

THE UNITED REPUBLIC OF TANZANIA



No. 24 OF 1971

I ASSENT,


President

4TH AUGUST, 1971

An Act to modify the East African Income Tax (Management) Act, 1958, of the High Commission

[18TH JUNE, 1971]

ENACTED by the Parliament of the United Republic of Tanzania:

1. This Act may be cited as the East African Income Tax Law (Modification) Act, 1971, and shall be deemed to have come into operation on the eighteenth day of June, 1971.

2.—(1) The East African Income Tax (Management) Act, 1958, shall take effect as from the date of the commencement of this Act as if the various provisions specified in the first column of the Schedule hereto were amended in the manner specified opposite thereto in the second column of the said Schedule.

(2) The provisions of subsection (3) of section 10 of the Treaty for East African Co-operation (Implementation) Act, 1967, shall apply to this Act as being a law of the United Republic that the provisions of this Act shall have effect notwithstanding provision to the contrary of the East African Income Tax (Management) Act, 1958.

(3) Notwithstanding the provisions of subsection (1) and subsection (2), in the event of an Act of the Community amending the East African Income Tax (Management) Act, 1958, in the same or substantially the same manner as that Act is amended by this Act being enacted, the Minister for Finance shall, by order published in the *Gazette*, declare that this Act shall cease to apply and the East African Income Tax (Management) Act, 1958, shall, upon such order being made, take effect subject to the amendments introduced by such Act of the Community as if this Act had not been enacted.

SCHEDULE

- (a) Section 2 In subsection (1) add the following definitions:—
 "management agreement" for the purpose of section 10 and section 59 means any arrangement, undertaking or agreement whereby a person agrees or undertakes to make any payment—
 (a) for any services of managerial, technical, professional or consultancy nature; or
 (b) by way of a fee or remuneration in respect of the office of a director or secretary held in any company or other body corporate or in respect of any services rendered by a director or a secretary to the company or other body corporate of which he is a director or, as the case may be, the secretary,
 whether such payment is of a fixed sum or calculated on the basis of profits, income or otherwise;
 "royalties" means any payments or credits of any kind made as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, cinematograph films (including films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, formula or process, or for the use of, or right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience and shall include gains derived from the sale or exchange of any right or property giving rise to such royalties;
- (b) Section 3 Re-number section 3 as subsection (1) of section 3 and add the following subsection:—
 "(2) Subject to the provisions of section 10, subsection (1) shall not apply to income of any non-resident which accrued in or was derived from the Partner States in respect of dividends, royalties, interest or any payment under any management agreement."
- (c) Section 4 Delete paragraph (c).
- (d) Section 10 Add immediately below section 9 the following new section:—
 "Income of 10. Where any resident person makes a payment of any amount to non-residents a non-resident person—
 from management agreements, royalties, dividends and interest
 (a) under any management agreement;
 (b) in respect of any royalties;
 (c) in respect of any dividend by any resident company;
 (d) in respect of any interest on any loan or deposit,
 such amount shall be deemed to have accrued in or derived from the Partner States and tax shall be levied on such amount in accordance with the provisions of section 59:
 Provided that this section shall not apply to any payment of interest or any payment under a management agreement where such payment has been certified by the Minister for Finance of the United Republic of Tanzania as being a payment due under an agreement to which the Government of Tanzania is a party or which has been guaranteed by the Government of Tanzania, the agreement being an agreement which requires such payment to be made without deduction of tax."
- (e) Section 14 In subsection (2) delete paragraph (i).
- (f) Section 19 Delete.
- (g) Section 58 (A) Delete the words "Subject to section 63" which occur at the beginning and substitute therefor the words "Subject to the provisions of section 59, section 63 and section 69"
 (B) In paragraph (a) delete the proviso;
 (C) In paragraph (b) delete the proviso.
- (h) Section 59 Add the following section immediately below section 58.—
 "Liability of tax in respect of certain incomes 59.—(1) Where any payment is to be made by a resident person to any non-resident person in respect of—
 (a) any amount due to such non-resident person under any management agreement;
 (b) any royalty;
 (c) dividend from any resident company;

(d) interest on any loan or deposit,

the person making such payment shall deduct from the sum to be paid the tax payable thereon and charged at the rates specified in the appropriate income tax legislation as the non-resident withholding tax rates, and shall pay to the person entitled to such payment the difference between the sum to be paid and the amount of tax so deducted.

(2) Where any payment is to be made by a resident person to any other resident person in respect of—

- (a) any amount due to such other resident person under any management agreement;
- (b) any royalty;
- (c) any dividend from a resident company other than a dividend in respect of a share beneficially owned by the Government of a Partner State, the Community or a corporation within the Community;
- (d) any interest on a loan or deposit other than a loan from the Government of a Partner State, the Community, a corporation within the Community or a local authority, or a loan or deposit with any financial institution which is a resident,

the person making the payment shall, unless the provisions of subsection (3) apply to such payment, deduct from the sum to be paid the tax payable and charged at the rates specified in the appropriate income tax legislation as the resident withholding tax rates and shall pay to the person entitled to such payment the difference between the sum to be paid and the amount so deducted.

(3) Notwithstanding the provisions of subsection (1) and subsection (2) no deduction shall be made from any payment—

- (a) to which the proviso to section 10 applies; or
- (b) in respect of which the Commissioner-General is satisfied that such payment is income which is exempt from tax by reason of the provisions of the First Schedule to this Act or of any exemption order made under this Act, and has issued a certificate to that effect to the person making the payment; or
- (c) to which any order made under subsection (7) applies.

(4) The person making any deduction under this section—

- (a) shall, within seven days from the date of the deduction, remit the amount so deducted to the Commissioner-General together with a return stating the name of the person entitled to the payment, the amount of the withholding tax deducted and particulars of the consideration in respect of which the payment has been made;
- (b) shall give the person entitled to the payment a certificate showing the amount of the withholding tax deducted.

(5) Where any amount of tax is deducted from any payment in accordance with the provisions of this section, the total income of any resident person receiving the payment shall be assessed as if no such deduction had been made.

(6) Any person who is required under this section to make any deduction and who—

- (a) fails to make the deduction or fails to make the deduction of the whole of the amount of the withholding tax due;
- (b) fails to remit the amount of any deduction to the Commissioner-General within seven days of the date on which the deduction was made or ought to have been made,

shall be liable for the full amount which ought to have been deducted as if such amount were tax due by and assessed on such person and shall also be liable for interest and penalty thereon accordingly.

(7) The Minister for Finance of the United Republic of Tanzania may, by order published in the Official Gazette of Tanzania, exempt from the provisions of subsection (2) any payment or category of payments or any payment made by or to any person or any class of persons, and where any such order is made such payment shall not be subject to any deduction for withholding tax under this section:

Provided that no order made under this subsection shall affect the liability, if any, of the person to whom the payment is made for tax in respect of such payment, and such person shall be liable therefor as if this section had not been enacted.

(8) For the purposes of this section "financial institution" means any bank (including a savings bank), a building society or a co-operative credit society."

(i) Section

65

Delete.

(j) Section

66

Delete.

(k) Section

67

Delete.

(l) Section

69

Delete and replace by the following new section—

"Set off tax deducted from dividends, interest, etc.

69.—(1) The amount of tax which—

(a) has been deducted under section 59(2); or

(b) has been deducted under section 68;

shall be deemed to have been paid by the resident person receiving or deemed to have received the amount in respect of which such tax has been deducted and shall be set off for the purposes of collection against tax charged on such person for the year of income in which such amount is received or deemed to have been received.

(2) Where any tax has been deducted under section 59 erroneously or where after a deduction is made a certificate under the proviso to section 10 or a certificate under paragraph (b) of subsection (3) of section 59 is issued in respect of the payment to which the deduction relates, the Commissioner-General shall refund the amount of the tax so deducted to the person entitled to such payment."

(m) Section
123 A

Delete the words "25 years" and substitute therefor the words "18 years".

Passed in the National Assembly on the twenty-second day of July, 1971.

Y. Duman
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Clerk of the National Assembly