

1937

38339

38339

C0533/486  
KENYA

Estate Duty (consolidation) Ordinance.

Previous

297

3060/33

Subsequent

**1941**

297

20/9

R309

24/9

~~Mr. Campbell~~

2/10

Mr. Dax & K

4/10

K302

6/10

C.D.

13/10

299

14/10

297

3/11

309

9/11

Madras

8/11

303

298

16/11

297

15/11

309

10/2

Madras

11

CA Taxation

Inland Revenue 18 9 57  
Encl. copy letter from Registrar Genl. Kenya regarding  
proposal to amend the Order. Encl. contains observations  
thereon & presumed reply will issue from C.O.

The provisions of Section 22 of Kenya Ordinance No.13 of 1926 (Estate Duty) as to refunds is as follows: if it appears that the value of an estate has been over-estimated for the purposes of Estate Duty, then within six months from the time when this discovery is made the aggrieved party can apply for a refund of Estate Duty, first to the Commissioners and then, if they refuse, to the Court.

The Uganda Ordinance (Section 22 of Cap.65) and the Zanzibar (Section 17 of Cap.96) are similar.

Kenya's suggestion to the Inland Revenue Office is that the six months time limit as above should be abolished, and that provisions should be inserted whereby claims for refunds of Estate Duty should be possible up to three years after payment, but not subsequently. The reasons for this are given in paragraph 3 of the letter under (1) to the Inland Revenue Office.

The Inland Revenue see no objection in principle, but they point out that no such time limit exists in the U.K. In England, no difficulty with claims for refunds, no matter when made, arises because of Section 7(5) of the Finance Act, 1894, which prescribes the date at which the value of the estate has to be ascertained, i.e. at the date of the owner's death.

Kenya, Uganda and Zanzibar have no corresponding provision, but see, for example, Section 9(4)(a) of Hong Kong Ordinance No.3 of 1952 (Hong Kong draws an enormous annual revenue from Estate Duty).



[The above number and letter should be quoted in any reply, addressed to—

The Secretary,  
Inland Revenue,  
Somerset House,  
London, W.C.2.

with the word \_\_\_\_\_  
in the left-hand corner of the  
envelope.]



INLAND REVENUE,

SOMERSET HOUSE, LONDON, W.C.2.

RECEIVED  
20 SEP 1937  
C. O. REGY

18th September, 1937.

Sir,

I am directed by the Board of Inland Revenue to enclose, for the information of Mr. Secretary Gruby-Gore, a copy of a letter (102/2608/37) which they have received from the Department of the Registrar General in Kenya, together with some observations on that letter which have been prepared in this office. It is presumed that a reply to the letter will be sent by your Department.

I am, Sir,

Your obedient Servant,

J. J. D. Woods

The Under-Secretary of State,  
Colonial Office,  
S.W.1.

*Copy (for records) to Kenya*

DEPARTMENT OF THE REGISTRAR GENERAL,

P.O. Box. No. 351,

Nairobi, Kenya.

1st September, 1937.

No. 102/2808/37

The Controller,  
Estate Duty Office,  
Inland Revenue,  
Somerset House,  
London, W.C.2.

Sir,

THE ESTATE DUTY (CONSOLIDATION) ORDINANCE, 1926,  
REFUND OF DUTY

Certain difficulties have lately arisen here in connection with the refund of Estate Duty where too high a duty has been paid, and as a result it is considered advisable to amend the Estate Duty Ordinance. Before doing so, however, the Estate Duty Commissioners of this Colony would very much appreciate the benefit of your advice on the matter.

The relevant Section of the Kenya Estate Duty Ordinance at present reads as follows:-

- \* 23.(1) Where the property of the deceased has been estimated to be of greater value than the sum has afterwards proved to be, and the person accountable for the duty has consequently paid too high a duty thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters of administration to the Assistant Commissioner and delivers to the Assistant Commissioner a particular account and valuation of the property of the deceased, verified by affidavit or affirmation, the Assistant Commissioner shall report his opinion to the Commissioners.
- \* (2) If the Commissioners are satisfied that too much duty has been paid they shall direct the Treasurer to make a refund out of the general revenue of the Colony.
- \* (3) If the Commissioners shall refuse to make a refund the person accountable for the duty may, within thirty days of receiving a notification to that effect, move the Supreme Court for a rule to direct the Commissioners to make such refund.
- \* (4) Any order made by the Supreme Court for a refund or for payment of costs by the Commissioners shall be in the nature of a direction to the Treasurer to pay to the person named in the order the sum found due. Such order shall be signed by the Judge, and on receipt of the same by the Treasurer he shall comply therewith.

It is suggested that this Section should be amended to limit the period in which refunds may be claimed to three years and making no reference to claiming within six months after the true value of the property has been ascertained. A number of Colonies do limit the period in which refunds may be claimed to three years, whilst others have a three year limit with a proviso that this period may be extended in exceptional circumstances,

and/

and the Commissioners would like to know if you can see any objection to their proposed amendment.

5/ The difficulties here are mainly due to applications for refunds being made a considerable number of years after Estate Duty has been paid. In the event of an application for a refund being made in England, say ten years after payment of Estate Duty, on the ground that the true value of the property has only just been ascertained perhaps on account of a sale having been effected, would such an application be successful? It is realised that the same difficulties are not encountered in England where land and buildings have a more or less set value according to their locality. In Kenya it is often most difficult to value them, but the Commissioners will be most grateful for any assistance you are able to give.

4/ There is also the question of the power of the Commissioners to claim additional duty where they consider too little duty has been paid. If refunds are limited to three years the Commissioners' view is that their right to claim additional duty should be similarly limited and would like your opinion on this point. This limitation to run for a period of three years from the date on which a property is first disclosed as cases may arise in which a property is not disclosed in the original affidavit.

I am, Sir,  
Your obedient Servant,

(sgd.) O. L. FISHER

AG. ASST. ESTATE DUTY COMMISSIONER.

LRP/IE

The proposal is, apparently, that claims for repayment of Kenya Estate Duty shall only be entertained if made within three years of the date when the duty was first paid.

There may be no objection, in principle, to an amendment of the Kenya Ordinance upon these lines; although it is thought that a proviso allowing for the extension of this period in exceptional circumstances would make it much fairer in its operation - e.g. in a case where executors are confronted, more than three years after the death, with a substantial claim by the deceased's creditors.

In Great Britain, there is no statutory time limit for a claim to repayment of Estate Duty. Section 8(12) of the Finance Act, 1894, which covers this point, runs as follows:-

"Where it is proved to the satisfaction of the Commissioners that too much Estate Duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over-valuation by the Commissioners, with interest at 3 per cent per annum".

The most frequent ground for repayments of Estate Duty, at a considerable interval after the death, is the discovery of additional debts. Under English law, a creditor by simple contract has six years in which to sue from the time when his cause of action arises, and a creditor by specialty has twenty.

Cases are, however, also constantly occurring where assets have been overvalued, and (especially in cases where the deceased is entitled to a share in a partnership, or in another person's estate) agreement - quite possibly at a lower figure - is not reached until several years afterwards.

In the case instanced by the Kenya authorities, of a sale taking place ten years after the death, we should be chary about making any repayment.

The law of Great Britain is quite explicit in regard to the date at which the value for Estate Duty has to be ascertained. Section 7 (5) of the Finance Act, 1894, provides that "the principal value of any

\*property/

"property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market "at the time of the decease". A sale ten years after the death would, in the normal course, be a very poor criterion of the value at the date of death, and there might be good reasons for rejecting a claim for repayment, in reliance on the view that the alteration in value was due to circumstances arising after the death.

From a perusal of the Kenya Estate Duty Ordinance of 1923, it is thought that the root cause of the present difficulty may lie in the absence of any section fixing the date for ascertaining death duty values upon the lines of Section 7 (5) of the Finance Act, 1894.

Section 14 of the Kenya Ordinance requires an accountable person to pay the duty, in the first instance, according to the value of the estate as set forth in the estate duty affidavit and valuation. If it appears that for any reason too little duty has been paid, a Corrective Affidavit has to be furnished. But neither here, nor in section 22, which provides for relief where too much duty has been paid, is there any express mention of the proper date upon which the value for duty has to be calculated.

It would seem from the end of the third paragraph of the annexed letter, that the Kenya authorities would welcome any suggestions; and in these circumstances it may be thought desirable to allude to Section 7 (5) of the (British) Finance Act, 1894, and to explain the part which it plays in minimising claims for repayment which are based on the result of subsequent sales.

In regard to paragraph 4, it may be mentioned that under Section 8(2) of the Finance Act, 1894, incorporated Section 14 of the Customs and Inland Revenue Act, 1896, no person is liable for Estate Duty in Great Britain "after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable where such account was in all respects a full and true account and contained all the material facts to be known to the Commissioners of Inland



"Revenue for the ascertainment of the rate and amount of duty; and no trustee, executor, or administrator is, after the expiration of such six years, liable to such duty if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information and belief".