

THE UNITED REPUBLIC OF TANZANIA



No. 44 OF 1967

I ASSENT

Julius K. Nyerere
President

27 NOVEMBER, 1967

An Act to impose transfer taxes on certain manufactured goods of Kenyan or Ugandan origin which are transferred to the United Republic and to provide for the Management and Administration of transfer taxes and for other matters related thereto or connected therewith

[1ST DECEMBER, 1967]

ENACTED by the Parliament of the United Republic of Tanzania.

1.—(1) This Act may be cited as the Transfer Tax Act, 1967 and shall be read and construed with the East African Customs and Transfer Tax Management Act, 1952.

(2) This Act shall come into operation on the 1st December, 1967.

(3) This Act shall extend to Zanzibar as well as to Tanganyika.

2. In this Act, unless the context otherwise requires—

“foreign country” means any country other than one of the Partner States;

“Management Act” means the East African Customs and Transfer Tax Management Act, 1952;

“manufactured goods” means the goods defined or otherwise listed in Annex IV to the Treaty, as from time to time amended or added to;

“master” includes any person for the time being having or taking charge or command of any aircraft or vessel;

“Minister” means the Minister for the time being responsible for finance;

“Partner States” means the United Republic, the Sovereign State of Uganda and the Republic of Kenya;

“proper officer” means any officer in the service of the East African Customs and Excise Department, or for the time being performing duties in relation to the Customs, whose right or duty it is to require the performance of, or to perform, the act referred to;

"transfer" means the movement of goods from one Partner State to another either directly or indirectly but shall not include goods in transit, goods for transshipment or goods for warehousing in a bonded warehouse;

"transfer tax" includes suspended transfer tax;

"Treaty" means the Treaty for East African Co-operation, as from time to time modified, a copy of which Treaty is set out in the Schedule to the Treaty for East African Co-operation (Implementation) Act, 1967.

Imposition
of transfer
taxes

3.—(1) There shall be charged, levied and collected in respect of the manufactured goods specified in the second column of the First Schedule to this Act which have their origin in the Partner States specified in the third column of that Schedule and are transferred to the United Republic, transfer taxes at the rates specified in the fourth column of the said Schedule and, subject to subsection (2) of section 5, suspended transfer taxes at the rates specified in the fifth column of the said Schedule.

(2) A transfer tax, other than a suspended transfer tax, shall be effective for such period as is set out in the sixth column of the First Schedule to this Act.

(3) All transfer taxes shall be levied, collected and paid in accordance with the provisions of this Act, read and construed with the Management Act.

(4) Notwithstanding the provisions of subsection (1), where the total amount of transfer tax computed with reference to any one transfer tax document includes any fraction of a shilling, that fraction shall be disregarded and the amount of transfer tax charged, levied, collected and paid shall be determined accordingly.

Recovery of
transfer tax

4. Where any manufactured goods are liable to transfer tax, the tax shall constitute a debt due to the United Republic by the owner of the goods and may, without prejudice to any other means of recovery, be recovered by suit by the Commissioner-General of Customs and Excise.

Power to
amend
Schedule

5.—(1) The Minister may, by order published in the *Gazette*, add to, amend, repeal or replace the First Schedule to this Act.

(2) No tax referred to in the First Schedule as a suspended transfer tax shall be charged, levied and collected until it has been brought into operation by order of the Minister published in the *Gazette* and every such order shall set out the period for which the tax is to be effective.

(3) Every order made under subsection (1) or subsection (2) shall be submitted for the approval, to be signified by resolution, of the National Assembly within fifteen days of the order being made or, if the National Assembly is not meeting, within fifteen days after it next meets.

(4) If any such order is not approved by the National Assembly within the time specified in subsection (3) or is disapproved by the National Assembly the order shall thereupon either expire forthwith or cease to have effect, as the case may be, but without prejudice to anything previously done or suffered to be done under the order.

(5) Notwithstanding subsection (3), where in compliance with an order under subsection (1) which is subsequently not approved or is disapproved by the National Assembly any person who has paid transfer tax prior to the coming into force of such order or has paid transfer tax at an increased rate as a result of such order, there shall be paid to such person an appropriate refund having regard to the law in force immediately prior to the coming into force of the order; and where in compliance with an order as aforesaid any person has paid transfer tax at a reduced rate or has not been obliged to pay transfer tax as a result of such order, such person shall be liable to make good the deficiency by paying the difference between the amount of transfer tax already paid by him and the amount which he would have been liable to pay had the order not come into force.

6.—(1) For the purposes of this Act, manufactured goods shall be accepted as originating in the Republic of Kenya or the Sovereign State of Uganda where—

Origin of
manufactured
goods

- (a) they have been wholly produced in those States; or
- (b) they have been produced in those States and the value of any materials imported from a foreign country or of undetermined origin which have been used at any stage of the production of the goods does not exceed seventy per cent of the ex-factory value of the goods.

(2) The rules contained in the Second Schedule to this Act shall apply to the determination of the origin of manufactured goods for the purposes of this Act.

7. Where any manufactured goods are liable to transfer tax *ad valorem*, the value of such goods shall be taken to be that laid down by the Third Schedule to this Act and transfer tax shall be paid on that value:

Value of
goods for
transfer tax

Provided that in the case of manufactured goods transferred under a contract of sale and entered for the payment of transfer tax, tax shall be deemed to have been paid on that value if, before the goods are released after transfer, tax is tendered and accepted on a declared value based on the contract price and for the purposes of this proviso—

- (a) the declared value of any goods is their value as declared by or on behalf of the buyer in the United Republic in making entry of the goods for transfer tax;
- (b) that value shall be deemed to be based on the contract price if it represents that price properly adjusted to take account of circumstances differentiating the contract from such contract of sale as is contemplated by the Third Schedule to this Act; and

- (c) the rate of exchange to be used for determining the equivalent in the currency of the United Republic of any other currency shall be the current selling price for sight drafts in the United Republic as last notified before the time when the goods are entered for the payment of transfer tax:

Provided further that, where under Article 15 of the Treaty, the Partner State in which the goods are manufactured is liable to pay to the United Republic the full amount of customs duty collected in respect of goods imported and used in the manufacture of the manufactured goods, the amount of such duty paid over shall be deducted from the value provided for by this section:

Provided further that, where under Article 18 of the Treaty the Partner State in which the goods are manufactured is liable to pay to the United Republic the full amount of excise duty collected in respect of goods manufactured or processed or used in the manufacture of manufactured goods, the amount of such duty paid over shall be deducted from the value provided for by this section.

Entry of
manufactured
goods subject
to transfer
tax

8.—(1) All manufactured goods which are subject to a transfer tax under this Act shall be entered by the owners in such manner and within such period after the transfer of such goods to the United Republic as may be prescribed under the Management Act, or such further period as may be allowed by the proper officer for the payment of transfer tax.

(2) Where an entry is delivered to the proper officer, the owner shall furnish therewith full particulars together with the transfer form, invoice and all other evidence in support of the entry.

(3) Entries may be delivered to the proper officer for checking before the arrival at the port or other place of discharge of the vessel, or unloading of the aircraft or vehicle, in which the goods are transferred to the United Republic; and in any such case the proper officer may in his discretion permit any goods to be entered before the arrival of the vessel, aircraft or vehicle.

Time of
entry
determines
rate of duty

9.—(1) Subject to subsection (2), transfer tax shall be paid at the rate in force at the time when the goods liable to such tax are entered for the payment of transfer tax:

Provided that, in the case of manufactured goods transferred overland, the time of entry of such goods for the payment of transfer tax shall be deemed to be the time when the transfer tax is paid.

(2) Where manufactured goods are entered for the payment of transfer tax before the arrival at the port of discharge of the aircraft or vessel in which such goods are transferred, the transfer tax upon such goods shall be paid at the rate in force at the time of arrival of the aircraft or vessel at the port of discharge.

10.—(1) Where any manufactured goods can reasonably be classified under two or more names, classes, or descriptions, with the result that there is a difference in the liability to transfer tax or in the transfer tax to which such goods are liable, then such goods shall be classified under the name, class or description which results in such goods being liable to transfer tax, or being liable to the higher or highest rate of transfer tax applicable, as the case may be.

(2) In determining for the purposes of subsection (1) which is the higher or highest rate of transfer tax applicable, regard shall be had to a suspended transfer tax which has been brought into operation.

11. Where any transfer tax or drawback of transfer tax is imposed or allowed under any law according to any specified weight, measure, strength or value, then, unless specific provision is made to the contrary in any law, such transfer tax or drawback of transfer tax shall be deemed to apply in the same proportion to any greater or less weight, measure, strength or value, as the case may be.

12. Where any goods are composed in part of an article which is liable to transfer tax, such goods shall be liable to transfer tax as if such article formed the whole of the composition of such goods; and where any such goods are composed, either entirely or in part, of two or more articles liable to transfer tax, such goods shall be liable to transfer tax as if the article forming part and liable to the higher or highest rate of tax formed the whole of the composition of such goods:

Provided that—

- (a) such goods shall not be liable to transfer tax as if any article forming part thereof were the whole of the composition of such goods where the Commissioner-General, in his discretion, is satisfied that it would be inequitable or impractical to apply this section;
- (b) in no case shall the transfer tax to which such goods are liable under this section be less than that to which they would be liable if this section were disregarded.

13.—(1) Where goods are transferred to the United Republic in an unassembled condition then, notwithstanding that the parts thereof may be separately liable to, or be free from, transfer tax, such goods shall be liable to the transfer tax to which they would be, or be free from transfer tax, as the case may be, as if they had been transferred to the United Republic in a fully assembled condition:

Provided that where the parts of any such article are separately transferred to the United Republic, the Commissioner-General may in his discretion apply this section to any such parts.

(2) Subject to this Act, integral parts of an article liable to transfer tax *ad valorem* or not liable to transfer tax and transferred to the United Republic as spare parts or for replacement purposes shall, unless it is otherwise specifically provided, be liable to the same rate of transfer tax or be not liable to transfer tax, as the case may be, as the article itself.

Refund of
transfer tax

14.—(1) Subject to subsection (2), the Commissioner-General may grant a refund of any transfer tax which has been paid in error.

(2) No refund of any transfer tax shall be granted unless the claimant presents his claim within twelve months of the date of the payment of the transfer tax.

Drawback of
transfer tax

15.—(1) Subject to this section, drawback of transfer tax may, on exportation or the performance of such conditions as may be prescribed, be allowed in respect of such manufactured goods, in such amount, and on such conditions, as the Minister may by regulations prescribe.

(2) Where the owner of any goods claims, or proposes to claim, drawback in respect thereof, then, as a condition to the grant of such drawback, he shall—

- (a) enter such goods in the form and in the manner prescribed under the Management Act and produce such goods for examination by the proper officer before the exportation thereof or the performance of the conditions on which drawback is allowed; and
 - (b) make and subscribe a declaration on the form prescribed under the Management Act to the effect that the conditions under which drawback may be allowed have been fulfilled and, in the case of goods exported or put on board any aircraft or vessel for use as stores—
 - (i) that such goods have actually been exported or put on board for use as stores, as the case may be; and
 - (ii) that such goods have not been re-imported and are not intended to be re-imported into the United Republic; and
 - (iii) that such owner at the time of entry of such goods for drawback was, and continues to be, entitled to drawback; and
 - (c) present his claim for drawback within a period of twelve months from the date of the exportation of goods or the performance of the conditions on which drawback may be allowed.
- (3) Drawback shall not be allowed in respect of any goods where—
- (a) the value of such goods for transfer tax is less than the amount of the drawback which may be otherwise allowed;
 - (b) the transfer tax thereon was less than fifty shillings.
- (4) Where the proper officer is satisfied that any goods under drawback, after being duly put on board any aircraft, vessel or vehicle for exportation or for use as stores—
- (a) have been destroyed by accident on board such aircraft, vessel or vehicle; or
 - (b) have been materially damaged on board such aircraft, vessel or vehicle and that such goods have, with the permission of the proper officer, been discharged at any port or place within the United Republic and abandoned to the Customs,

then drawback may be allowed in respect of such goods as if such goods had actually been exported or used as stores.

16.—(1) Where he is satisfied that it is in the public interest to do so, the Minister may, by order published in the *Gazette*, remit, in whole or in part, any transfer tax payable by any person on any manufactured goods transferred to the United Republic. ^{Remission of transfer tax}

(2) A remission order made under subsection (1) may apply either to particular transfers or generally in respect of goods transferred by specified persons or persons of a specified class.

(3) Every order made under subsection (1) shall be laid before the National Assembly.

17. The Minister may make regulations for carrying the purposes and provisions of this Act into effect. ^{Power to make regulations}

(Section 3)

FIRST SCHEDULE

TRANSFER TAXES

1. B.T.N. Item No.	2. Description of manufac- tured goods	3. Partner State of origin	4. Rate of transfer tax	5. Rate of suspended transfer tax	6. Period of effect of transfer tax
-----------------------------	---	-------------------------------------	-------------------------------	--	--

(Section 6)

SECOND SCHEDULE

RULES FOR THE DETERMINATION OF THE ORIGIN OF MANUFACTURED GOODS

Interpretation

1.—(1) In these Rules—
“materials” includes products, parts and components used in the production of goods;
“produced” and “a process of production” include the application of any operation or process with the exception of any operation or process which consists only of one or more of the following—

- (a) packing, wherever the packing materials have been produced;
- (b) splitting up into lots;
- (c) sorting or grading;
- (d) marking;
- (e) putting up into sets.

(2) Energy, fuel, plant, machinery and tools used in the production of goods within the Partner States and materials used in the maintenance of such plant, machinery and tools shall be regarded as wholly produced within the Partner States when determining the origin of such goods.

(3) In determining the place of production of marine products and goods in relation to a Partner State, a vessel of a Partner State shall be regarded as part of the territory of that State and in determining the place from which such goods originated, marine products taken from the sea, or goods produced therefrom at sea, shall be regarded as having their origin in the territory of a Partner State if they were taken by, or produced in, a vessel of that State and have been brought directly to the territories of the Partner States.

(4) For the purposes of paragraph (3) of this rule, a vessel which is registered or licensed under any law in force within the Partner States shall be regarded as a vessel of the State in which it is so registered or licensed.

Goods wholly produced in the Partner States

2. For the purposes of subsection (1) of section 6, the following are among the products which shall be regarded as wholly produced in the Partner States—

- (a) mineral products extracted from the ground within the Partner States;
- (b) vegetable products harvested within the Partner States;
- (c) live animals born and raised within the Partner States;
- (d) products obtained within the Partner States from live animals;
- (e) products obtained by hunting or fishing conducted within the Partner States;
- (f) marine products taken from the sea by a vessel of a Partner State;
- (g) used articles fit only for the recovery of materials provided that they have been collected from users within the Partner States;
- (h) scrap and waste resulting from manufacturing operations within the Partner States;
- (i) goods produced within the Partner States exclusively from one or both of the following—
 - (i) products within sub-paragraphs (a) to (h);
 - (ii) materials containing no element imported from outside the Partner States or of undetermined origin.

Application of percentage criterion

3. For the purposes of paragraph (b) of subsection (1) of section 6 the following rules shall apply—

- (a) any materials which meet the condition specified in paragraph (a) of subsection (1) of section 6 shall be regarded as containing no element imported from outside the Partner States;
- (b) the value of any materials which can be identified as having been imported from a foreign country shall be their c.i.f. value accepted by the East African Customs and Excise Department on clearance for home consumption less the amount of any transport costs incurred in transit through the territory of other Partner States;
- (c) if the value of any materials imported from a foreign country cannot be determined in accordance with paragraph (b) of this rule, their value shall be the earliest ascertainable price paid for them in the territory of the Partner State where they were used in a process of production;
- (d) if the origin of any materials cannot be determined, such materials shall be deemed to have been imported from a foreign country and their value shall be the earliest ascertainable price paid for them in the territory of the Partner State where they were used in a process of production;
- (e) the ex-factory value of the goods shall be the price paid or payable for them to the exporter in the territory of the Partner State where the goods were produced, that price being adjusted where necessary to a f.o.b. or free at frontier basis in that territory;
- (f) the value under paragraphs (b), (c) or (d) of this rule or the ex-factory value under paragraph (e) of this rule may be adjusted to correspond with the amount which would have been obtained on a sale in the open market between buyer and seller independent of each other; this amount shall also be taken to be the ex-factory value when the goods are not the subject of a sale.

Unit of Qualification

4.—(a) Each article in a consignment shall be considered separately.

(b) For the purposes of paragraph (a) of this rule—

- (i) tools, parts and accessories which are transferred with an article, the price of which is included in that of the article or for which no separate charge is made, shall be considered as forming a whole with the article so long as they constitute the standard equipment customarily included on the sale of articles of that kind;
 - (ii) in cases not within sub-paragraph (i) of this paragraph, goods shall be treated as a single article if they are so treated for the purpose of assessing customs duty on like articles.
- (c) An unassembled or disassembled article which is imported in more than one consignment because it is not feasible for transport or production reasons to transfer it in a single consignment may, at the option of the transferee, be treated as one article.

Segregation of Materials

5.—(a) For those products or industries where it would be impracticable to segregate physically materials of similar character but different origin used in the production of goods, such segregation may be replaced by an appropriate accounting system which ensures that no more goods are deemed to originate in the Partner States than would have been the case if it had been possible physically to segregate the materials.

(b) Any such accounting system shall conform to such conditions as may be agreed upon by the Common Market Council in order to ensure that adequate control measures will be applied.

Treatment of mixtures

6.—(a) In the case of mixtures, not being groups, sets or assemblies of separable articles dealt with under rule 4, a Partner State may refuse to accept as originating in the Partner States any product resulting from the mixing together of goods which would qualify as originating in the Partner States with goods which would not so qualify, if the characteristics of the product as a whole are not essentially different from the characteristics of the goods which have been mixed.

(b) In the case of particular products where it is recognized by the Common Market Council to be desirable to permit mixing of the kind described in paragraph (a) of this rule, such products shall be accepted as originating in the Partner States in respect of such part thereof as may be shown to correspond to the quantity of goods originating in the Partner States used in the mixing subject to such conditions as may be agreed by the Common Market Council.

Certificates of origin

7. The transferor of any goods from one Partner State to another Partner State shall, if required by law or by the appropriate authority, provide a certificate of the origin of such goods, determined in accordance with the provisions of subsection (1) of section 6 and of this Schedule signed or otherwise authenticated by the manufacturer of such goods.

(Section 7)

THIRD SCHEDULE

VALUE OF MANUFACTURED GOODS

1.—(1) The value of any manufactured goods which are liable to transfer tax shall be taken to be the normal price that is to say the price they would fetch, when they are entered for the payment of transfer tax (or, if they are not so entered, at the time of transfer to the United Republic), on a sale in the open market between buyer and seller independent of each other.

(2) The normal price of any manufactured goods shall be determined on the following assumptions—

- (a) that the goods are treated as having been delivered to the buyer at the point of entry into the United Republic; and
- (b) that the seller will bear freight, insurance, commission, and all other costs, charges and expenses incidental to the sale and the delivery of the goods at that point of entry; but
- (c) that the buyer will bear any transfer tax chargeable in the United Republic.

2. A sale in the open market between buyer and seller independent of each other presupposes—

- (a) that the price is the sole consideration; and
- (b) that the price paid is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer or any person associated in business with him (other than the relationship created by the sale of the goods in question); and
- (c) that no part of the proceeds of the subsequent resale, use or disposal of the goods will accrue either directly or indirectly to the seller or any person associated with him.

3. Where the goods to be valued—

- (a) are manufactured in accordance with any patented invention or are goods to which any registered design has been applied; or
- (b) are transferred under a foreign trade mark, or are transferred for sale (whether or not after further manufacture) under a foreign trade mark,

the normal price shall be determined on the assumption that the price covers the right to use the patent, design or trade mark in respect of the goods.

4. For the purposes of paragraph 3 of this Schedule, "trade mark" includes a trade name and a get up, and a "foreign trade mark" means a trade mark used for the purpose of indicating that goods in relation to which it is used are those of—

- (a) a person by whom the goods to be valued have been grown, produced, manufactured, selected, offered for sale or otherwise dealt with outside the United Republic; or
- (b) a person associated in business with any such person as is referred to in sub-paragraph (a) of this paragraph; or
- (c) a person to whom any such person as is mentioned in sub-paragraph (a) or (b) of this paragraph has assigned the goodwill of the business in connection with which the trade mark is used.

5. Two persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either of them has any interest in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property of both of them.

Passed in the National Assembly on the twenty-sixth day of October, 1967.

