

**THE INCOME TAX (AMENDMENT) ACT, 1976****No. 7 of 1976***Date of Assent: 25th May, 1976**Date of Commencement: 13th June, 1975***An Act of Parliament to amend the law relating to  
Income Tax**

ENACTED by the Parliament of Kenya, as follows:—

Short title and  
commencement.

1. This Act may be cited as the Income Tax (Amendment) Act, 1976, and shall be deemed to have come into operation on 13th June, 1975.

Amendment of  
No. 16 of 1973.

2. The Income Tax Act, 1973, is hereby amended—

(a) in section 2, by the insertion in subsection (1), in their proper alphabetical order, of the following definitions—

“interstate tax” means any income tax or any tax of a similar nature charged under any law in force in another Partner State;

“paid” includes distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person, and “pay”, “payment” and “payable” have corresponding meanings;:

(aa) in section 15—

(i) by the deletion of the word “an” which appears immediately before the word “individual” in the first line of paragraph (q) of subsection (2) and the substitution therefor of the words “a resident”; and

(ii) by the insertion of the word “resident” immediately before the word “individual” which appears in the second line of the proviso to paragraph (q) of subsection (2);

(b) in section 15, by the deletion of paragraph (f) of subsection (3) and the substitution therefor of the following paragraph—

(f) the amount of any loss realized in computing, in accordance with subparagraph (2) of paragraph

4, or paragraph 16A, of the Eighth Schedule, gains chargeable to tax under paragraph (f) of subsection (2) of section 3:

Provided that the amount of any such loss incurred in any year of income shall be deducted only from gains under paragraph (f) of subsection (2) of section 3 in that year of income and, in so far as it has not already been deducted, from gains in any subsequent years of income.;

(ba) in section 16, by the insertion immediately after and below paragraph (f) of subsection (2), of the following new paragraph—

(fa) any expenditure incurred in the production of dividend income deemed under paragraph (a) of subsection (1) of section 7 to have been derived from Kenya where such expenditure was incurred by a non-resident person not having a permanent establishment within Kenya.;

(bb) in section 27, by the insertion of the following new subsection--

(3) In the case of a partnership which makes up the accounts of its business to an accounting date other than 31st December in any year, the accounting date of the partners of the partnership in respect of income other than their income from any employment or services rendered by them as individuals, shall be deemed to be the same as that of the partnership.;

(c) by the insertion immediately after section 34 of the following new section—

Deduction in respect of certain rates of tax.

34A. Where the Commissioner is satisfied in relation to any taxpayer who is an individual, and whose total income includes income chargeable to tax under paragraph (f) of subsection (2) of section 3, that the tax payable in respect of that portion of the total income would exceed an amount equal to thirty-five per cent of that income, he shall allow a deduction from the tax payable of the amount of that excess.;

(d) in section 35, by the insertion in their appropriate order of the following new subsections—

(3A) Every person shall upon payment to any person who is an individual, whether or not resident in Kenya, in respect of the gross amount or aggregate consideration of any transaction the income or proceeds from which is subject to tax pursuant to paragraph (f) of subsection (2) of section 3, deduct therefrom tax at the appropriate rate of withholding tax:

Provided that this subsection shall not apply to the transfer of investment shares as defined in Part II of the Eighth Schedule in which event tax shall be deducted in accordance with that Part.

(3B) The provisions of subsection (3A) of this section shall not apply where a person entitled to chargeable property by way of security or to the benefit of a charge or encumbrance on such property deals with the property for the purpose of enforcing or giving effect to the security, charge or encumbrance.

(6A) Where any person who is required under subsection (3A) of 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,

any Collector of Stamp Duties appointed under section 4 of the Stamp Duty Act shall not stamp the instrument of which the property is the subject matter under the Stamp Duty Act, and Registrars of Title and Land Registrars appointed under any written law shall not register the property under any written law, until such tax has been duly accounted for:

Provided that the transferee of any chargeable property may pay such tax and be entitled to recover the amount of the tax from any consideration for

the transfer in his possession, by action in a court or by any other lawful means at his disposal.;

(da) in section 37, by renumbering the present section as subsection 37 (1) and by adding the following new subsections thereto—

(2) If an employer paying emoluments to any employee fails—

(a) to deduct tax thereon;

(b) to account for tax deducted thereon; or

(c) to supply the Commissioner with any certificate as provided by any rules prescribing such certificate,

the Commissioner may impose a penalty not exceeding four thousand shillings and the provisions of this Act relating to the collection and recovery of such tax shall also apply to the collection and recovery of such penalty as if it were tax due from the employer:

Provided that, for the avoidance of doubt, it is hereby declared that instead of the Commissioner imposing a penalty under this subsection, a prosecution may be instituted for an offence under paragraph (j) of subsection (1) of section 109.

(3) The Commissioner may in his absolute discretion remit the whole or any part of any penalty imposed under this section.

(4) Any tax deducted under this section from the emoluments of an employee shall be deemed to have been paid by such employee and shall be set-off for the purposes of collection against tax charged on such employee in respect of such emoluments in any assessment for the year of income in which such emoluments are received.;

(db) in section 40,—

(i) by the deletion of subsection (1) and the substitution therefor of the following subsection—

(1) If any resident person chargeable to tax in Kenya for any year of income accrued in or derived from another Partner State proves to

the satisfaction of the Commissioner that he has paid interstate tax in such Partner State 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 in Kenya on such income.; and

(ii) by the deletion of subsection (3) and the substitution therefor of the following new subsection—

(3) Credit under this section shall not exceed the lesser of the tax computed in accordance with subsection (2) of this section or the amount of the interstate tax chargeable on the income in respect of which the credit is to be allowed or upon each part of such income.;

(*dc*) in section 41, by the deletion of the section and the substitution therefor of the following new section—

Special  
arrange-  
ments  
for relief  
from  
double  
taxation.

41. (1) The Minister may from time to time by notice declare that arrangements, specified in the notice and being arrangements that have been made with the Government of any country outside of the Republic of Kenya with a view to affording relief from double taxation in relation to income tax and any taxes of a similar character imposed by the laws of that country, shall, notwithstanding anything to the contrary in this Act or in any other written law, have effect in relation to income tax, and every such notice shall, subject to the provisions of this section, have effect according to its tenor.

(2) Any such arrangements may include provisions for relief from tax for periods before the commencement of this Act or before the making of the arrangements.

(3) Any notice under this section may be at any time amended or revoked by a subsequent notice and any such amending or revoking notice may contain such transitional provisions or termination date as appears to the Minister to be necessary or expedient.

(4) The Minister shall cause a copy of every notice made under subsection (1) of this section

and of every subsequent notice made under subsection (3) of this section to be laid, without delay, before Parliament.;

(*dd*) in section 42, —

- (i) in subsection (1), by the insertion of the words “derived by a person resident in Kenya” immediately after the word “income” which appears at the beginning of the third line;
- (ii) by the deletion of subsection (2); and
- (iii) by the deletion of subsection (4) and the substitution therefor of the following new subsection—

(4) A credit shall not exceed the lesser of the tax computed in accordance with subsection (3) of this section or the foreign tax chargeable upon the income in respect of which the credit is to be allowed or upon each part of such income.;

(*de*) in section 92, —

- (i) by the insertion of the words “service of the” immediately before the word “notice” which appears in the second line of subparagraph (ii) of paragraph (a) of subsection (2); and
- (ii) by the insertion immediately after subsection (4) of the following new subsection—

(4A) Where a person has notified the Commissioner in writing as is required by subsection (3) of section 53 of this Act, the provisional tax shall be due and payable within thirty days after the date of service by the Commissioner of the provisional assessment.;

(*df*) in section 95, —

- (i) by the deletion of subsection (1) and the substitution therefor of the following—

(1) If, for any year of income, the difference between the amount of tax assessed on the total income of any person and the amount of the estimate of the tax chargeable contained in a provisional return of income made by that person in respect of such year is greater than

twenty per cent of that estimated tax, interest at the rate of one per cent per month shall be payable on the whole of the difference between the tax so assessed and the tax so estimated.

(ii) by the deletion of the words and full stop "to the date of payment." at the end of subsection (2) and the substitution therefor of the words, brackets, numbers and full stop "to the due date of payment as specified in subsection (2) of section 92 of this Act and where more than one due date is specified, to the second of such due dates.":

(dg) in section 102, by the insertion immediately after subsection (1) of the following new subsection—

(1A) For the purposes of executing any such distress the person authorized by the Commissioner under the order may, in addition to employing such servants or agents as such person may consider necessary, require any police officer to be present while such distress is being levied and any police officer so required shall comply with any such requirement.;

(dh) in section 109, by the insertion immediately after paragraph (i) of subsection (1) of the following new paragraph—

(j) fails to deduct and account, or fails to account for tax, as provided by section 37 of this Act, or fails to supply any prescribed certificates as is required by that section.;

(di) in section 125, by the insertion immediately after subsection (1) of the following new subsection—

(1A) Every officer appointed under section 122 shall, on appointment, make and subscribe, before a Magistrate, Justice of the Peace or Commissioner for Oaths, a declaration in the prescribed form.;

(dj) in Part I of the First Schedule, by the deletion of paragraph 23 and the substitution therefor of the following new paragraph—

23. The income of the East African Development Bank and of Corporations established under

Article 71 of the Treaty for East African Co-operation together with the income of subsidiary companies wholly owned by the said Development Bank or by any of the said Corporations.

(e) in Part I of the First Schedule, by the addition immediately after paragraph 34 of the following new paragraphs—

35. Interest not exceeding one thousand shillings on any deposit in the Kenya Post Office Savings Bank managed and controlled by the Director-General under the East African Posts and Telecommunications Act where such interest is payable to any person other than a company in any year of income.

36. Such part of the income of an individual, chargeable to tax under paragraph (f) of subsection (2) of section 3 as consists of gain derived from the transfer of—

(a) shares in the stock or funds of the Government, the High Commission or the Authority established under the Organization or the Community;

(b) shares of a local authority;

(c) a private residence if the individual owner has occupied the residence continuously for the three-year period immediately prior to the transfer concerned:

Provided that—

(i) in determining whether or not a person has occupied a residence continuously for three years, any period during which he was temporarily absent from the residence shall be ignored;

(ii) references to a private residence include the immediately surrounding land utilized exclusively for personal purposes as an adjunct to the residence and not for the production of income,

but does not include any part of the residence and land utilized for business purposes;

- (iii) no individual may claim or be taken to have used more than one residence as his residence at the same time for the purposes of this Act;
  - (iv) no individuals may claim or be taken to have used more than one residence as their residence for the purposes of this Act at any time when they were husband and wife living together;
  - (v) no individual shall claim or be taken to have used a residence as a residence at any time when he was a dependant of either or both of his parents;
  - (vi) where a residence is used in part for business purposes, or is transferred in a single transaction together with land and other property used for the production of income, the taxable value of such property used for residential purposes shall be separately determined from that used for business purposes or for the production of income;
- (d) property (being land) transferred by an individual where—
- (i) the transfer value is not more than thirty thousand shillings; or
  - (ii) agricultural property having an area of less than one hundred acres where such property is situated outside a municipality, gazetted township or an area that is declared by the Minister, by notice in the Gazette, to be an urban area for the purposes of this Act;

Cap. 283.  
Cap. 284.

(e) land which has been adjudicated under the Land Consolidation Act or the Land Adjudication Act when the title to such land has been registered under the Registered Land Act and transferred for the first time;

Cap. 300.

(f) property which is transferred or sold for the purpose of administering the estate of a deceased person where such transfer or sale is completed within two years of the death of the deceased or within such extended time as the Commissioner may allow in writing.;

(ea) in the Second Schedule,—

(i) in subparagraph (1) of paragraph 16—

(a) by the deletion of the words “incurred in the Partner States” in the definition of “expenditure” and the substitution therefor of the words “in Kenya”;

(b) by the insertion immediately after the words “mining operations” in the definition of “mineral” of the words and number “or is mineral oil obtained either under a licence granted under section 3 of the Oil Production Act or from the continental shelf”; and

(c) by the insertion of the abbreviation and numbers “Cap. 308” in the margin against the new reference to the Oil Production Act; and

(ii) in paragraph 21 by the deletion of the words “in the Partner States” and the substitution therefor of the words “in Kenya”;

(f) in the Third Schedule, by the insertion immediately after paragraph 5 of the following new paragraph—

6. The rate of deduction for any transaction chargeable to withholding tax under subsection (3A) of section 35 shall be ten per cent of the gross amount or aggregate consideration of the transaction.;

- (fa) in the Fifth Schedule, by the deletion of the sub-headings “Qualifications” and “Profession” and the substitution therefor of the subheadings “Profession” and “Qualifications” respectively;
- (g) by the deletion of the Eighth Schedule and the substitution therefor of the following new Eighth Schedule—

EIGHTH SCHEDULE (ss. 3(2)(f)  
and 15(3)(f))

PART I—ACCRUAL AND COMPUTATION OF GAINS  
FROM PROPERTY OTHER THAN INVESTMENT SHARES  
TRANSFERRED BY INDIVIDUALS

Interpreta-  
tion.

1. (1) In this Part of this Schedule, except where the context otherwise requires—

“adjusted cost” has the meaning assigned thereto in paragraph 8 of this Schedule;

“company” includes—

(a) a members’ club deemed under subsection (1) of section 21 to be carrying on a business;

(b) a trade association that elects under subsection (2) of section 21 to be deemed to carry on a business;

“consideration” means consideration in money or money’s worth;

“individual” includes more than one individual or an unincorporated association or body of individuals including trustees and partners;

“land” includes—

(a) buildings on land and anything attached to land or permanently fastened to anything attached to land (whether on or below the surface);

(b) standing timber, trees, crops and other vegetation growing on land; and

(c) land covered by water;

“marketable security” includes a security of such a description as to be capable of being sold and any stock as defined in section 2 of the Stamp Duty Act;

Cap. 480.

“property”—

Cap. 2.

(a) in the case of any company has the meaning assigned thereto in the Interpretation and General Provisions Act, and includes property acquired or held for investment purposes but does not include a road vehicle;

(b) in the case of an individual means—

(i) land situated in Kenya and any right or interest in or over such land, and

(ii) a marketable security situated in Kenya, other than an investment share as defined in Part II of this Schedule;

“transfer” has the meaning assigned thereto in paragraph 6 of this Schedule;

“transfer value” has the meaning assigned thereto in paragraph 7 of this Schedule.

(2) For the purposes of this Schedule—

(a) a reference to a transfer of property includes a reference to a part transfer of property; and

(b) there is a part transfer of property where, on a person making a transfer, any description of property derived from the transferred property remains undisposed of.

(3) For the purposes of this Schedule any two persons are “related persons” 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.

(4) For the purposes of subparagraph (3) of this paragraph a reference to "person" includes—

(a) in the case of an individual, a reference to a relative (as defined in subsection (5) of section 26) of that person; and

(b) a reference to a company.

(5) For the purposes of this Schedule—

(a) shares or securities being marketable securities issued by a municipal or a Governmental authority, or by any body created by such an authority, are situated in the country of that authority; and

(b) subject to paragraph (a) of this paragraph, shares or securities (being marketable securities) are situated where they are registered and, if registered in more than one register, where the principal register is situated.

Taxation  
of gains.

2. Subject to this Schedule, the income in respect of which tax is chargeable under paragraph (f) of subsection (2) of section 3 is the whole of any gain which accrues—

(a) to a company, on or after 1st January, 1975; or

(b) to an individual, on or after 13th June, 1975, on the transfer of property situated in Kenya, whether or not the property was acquired by the person before that date.

Income  
not  
charge-  
able.

3. (1) Income is not chargeable to tax under paragraph (f) of subsection (2) of section 3 of this Act where, and to the extent that, it is chargeable to tax under any other provision of this Act.

(2) The gain accruing to a company on any transfer of machinery classified in paragraph 7 of the Second Schedule is not chargeable to tax under paragraph (f) of subsection (2) of section 3 of this Act.

Computa-  
tion of  
gains.

4. (1) The gain which accrues to a person on the transfer of any property is the amount by which the transfer value of the property exceeds the adjusted cost of the property.

(2) Where, in computing the gain accruing to a person on the transfer of any property, it is found that the adjusted cost of the property exceeds the transfer value of the property, the amount of the excess is the loss realized by the person on the transfer of the property.

(3) Any gain or loss realized by a person on the transfer of any property shall be deemed to be realized by the person at the time of the transfer, whether or not the consideration is payable by instalments, but any payment by way of interest on any part of the consideration not immediately payable shall not be treated as part of the transfer value of the property.

(4) Debts incurred on the transfer of any property which the Commissioner considers to have become bad, shall be deemed to be a loss for the purposes of paragraph (f) of subsection (3) of section 15 and the provisions of the paragraph shall apply accordingly.

(5) Paragraph (e) of subsection (2) of section 15 of this Act does not apply in relation to any loss realized by a person on the transfer of any property.

Dealings  
by  
nominees,  
trustees  
and  
liquidators,  
and for  
the  
enforce-  
ment of  
securities.

5. (1) In relation to any property held by a person as nominee for another person or as trustee for a person absolutely entitled as against the trustee (or for two or more persons who are so entitled in possession, whether as joint tenants or tenants in common), or as liquidator for any company, this Schedule shall apply as if the property were vested in, and the acts of the nominee, trustee or liquidator in relation to the property were the acts of the person or persons for whom the person is nominee, trustee or liquidator (transfers between the person or persons and the nominee, trustee or liquidator being disregarded accordingly).

(2) Where a person entitled to property by way of security or to the benefit of a charge or encumbrance on property, deals with the property for the purpose of enforcing or giving effect to the security, charge or encumbrance, his dealings with it shall be treated as if they were done through him as nominee by the person entitled to the property subject to the security, charge or encumbrance, and this subparagraph shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or encumbrance as receiver and manager as it applies to the dealings of the person so entitled.

Meaning  
of  
transfer.

6. (1) Subject to this Schedule there is a transfer of property for the purposes of this Schedule—

(a) where property is sold, exchanged, conveyed or otherwise disposed of in any manner whatsoever (including by way of gift), whether or not for consideration; or

(b) on the occasion of the loss, destruction or extinction of property whether or not any sum by way of compensation or otherwise, or under a policy of insurance, is received in respect of the loss, destruction or extinction of the property unless such sum is utilized to reinstate the property in essentially the same form and in the same place within one year of the loss, destruction or extinction of the property or within such longer period of time as is approved by the Commissioner; or

(c) on the abandonment, surrender, cancellation or forfeiture of, or the expiration of substantially all rights to, property, including the surrender of shares or debentures on the dissolution of a company.

(2) There is no transfer of property for the purposes of this Schedule—

(a) in the case of the transfer of property for the purpose only of securing a debt or

a loan, or on any transfer by a creditor for the purpose only of returning property used as security for a debt or a loan;

(b) in the case of the issuance by a company of its own shares or debentures;

(c) by the vesting in the personal representative of a deceased person by operation of law of the property of that deceased person;

(d) by the transfer by a personal representative of any property to a person as legatee in the course of the administration of the estate of a deceased person. For this purpose "legatee" includes any person taking under a devise or other testamentary disposition or on an intestacy or partial intestacy whether he takes beneficially or as a trustee;

Cap. 486.

(e) by the vesting in the liquidator by an order of a court of the property of a company under section 240 of the Companies Act;

Cap. 53.

(f) by the vesting in the official receiver or other trustee in bankruptcy of the property of a bankrupt under section 57 of the Bankruptcy Act; or

(g) by the transfer by a trustee of any property, which is shown to the satisfaction of the Commissioner to be subject to a trust, to a beneficiary on his becoming absolutely entitled thereto.

Transfer value.

7. (1) Subject to this Schedule, the transfer value of any property shall be computed by reference to such of the following amounts (if any) as are appropriate having regard to the manner of the transfer, namely—

(a) the amount of or the value of the consideration for the transfer of the property;

(b) sums received in return for the abandonment, forfeiture or surrender of the property;

- (c) sums received as consideration for the use or exploitation of the property;
- (d) sums received by way of compensation for damage or injury to the property or for the loss of the property;
- (e) sums received under a policy of insurance in respect of damage or injury to, or the loss or destruction of, the property;
- (f) any amount by which the liability of a person to another person entitled to property by way of security or to the benefit of a charge or encumbrance is reduced as a result of dealings with the property for the purposes of enforcing or giving effect to the security, charge or encumbrance, together with any amount received by the person out of the proceeds of such dealings.

(2) Subject to this Schedule, for the purpose of computing the transfer value of any property there shall be deducted the incidental costs to the transferor of making the transfer.

(3) In any case where no amount is ascertainable under this Schedule as the transfer value of any property the transfer value of the property shall be deemed to be nil.

Adjusted  
cost.

8. (1) Subject to this Schedule, the adjusted cost of any property is—

- (a) the amount of or value of the consideration for the acquisition or construction of the property;
- (b) the amount of any expenditure wholly and exclusively incurred on the property at any time after its acquisition by or on behalf of the transferor for the purpose of enhancing or preserving the value of the property at the time of the transfer;
- (c) the amount of any expenditure wholly and exclusively incurred at any time after the

acquisition of the property by the transferor establishing, preserving or defending the title to, or a right over, the property; and

(d) the incidental costs to the transferor of acquiring the property.

(2) For the purpose of computing the adjusted cost of any property, any amount computed shall be reduced by such amounts as have been allowed as deductions under subsection (2) of section 15.

(3) Where any company issues to any of its shareholders shares—

(a) that do not constitute a dividend under paragraph (d) or (e) of subsection (1) of section 7, the cost of the shares—

(i) shall be the sum paid for the shares; or

(ii) if no sum is paid for the shares, shall be deemed to be nil,

and the shareholder shall allocate, in the manner prescribed, the cost of his existing shares between such old shares and such new shares; or

(b) that constitute, wholly or partly, a dividend under either of those paragraphs, such amount as constitutes a dividend shall be treated as part of the cost of the shares, and the shareholder shall allocate, in the manner prescribed, the cost of the existing shares between such old shares and such new shares.

(4) Where there is a part transfer of property the adjusted cost of the property shall be allocated to the part transferred in accordance with any just and reasonable method approved by the Commissioner.

(5) The Commissioner may make rules for the purposes of subparagraph (3) of this paragraph prescribing the manner of allocation to be prescribed under that subparagraph.

Market  
value.

9. (1) Where property is acquired or transferred—

- (a) otherwise than by way of a bargain made at arms length;
- (b) by way of a gift in whole or in part;
- (c) for a consideration that cannot be valued; or
- (d) as the result of a transaction between persons who are related,

then, for the purposes of—

- (i) paragraph 7 of this Schedule, the amount of the consideration for the transfer of the property shall be deemed to be equal to the market value of the property at the time of the transfer; and
- (ii) paragraph 8 of this Schedule, the amount of the consideration for the acquisition of the property shall be deemed to be equal to the market value of the property at the time of the acquisition or to the amount of the consideration used in computing stamp duty payable on the transfer by which the property was acquired, whichever is the lesser.

(2) Property is acquired or transferred by way of a bargain at arms length only if the consideration is determined as between an independent willing buyer and an independent willing seller.

(3) The Commissioner may determine the market value of any property, and a reference in this paragraph to the market value of any property is a reference to the price which the property would fetch if sold in the open market as so determined.

Incidental  
costs.

10. For the purposes of subparagraph (2) of paragraph 7 and subparagraph (1) (d) of paragraph 8 of this Schedule, the incidental costs of the acquisition or transfer of any property shall consist of expenditure wholly and exclusively incurred by the person acquiring the property or the transferor for

the purposes of the acquisition or transfer, as the case may be, of the property being—

- (a) fees, commission or remuneration paid for the professional services of any surveyor, valuer, accountant, agent or legal adviser;
- (b) costs of transfer (including stamp duty);
- (c) in the case of an acquisition, the cost of acquisition (including mortgage costs) and the cost of advertising to find a seller, and costs reasonably incurred for the purposes of this Schedule in making any valuation or in ascertaining market value;
- (d) in the case of a transfer, the cost of advertising to find a buyer and costs reasonably incurred for the purposes of this Schedule in making any valuation or in ascertaining market value; and
- (e) any other costs which the Commissioner may allow as being just and reasonable.

Amounts not allowable in computing transfer value or adjusted cost.

11. No amount shall be allowed—

- (a) under subparagraph (2) of paragraph 7 of this Schedule as part of the incidental costs of making a transfer; or
- (b) under paragraph 8 of this Schedule as part of the adjusted cost of any property,

if that amount has been or is otherwise allowed as a deduction in computing gains or profits chargeable to tax under paragraph (a) of subsection (2) of section 3 of this Act.

Transfer or acquisition of property with other property.

12. (1) Where property is transferred or acquired together with other property in pursuance of one bargain, then, notwithstanding that separate prices are, or purport to be, agreed for separate items of that property, the Commissioner may determine what part of the adjusted cost or the transfer value is reasonably attributable to each of the properties involved, which determination shall be binding on both the transferor and the transferee of the property.

(2) Any person aggrieved by an apportionment of any amount or sum by the Commissioner under subparagraph (1) of this paragraph may appeal therefrom to a local committee.

**Exemption.**

15. (1) No gain or loss shall be included in the computation of income under paragraph (f) of subsection (2) of section 3 of this Act in the case of a transfer of property in exchange for other property that is necessitated by, and takes place pursuant to, a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or any similar restructuring of corporate identity involving one or more companies (to the extent otherwise permitted by law) found by the Minister in his discretion to be in the public interest:

Provided that following all such exchanges, the transferor's cost of the property acquired by him shall be the cost of the property transferred, except that the cost to any company of property received by it in exchange for the issuance of its own shares or debentures shall be the cost to the issuee of such property received.

(2) As a condition of making his finding that any one of the transactions referred to in subparagraph (1) of this paragraph is in the public interest, the Minister may require one or more of the parties to the transaction to agree, for the purposes of this Act, as to the treatment of any charge, deduction or other item, present or future, involved in or arising out of the transaction, including, without limitation, the treatment of any property received as a dividend, the charge of any gain or loss to income, the cost or valuation of any property, the allocation of cost or value between different properties, and the accounting treatment of any item.

(3) Any agreement made pursuant to subparagraph (2) of this paragraph shall, for the purposes of this Act, be binding on such party and its successors in title, as to matters covered by the agreement.

PART II—ACCRUAL AND COMPUTATION OF GAINS  
FROM INVESTMENT SHARES

Interpreta-  
tion.

14. In this Part of this Schedule—  
“adjusted cost” means—

(a) in the case of investment shares acquired before 13th June, 1975, the market price at which the shares could have been purchased in a transaction between an independent willing buyer and an independent willing seller on the Nairobi Stock Exchange immediately prior to the close of business on 12th June, 1975:

Provided that if the transferor of the investment shares can prove to the satisfaction of the Commissioner that he actually paid more for the shares than such market price, the actual cost to the transferor of the shares may be substituted for the said market price; and

(b) in the case of investment shares acquired on or after 13th June, 1975, the amount or value of the consideration for the acquisition of the shares;

“consideration” means consideration in money or money’s worth;

“investment shares” means such shares of companies, municipal or Governmental authorities or any body created by such authorities, as are listed and traded on the Nairobi Stock Exchange;

“transfer value” means the amount or value of the consideration for the transfer of investment shares (less any amount which would be deductible under paragraph 10 of Part I of this Schedule if the gains were being computed under that Part).

Computa-  
tion of  
gains.

15. The gain subject to tax under this Part of this Schedule is the amount by which the transfer value of investment shares transferred by any person who is an individual exceeds the adjusted cost of such shares.

- Deduction of tax.** 16. The gain ascertained under paragraph 15 of this Schedule is subject to a deduction of income tax at the rate of thirty-five per cent of such gain.
- Losses.** 16A. Where in computing the gain accruing to a person on the transfer of any investment shares, it is found that the adjusted cost of the shares exceeds the transfer value of such shares the amount of the excess is the loss realized by the person on the transfer of the investment shares.
- Set-off of tax.** 17. The provisions of section 39 apply to tax deducted under paragraph 16 of this Schedule.
- Collecting of tax.** 18. A stockbroker who conducts the transfer of investment shares on behalf of a transferor shall collect and remit tax to the Commissioner in accordance with the provisions of subsection (5) of section 35.
- Remittance of tax.** 19. The remittance of any money by a stockbroker under paragraph 18 of this Schedule shall be a full and final discharge to the stockbroker as against all persons from any liability in respect of such money.
- Failure to collect and remit.** 20. A stockbroker who fails to collect and remit as required under paragraph 18 of this Schedule, the amount of any income tax out of the proceeds (over which he has control) accruing as a result of the transfer of any investment shares is jointly and severally liable with the transferor of the shares for payment of the tax.
- Exemption.** 21. (1) Where the transferor of investment shares is an unincorporated association or body of individuals of a public character which has been exempted from income tax under paragraph 10 of the First Schedule no deduction of income tax shall be made under this Part of this Schedule.
- (2) Gains from a transfer of investment shares for or in connexion with a pension fund, trust scheme, or provident fund registered with the Commissioner shall not be subject to deduction of income tax under this Part of this Schedule.

PART III—REDUCTION OF CHARGEABLE GAINS IN  
RESPECT OF PROPERTY ACQUIRED BEFORE 1ST  
JANUARY, 1975, AND TRANSFERRED BEFORE 1ST  
JANUARY, 1985

Interpreta-  
tion.

22. (1) In this Part of this Schedule—

“property” means “property” as defined in Part I of this Schedule;

“transfer” has the meaning assigned thereto in paragraph 6 of this Schedule.

(2) Property shall for the purposes of this part of this Schedule be deemed to have been acquired by the taxpayer on the date on which it passed or was conveyed into his name or into the name of another person for his absolute benefit and to have been transferred by the taxpayer on the date on which there was a transfer of the property by the taxpayer.

Application.

23. The provisions of this Part of this Schedule shall apply only to property acquired before 1st January, 1975, which is also transferred before 1st January, 1985.

Amounts  
represented  
by A and B  
in reduction  
formula.

24. In paragraph 25—

A is—

(i) in respect of property acquired before 1st January, 1955, the number 1955;  
or

(ii) in respect of property acquired on or after 1st January, 1955, but before 1st January, 1975, the number given by the year of acquisition of the property.

B is the number given by the year of transfer of property transferred on or after 1st January, 1975.

Reduction  
formula.

25. Gains chargeable to tax under paragraph (f) of subsection (2) of section 3 in respect of property acquired before 1st January, 1975, and transferred before 1st January, 1985, shall be reduced by the percentage given by the formula—

$$\frac{1975 - A}{B - 1954} \times 100$$

**Saving.**

**3.** Notwithstanding the date of coming into operation of this Act and notwithstanding that the Capital Gains Tax Bill, 1975, published in Gazette Supplement No. 33 on 12th June, 1975, and the Income Tax (Amendment) Bill, 1975, published in Gazette Supplement No. 69 on 5th December, 1975, were not enacted, amounts paid under those Bills by virtue of Provisional Collection of Taxes Orders made in respect of those Bills shall be deemed to have been validly and lawfully collected and paid and shall be deemed to be tax deducted under subsection (3A) of section 35 of the Income Tax Act, 1973, and shall be allowed as a set-off in accordance with section 39 of that Act, even though any amount so collected and so deemed by this section to be a deduction under subsection (3A) of section 35 of the Income Tax Act, 1973, is greater than the amount that would now have been required to be deducted under that section.

No. 16 of 1973.