 34, 39, 114 (1) and (2), 115 (1) and (4), 116, 117 (1) and (2), 118 (1) and (2) of the principal Act are amended by deleting the expression "the Commissioner" wherever it appears and inserting "the Minister".