

1938

38054/6

C0533/490
KENYA

38054/6

Income Tax.Representations on account of Messrs Swift Rutherford & Co Ltd.
Makupa.

Previous

See 38122/16/35
See 38054/6.

Subsequent

297 12/10

300 12/10

Mr Parkin 14

Mr Casey 17

C.D. R. 308 22/10

R. 299 24/10

297 21/11

Mr Parkin /

297 20/11

309 27/11

Mr Parkin 29

Mr Freeman 30

Mr Freeman 2/12

R. 297

6.7.
Taxation
Nominal

1. A. S. L. Young, M.P. _____ 2/10/38 2
Encls. etc. received from son of one of his constituents,
regarding income tax payable by Messrs Swift
Butcher and Co. Ltd., Makeny, and requests
interview. 29)

Mr. Peakin.

I attach a letter from Mr. A.S.L. Young, M.P.
regarding a Kenya income tax case. Mr. MacDonald
would be grateful if the Department would put up
the draft of a further reply which he might send.

J. Creay.

11.10.38.

To A. S. L. Young. 1 encl. 11/10/38

DESTROYED UNDER STATUTE

This is nothing more than a complaint
that it is sometimes unpleasant to have
to pay taxes. There is no question
of double taxation, which arose in the
case of the East African Town & Licensing
Co. — which is the only "other case" to
which I can imagine the last para of
the encl. to (1) refers to. There
can of course be no question of an
appeal for taxation to be permitted
~~to be~~ entertained for a moment,
unless it ramifies into the problem
of double taxation or something of the
same nature. ~~However~~ It does
not look as if anything of the sort
arises in this case, but it
might be best to ? refer to

Kenya before sending a definite reply
to Mr Young — i.e. further interview with
to Mr Young & copy copies of. to
Kenya asking for details.

Clotley White
12/10

It is clearly impossible for the East
African Department to advise on a matter like this
without consulting the Governor, to whom we should
accordingly write as in draft herewith. The
Secretary of State should perhaps ~~be aware~~ that we
are doing so in case Mr. Young should speak to him
at the House before the Governor's reply is received.

J.J. Cassin

14.10.38.

I have thought it as well to let
Mr Young know by letter that ~~ref~~ to
Kenya - ~~replied~~

17.10.38.

18.10.38.

To Young - ~~replied~~

PROHIBITED UNDER STATUTE

at the Kenya Conf. (7.1) - ~~replied~~ 22.10.38.

DESTROYED UNDER STATUTE

5. Governor Boy 206 15/11/38 3
Gives observations on report and enclosed copies of
relevant correspondence.

Draft submitted under Clotley White 29/10

m: reception.

Tom also. see.

Mr Young recently passed on to
the S. of S. a long letter from the
same company attacking the policy
of Income Tax as applied to Kenya.

J.J. Cassin
29/10
35

6 To A.S.L. Young - ~~replied~~ - 2nd Dec 1938

~~X~~

38054/6/38

6

C. O.

Mr. Cortright 29/11

Mr. Pastan 29

Mr. Freedman 30

Mr. A. J. Damm per Casey 1-12-38p.

~~Sir H. Moore.~~

~~Sir G. Tomlinson.~~

~~Sir J. Shackburgh.~~

~~Parli. U.S. of S.~~

~~Parly. U.S. of S.~~

~~Secretary of State.~~

for the Secretary of State's signature

2 Dec. 1938

DRAFT *Caution*

A. S. L. Young, Esq., M.P.

I have now had a report from the Gov of Kenya on the (Income Tax payable assessment) of Sir Rutherford and Co, about which you wrote to me

(1) on the 8th of October.

The Gov writes that in former we Chat the

PTD.

FURTHER ACTION.

W. 10118-10 15,000 #15 T.S. 695
W. 10118-1 15,000 10/15 T.S. 695

the assessment of this

Company to Income Tax payable in 1937 was based on the Company's position, as disclosed by its Accounts in respect of the year ending 30th September, 1936. The Company at that date shewed an excess of assets over liabilities - not including share capital - of over £59,000, and a profit on the year's working of approximately £8,155. There was an overdraft of £3,554, secured by an equitable mortgage on the Company's property of £15,000. Apart from this security, the overdraft was amply covered by stocks in hand of over £8,500.

The income upon which tax is payable has been provisionally assessed at £8,000 bearing tax of £800. According to the information supplied to the Commissioner of Income Tax, ^{in Kenya,} the dividend paid out of the profits amounts to £2,550 net, upon which tax of £255 has been or will be allowed or refunded to shareholders, so that the net burden to the Company will therefore be somewhere between £500 and £550.

C. O.

- Mr.
- Mr.
- Mr.
- Mr. A. J. Dawe.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir J. Shackburgh.
- Permt. U.S. of S.
- Perly. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

In the light of these figures the contention that payment of the tax would "break the Company" and "would cause acute distress to six Europeans" scarcely appears to carry conviction.

to the Governor in Council

The Company recently appealed unsuccessfully for exemption from Income Tax on ground of hardship. The gist of the Company's arguments were (a) that they had made losses in the past and (b) that the profits which are subject to tax have been fully utilised or distributed so that cash for payment of the tax no longer remains. The Govt points out that, with

regard to (a), the set-off of previous losses has been generally dealt with under the Ordinance, and with regard to (b) that any income tax payer could place himself in the same position and ~~may~~ find himself in that position.

The Gov also states that there is no evidence that the settlers in Kenya are dissatisfied with the treatment accorded them by the Administration in connection with the income tax.

(SIGNED) MALCOLM MAC DONALD.



CONFIDENTIAL.

RECEIVED

22 NOV. 1938

C. O. REGD

15 NOVEMBER, 1938.

Sir,

I have the honour to refer to your Confidential despatch of the 22nd October transmitting a copy of a letter from Mr. A.S.L. Young, M.P., on the subject of the assessment to Income Tax of Messrs. Swift Rutherford and Company Limited of Makuyu.

2. The facts are that the assessment of this Company to Income Tax payable in 1937 was based on the Company's position, as disclosed by its Accounts in respect of the year ending 30th September, 1936. The Company at that date shewed an excess of assets over liabilities - not including share capital - of over £59,000, and a profit on the year's working of approximately £8,155. There was an overdraft of £5,554, secured by an equitable mortgage on the Company's property of £15,000. Apart from this security, the overdraft was amply covered by stocks in hand of over £8,500.

3. The income upon which tax is payable has been provisionally assessed at £5,000 bearing tax of £800. According to the information supplied to the Commissioner of Income Tax, the dividend paid out of the profits amounts to £2,550 net, upon which tax of £385 has been or will be allowed or refunded to shareholders, so that the net burden to the Company will therefore be somewhere between £500 and £550.

-1-

4. In the light of these figures it is clearly impossible seriously to contend that the payment of this tax will either "break the Company" or "cause acute distress to six Europeans", or that "400 natives would be thrown out of work."

5. The Company recently appealed unsuccessfully, under section 90 of the Income Tax Ordinance, to the Governor in Council for exemption from Income Tax on grounds of hardship. I enclose for your information copies of the papers submitted to Executive Council in this connection containing the claim for exemption made by Messrs. Swift Rutherford & Co.Ltd., the comments of the Commissioner of Income Tax on their claim, together with other correspondence between the Company and the Commissioner of Income Tax.

6. What the Company's arguments amount to are (a) that they have made losses in the past, and (b) that the profits which are subject to tax have been fully utilised or distributed so that cash for tax payment no longer remains. With regard to (a), the set-off of previous losses has been dealt with generously under the Ordinance, and with regard to (b) any income tax payer could place himself in the same position and many find themselves in that position.

7. It is relevant to observe that Mr. Rutherford has been one of the opponents to the introduction of income tax into Kenya. There is no evidence whatever to support the statement contained in Mr. Young's letter that the settlers in Kenya are dissatisfied with the treatment accorded them by the Administration, so far as income tax is concerned.

I have the honour to be,
Sir,

Your most obedient, humble servant,

W. Brooks-Polham
GOVERNOR.

AIR CHIEF MARSHAL,

S/B/T.A.X. 9/3/27.

INCOME TAX - SWIFT RUTHERFORD & CO. LD.
CLAIM FOR EXEMPTION UNDER SECTION 90.

The accompanying claim under Section 90 of the Income Tax Ordinance, 1937, made by Messrs. Swift Rutherford & Co. Ltd. is submitted for consideration by Council.

2. The comments of the Commissioner of Income Tax are as follows:-

1. Any reference in their letter to the contribution the Company has made to the Sisal Industry and to the amount which is paid out as wages, etc., has no bearing on its liability to Income Tax. There must be many similar concerns in the Colony who could put forward an equally good claim.
2. The Company has been assessed provisionally in the sum of £6,000 bearing tax of £600 but the figures are not yet final pending an examination of the accounts. Settlement is being delayed at the moment as one of the Company's officials is away on leave.
3. According to the Balance Sheet at the 30th September, 1936, the Company's financial position showed an excess of assets over liabilities, excluding the Share Capital, of more than £39,000. There was an overdraft of £3,554 secured by an Equitable Mortgage on the Company's property of £15,000. Apart from this the overdraft was amply covered by Stocks in hand of over £6,500.
4. The reference to the successful placing of new capital of £3,000 and £1,000 appears to be misleading. From evidence submitted with the Company's returns it seems probable that those amounts were merely conversion of loans made by the Company's manager in 1933 and 1935, so that no new capital was in fact introduced into the business.
5. The statement that at the time the profit of £6,155 was available for Dividend there was no reason to expect that Income Tax would be introduced appears to be incorrect. The Dividend was paid out in cash in December, 1936, but the Resolution confirming the Dividend was not passed by the Directors until the 26th April, 1937, when the Bill was passed through Council.
6. According to the information submitted to this office the Dividend amounted to £2,550 net upon which tax of £263 has been or will be allowed/

allowed or refunded to shareholders. The net burden to the Company at the moment will, therefore, be somewhere between £300 and £350.

7. The statement that Income Tax can only be paid by cutting wages or salaries cannot be confirmed. It will be seen from paragraph 3 above that the Overdraft facilities are available up to £15,000.

8. Apart from the apparently incorrect information which has been given in the application it seems quite clear that the Company is in a position to meet the liability without any hardship. Their position is no worse than if they had made a profit of £5,540 instead of £6,155.

9. The Company has already enquired whether I would support an application under Section 90 and I enclose a copy of their letter of the 19th January last and my reply of the 21st idem for information.

10. I submit that their application should be refused."

Copy of letter from

SWIFT RUTHERFORD & CO. LTD.
P.O. MUKUYU.
19th January, 1938.

The Commissioner of Income Tax,
Nairobi.

Sir,

We refer to your letter of the 29th Nov. You will understand that, as copies of your letter had to be circulated to Directors and others, there was unavoidable delay in replying.

Your letter has our earnest attention; we quite understand that you must adhere to the terms of the Ordinance, and we hope that you, on your side, will appreciate that we must do everything in our power to avoid being forced into bankruptcy by the so-called Income Tax Ordinance.

We feel that we cannot accept your ruling that we are not entitled to the benefit of Section 19; if profits that have been transferred to Reserve and left in cash in the Bank or invested are not liable to Income Tax, then, a fortiori, profits which have been transferred to Reserve and used to convert an Overdraft into a nil balance must also be exempt from Tax.

In any case we understood the Colonial Secretary to say in the Legislative Council that he was authorised to say that you considered that the Ordinance must be amended to provide for cases such as ours. Is it your intention to force us into bankruptcy before these amendments are made? If your contention were to be accepted it would mean that the wealthy, with ample cash available to pay Income Tax, could, by investing their profits, escape Tax altogether, while those who are recovering from an unparalleled depression and have no cash to pay are to be forced into bankruptcy by an Ordinance which purports to be a Tax on wealth.

The position is, as you must appreciate,

extraordinarily grave, and we feel that we must take every possible means to preserve our existence. Before we deal with Section 69, will you please give this matter your very careful attention and write and advise us as to whether you would support our application to the Governor in Council for exemption under Section 90 of the Ordinance.

Yours faithfully,
SWIFT RUTHERFORD & CO. LD.
(Ed.) G.H. Warren,
Manager.

INLAND REVENUE OFFICE,
N.I.R.C.B.1, 21st January, 1936.

The Manager,
Messrs. Swift Rutherford & Co. Ltd.
P.O. Makuyu.

Sir,

I have to acknowledge the receipt of your letters of the 17th and 19th instant, which I received today.

As regards your letter of the 19th inst., you have my assurance that if, in any instance, the payment of Income Tax would force a trader into Bankruptcy, I should immediately take steps to report the matter to Government. So far as your Company is concerned, an examination of the Balance Sheet at the 30th September, 1936, indicates an excess of assets over liabilities (the share capital being excluded) of approximately £39,000, and if you can produce any evidence to show that after making a profit of £6,000 in the year 1936 the payment of Income Tax will have the effect of wiping out that excess, I shall be glad to deal with the matter on the lines I have indicated.

With regard to your reference to the Colonial Secretary, I shall be glad if you will let me know precisely to what statement you refer.

I regret that I am unable to accept your contention as regards the operation of Section 19 of the Ordinance, and on the facts before me I am not prepared to support any application you may wish to make for exemption under Section 90.

With reference to your letter of the 17th instant, a copy of the Accounts was forwarded to me by Mr. T.R. Swift, a Director of your Company.

There is no obligation upon you to treat any of this correspondence as confidential, and if you wish to publish any letter you are obviously entitled to do so.

I am,
Your obedient servant,
(sd.) J.C. Furdy
COMMISSIONER OF INCOME TAX.

(Copy)

MACRE SHAW & BUCKLEY,
ADVOCATES.

P.O. Box 481
Nairobi, Kenya.

5th August, 1938.

The Clerk to the Executive Council,
The Secretariat,
Nairobi.

Sir,

re: Swift Rutherford & Co. Ltd.

We beg to inform you that we have been instructed by Messrs. Swift Rutherford & Co. Ltd., to ask that the undermentioned facts may be placed before His Excellency the Governor in Council for the purpose of being considered in support of an application which the said Company hereby makes for exemption from payment of Income Tax under the provisions of Section 90 of the Income Tax Ordinance, 1937.

This Company has contributed to the Sisal Industry of Kenya a degree of agricultural work and pioneering development and experiment not equalled by any other similar concern in the Colony. It was the actual pioneer of Sisal in Kenya Colony and was the first enterprise to grow sisal in the highlands of any country. The Company also initiated the system of water-borne waste and washing the sisal in the decorticator. Later, Mr. Rutherford, the Managing Director of the Company, in collaboration with Mr. Mann of Kenya Sisal Products Ltd., developed the present system of waste reclamation which enabled Kenya Sisal Products Ltd. to erect a factory for the production of bags made from fibre which, prior to the development of the waste reclamation system, was lost.

For the Company's financial year ending 30th September, 1936, the Company showed a trading profit on its Balance Sheet and Profit and Loss Account of Shs. 123,091/87 or approximately £6,155. As the Company's Balance Sheets are available for examination by His Excellency the Governor in Council if required, and are expressed in terms of Shillings and Cents, we propose for the sake of simplicity to refer to the nearest £ sterling in the remainder of this letter.

The Company has been assessed to Income Tax at £615 under the Income Tax Ordinance, 1937, in respect of the above mentioned (1936) profit, and whilst it is not at present the intention of the Company to contest this assessment, it submits that its case is one of hardship and that the grounds hereinafter set forth are sufficient to enable His Excellency the Governor in Council to exempt the Company from payment of the above assessment under the provisions of Section 90 of the said Ordinance.

During the years 1930, 1931 and 1932 the Company's planting and trading resulted in an aggregate loss of £7165 and during those years it was indebted to the Standard Bank of South Africa Limited on a fluctuating overdraft which at the 30th September, 1932, stood at no less than £11,910.

It should also be remembered that during the years

of special depression the Company did not shut down production as did so many other Sisal Companies and it did not dismiss its staff and native employees. On the contrary, it carried on its enterprise in order to keep the employees together although making practically no profit for itself. It may be added that the staff volunteered to take 33% cuts in their salary without any prior hints or suggestions to this effect emanating from the Directors. Incidentally this reduces any possible claims for rebate of Income Tax on the year of assessment 1936, the only real good year for many years past.

In the years 1933, 1934 and 1935 the Company made certain profits as follows:-

1933	£29.10. 0
1934	£162. 0. 0
1935	£3,026. 0. 0

It will be observed that the aggregate of these profits does little to reduce the Company's indebtedness to the Standard Bank of South Africa Limited. Nevertheless, by careful and cautious management and prudent working the Company succeeded in diminishing its indebtedness to the Standard Bank of South Africa Limited, so that the overdraft by the 30th September, 1935, had been reduced to £7,343.

At this stage the Company decided to endeavour to raise additional capital to be devoted to the further reduction of its indebtedness to the Bank and owing to its reputation for good work and general good name was successful in raising a further £3,000 so that, together with the assistance of a portion of the 1936 profits, the overdraft was further reduced by the 30th September, 1936, to £3,554. In this financial year (1936) the Company succeeded in making the profit above referred to, £6155.

It is pertinent to observe at this juncture that at the time this profit was available for distribution to the shareholders or for such other purpose as the Directors might have deemed requisite, there was no Income Tax in the Colony and there appeared at that time to the Directors to be no reason to expect that an Income Tax should be imposed since the permanent fiscal policy of the Colony was wholly incompatible with any form of further direct taxation on agricultural enterprise.

Accordingly the Directors decided that it would be in the best interests of the Company to add to the Company's capital a further £1,000, the issue of which was successfully placed. It will therefore be seen that the Company had at its disposal a sum of £7,155 and an overdraft of £3,554.

In view of the facts that for many years past the Company had been unable to declare any dividends and that two of its most important shareholders - Mr. T.R. Swift of Nyeri and Mr. E.D. Rutherford of Makuyu - were almost entirely dependent upon its earnings for their incomes, it was considered advisable to declare a dividend of 10%. In past years Mr. Rutherford, as Managing Director, had drawn a modest salary from the Company but Mr. Swift had received for many years nothing whatever prior to this dividend. The amount absorbed by the payment of the dividend was £2,615 and most of the remainder of the profits were devoted to improvement of the Company's capital assets as follows:-

But the Profit report was published in Sept. 1936.
J.P.

Purchase of a Gyrotiller	£1550
Purchase of Trucks	£ 820
Purchase of Rails	£ 434
Sundry Improvements, etc.	£ 176
Total	<u>£2980</u>

The balance of the profits were devoted to paying off the Company's overdraft with the aid of the fresh capital already referred to.

It will therefore be seen that of the £6,155 of profits not a single penny remains in liquid form available as cash for the purposes of the Company. Nevertheless, the Company is now assessed to pay a sum of £615 by way of Income Tax. This Tax only became effective in June 1937 and in fact no assessment thereunder was made until a period of almost a further financial year had been allowed to expire. During such period the 1936 profits had been distributed as aforesaid leaving nothing whatsoever from which the Company can pay Tax.

It must be remembered that the year 1936 was the first year in which the Company succeeded in making anything approaching a reasonable profit having regard to its issued capital of (at that time) £25,500. Consequently, prior to that year it had been unable to embark upon any necessary machinery replacements, planting programme and similar necessary improvements and development. Nevertheless, as soon as it found itself able to do so and after payment of the small dividend referred to above, it devoted its available cash, not to further payments to the hard pressed shareholders who had waited for so long for any dividend at all, but to capital improvements which cannot help being of assistance to its enterprise in particular, to the Sisal Industry in general, and so indirectly to the entire Colony.

It is also significant to note that in the year immediately following this profit the amount of native wages paid by the Company was £2,859, whereas in the years of depression, (taking 1934 as an example) the amount paid by the Company to the native community by way of wages was only £1,925. In 1934 salaries and commissions amounted to only £772 which cannot be considered excessive when it is remembered that it has to be divided between a European Managing Director, 3 Europeans and 2 Asians. Even in 1937 when the Company's position was financially considerably more satisfactory, this item amounts to only £1,603 which again cannot be considered excessive when it is remembered that it has to be divided between a European Managing Director, 3 Europeans and 2 Asians.

It will therefore be clear that this Company has "tightened its belt" during the years of depression and has been able to carry on only because of its exceptionally economical management which in turn has only been possible owing to the heavy sacrifices of the shareholders and the Company's employees.

It will thus be seen that the order in which classes of persons associated with the Company benefit from any improvement in its position is:-

- FIRST: The native labour to the extent of almost £1,000
SECONDLY: The salaried employees to the extent of slightly over £800.
THIRDLY: The Company's estate which is an important integral part of the Sisal Industry and therefore of the Colony, and/

4.

LASTLY: The shareholders who for many years have received no returns on their investment without complaining; an attitude demanding great sacrifices on the parts of both Mr. Swift and Mr. Rutherford for the reasons already stated herein.

The 1937 position reflects a sudden return to a period of difficulty on account of the fall in sisal prices. The Company is consequently unable to replace its 1936 profits (already distributed and returned to the State in development) by increased earnings in 1937. In fact to replace even £615 merely to pay the 1937 Income Tax assessment can only be done by reducing the 1936 benefits in favour of the first two classes set out above.

Such action would inflict great hardship on the labour and employees and also on the shareholders of the Company. To borrow or raise further capital for such a purpose as meeting payments due under an Income Tax is a wholly unsound and impracticable financial proposition even for so well known and respected a Company as Swift, Rutherford & Co. Ltd.

If the Company in this and succeeding years is to find itself continuously in the position depicted above, there is little doubt that it will have to revise its policy to the detriment of the Sisal Industry in the Colony.

The Company therefore humbly petitions His Excellency the Governor in Council for exemption from payment of £615 being the assessment under the Income Tax Ordinance 1937 in respect of its profit for the year ending 30th September, 1936, on the grounds that it will be impoverished in making such a payment and that such impoverishment constitutes a hardship to the labour, employees, and shareholders; and it further submits that the grounds set forth in this letter are amply sufficient to justify the granting of this application for exemption.

We have the honour to be,
Sir,
Your obedient servants,
for DACHE & SHAW & BUCKLEY.
(Sd.) R.N. Buckley.

Telephone
Dinner 50

AUCHINCLOSSAN,
DALMUIR,
GLASGOW

~~Zyckes~~

8th Oct 1938.

Dear MacDonald,

I enclose a letter from a son of a Constituent of mine in the hope that you may be able to assist this Company, as you appear to have done in another case.

I gathered from my conversation with Mr Warren that the settlers in Kenya are dissatisfied with the treatment accorded them by the Administration. Perhaps when the House reassembles in November you will find time to have a talk with me on the subject.

Yours sincerely
A L Young

by 6/10/38
A.L.Y.

74 Balshagray Avenue
Glasgow W. 1.

30th September, 1938.

A. S. L. Young Esq. M.P.

Dear Mr. Young.

I have to thank you for listening so patiently to me at the Partick Club, and also for your offer to have a word with the Colonial Secretary; I, and others, would be very grateful if you could do so.

The immediate trouble concerns SWIFT RUTHERFOORD & CO. LTD. MAKUYU, KENYA.

They have received a demand for £600 for Income Tax on £6,000 profit made in 1936, and used in reduction of a Bank Overdraft. The overdraft is not extinguished, and, in the present disturbed conditions, this demand may break the Company. I cannot see that this would do anyone any good; it would cause acute distress to six Europeans and 400 natives would be thrown out of work:- some are specialists.

The Commissioner of Income Tax in Kenya seems to think that Banks will grant unlimited overdrafts on the security of land; he is wrong.

I cannot see that delay would do any harm; further, I gather that a successful appeal has been made to the Colonial Secretary in another case.

I do not like troubling you, but I feel I must.

Yours sincerely,

G. H. Warren
G. H. Warren

Kenya Income Tax imposed in 1937 & made retrospective