

1938

Kenya

No. 38054/1

SUBJECT.

CO 533/490

Income Tax Legislation

Previous

1937 *2/2*

Subsequent

1939 *2/2*

1. Gov. No. 64-Conf \_\_\_\_\_ 24. 3. 35  
Requests that the advice of the Bd. of Island Revenue  
may be obtained as early as possible on the credit memo by  
the Commissioner of Income Tax about the position of the C. A.  
Power and Lightly Co. Ltd. under the new scheme.

2. Sir R. Brooks - Popham (5/0) \_\_\_\_\_ 26. 3. 35  
Requests that No. 4 may be dealt with at an early date

? Refer to Bd. of Isl. Rev. \_\_\_\_\_ 22

J. J. Cannon  
30/3  
F. S. Sanger  
31/3  
Wood 1/4

Letter on the 10th of

2/4

3 To B. S. K. - (W) C. I) - Crossed 1 APR 1930

~~11/11~~

4. J. S. K. \_\_\_\_\_ TEL 45 Conf \_\_\_\_\_ 16. 4. 38

DESTROYED UNDER STATUTE Request early reply to (1).

Proceed as in the letter  
h'witt.

Send to the Gov. by 6 days  
mail copy of (3) without encl.  
and of above letter, with LF  
ref. (4). Conf.

Then receive. A. T. Jones  
A. P. M. Jones  
22/4

11/6  
See Christensen  
to see notes to 3  
4 soft side slip  
above 3

To Inland Revenue — Ans 20 APR 1938

DESTROYED UNDER STATUTE

Kenya Inf (3) (7c. 3/25) A/P 20 APR 1938

See green slips attached.

B. V. in a week if nothing  
from B. I. R.

(1 time)

W. M. Mawe

23.4

B. I. R.

23.4.38  
Submits claims on questions raised  
regarding part of East African Power &  
Lighting Coy.

In No. 1 the Kenya Commissioner of  
Income Tax set out a complaint by the East  
African Power and Lighting Company against the  
double taxation of their dividends, i.e. at  
two shillings in the pound in Kenya and at a  
further five shillings in the pound in the U.K.

In No. 7 the B.I.R. offer several  
suggestions for meeting the difficulty.

Double taxation on dividends payable,  
through a paying agent in London, by a Dominion  
or Colonial company is avoidable by deduction,  
before payment, of U.K. tax from the dividends  
at less than full standard rate. Relief from

a twofold charge is thus obtained at the source.  
Such an arrangement is, however, evidently not  
possible if individual shareholders themselves are  
able to claim relief from double taxation in the  
Colony. Unfortunately it is intended to make rule  
under Section 10(2) of the Kenya Ordinance for the  
grant of tax-free personal allowances to non-residents.  
The B.I.R. is, for this reason, unable to sanction  
the adoption of the "paying agent" device in this  
case for dealing with double taxation. A way out  
of the difficulty would be for the Governor to  
declare his intention to make no such personal  
allowances to non-residents. This would satisfy  
the B.I.R. (Allowances already made to certain  
classes of pensioners are not of sufficient  
importance of themselves to preclude such an  
arrangement).

If, however, it is decided by Kenya to  
go forward with the policy of granting non-resident  
allowances there are two possibilities. If the  
allowances are dependent upon the non-resident's  
total income, the rate of Kenya tax paid will depend  
in each case upon the particular circumstances and  
will vary with the amount of total income; there  
would be no fixed minimum rate of Kenya tax by  
reference to which relief could be given and it  
would consequently not be possible to use the  
"paying agent" device (see the first part of para. 7  
of No. 7).

On the other hand if there is a fixed  
allowance of, say, £100 to all non-residents it  
would be possible to make rule in Kenya by which  
no tax would be deducted in respect of the income  
out of which the first £100 of dividend is paid

by the Company to each shareholder; and for higher total dividends the "paying agent" device could be used. It is this scheme which the B.I.A. recommends for Kenya's consideration. Details would have to be elaborated further, especially with the treatment of shareholders in more than one company. Kenya may, however, decide that the loss of revenue involved in granting non-resident allowance is too great to be faced - in which case the first solution above will be applicable.

It does not seem necessary to add anything to the S.I.A.'s letter at this stage. It will be sufficient to send out a copy of No. 7 with enclosure in a short despatch to Kenya. As the matter is urgent a draft is submitted for concop.

Clatworthy

27.8.38

This is a very technical matter which will be more easily understood by individuals dealing with the D.O. in Kenya. I have based the report on what I have seen & may have heard. I would go to the following in connection with No. 12.

(A copy of the D.O. should be put with these "Legislation" subfiles). CWS 28.4

The B.I.A. are sending over two or three more copies of the end to No. 7 so that the file is complete after the original end has been sent to Kenya.

Clatworthy 27/8 29.4.38.

~~7th B.I.A.~~ extra copies of end to 7. 30/7  
 Short despatch to Kenya copy (2). (No. 7 original) Com. No. 7 38  
 (1 bound.)

Letter to the members  
 re. relief  
 if vide report

Ms. Quacks and  
 D.I.C. re. page.

See. / Do not take a  
 new report 1/2 (2).  
 Kenya  
 9.5.38.

9 - AIR (w/o) of 10/5/38

10. You tel 58 Com. Ask that the Board may reconsider proposals which are incapable of appl. locally owing to political reasons.

11. E.A. Power & Lighting Co. (Nairobi) — 10.5.38  
 (Requests good offices of Sir H. Moore in finding a solution of some difficulties)

12. E.A. Power & Lighting Co (London) — 18.5.38  
 (Offers to explain, orally, the difficulties under which the Company is labouring, as the result of discussions at Somerset Hqs.)

No. 10. without the promised despatch is not very much for Somerset House to go on, in regarding this as a private business, but we can only proceed



as in dft.

Mr. 11/12.

Mr. H. Brown has spoken to me & asked me to consider whether Mr. Brown should be asked to call on the office to do, to explain what has happened in his absence at present No. 1 was not sure that such a visit at present would be profitable for the purpose of the C. I. T. in C.D. is under the impression that it would be possible to see Mr. Brown.

Mr. H. Brown does not wish to come to his V. personally (based upon a letter), & I suggest replying as in dft.

J. Brown  
2/5

A. M. Dave  
20.5

Handwritten note: 21/5

13 2 B.R. (use 10) - Cons. 21 May 1938

14 To Mr. H. Ward 11 Arr. 20 25 MAY 1938

Not destroyed

15 To Brook - 12 Arr. 20 21/5/38

Requiesce as

at 1/2 on 1/2/38

16 For Conf 100 18 5 38  
Also that the Board may devise some procedure to meet special cases and emphasize the urgency of the matter.

17 See R Brooke Popham s/o to Sir C Parkinson 18 5 38

18 D C Brook s/o 25 5 38  
DESTROYED UNDER STATUTE In arranging interview with Mr. Dave.

19 Copy comm. between Mr Brook & Somerset House

20 Hloyes 26 5 38  
Asked that Kenya authorities may be requested to commute the Income Tax on "Handwritten" chargeable income from "Cover" operated for them in Kenya from a tax on profits to a tax on the premises received by them on such "Cover"

Proceed as in dfts.  
Revic. to me.

(1 time)  
A. M. Dave  
27.5

Kenya to the office (arr. 21/5)

Requiesce as at 21/5 (Boyd - 20 Arr. 20) 30/5/38

DESTROYED UNDER STATUTE Kenya Conf (2) - (C. 20 & 21) - Cons. 30. 6. 38. (16 Arr. 20)



make a fixed allowance since it would entail a substantial loss of revenue. This argument was quite clear and obviously has considerable force. It was however not so clear why, as stated in 16, the Government of Kenya were not prepared, in order to overcome the difficulty in this case, to abandon the idea of making any personal allowance to non-residents (other than pensioners). 16 merely stated that they were committed politically to the opposite course but it was difficult to see why, in the face of the <sup>considerable</sup> ~~difficulties~~ which had now arisen in this case, <sup>particular</sup> any local importance should be attached to the political commitment. It was decided that this was a point which had better be discussed with Sir Armigel de Wade, and it was arranged that he should be invited to call at the office at 12 noon on Tuesday, 14th June, and that Mr. Firth would be present.

The letter at 17 was shown to Mr. Firth who made no comment. It is to be observed, however, that the argument in para. 2 of that letter is no longer in accordance with the facts for it is the B.I.R. who have now suggested departure from the Model Ordinance in the way of making no allowance to British non-residents, and the Government of Kenya <sup>which</sup> ~~cannot~~ object to such departure. The argument in para. 3 strikes me as being rather disingenuous.

*T.M. Bowyer*  
13. 6. 38.  
16.6.38

24 To Wade 3/0

25

you 312  
Propose to amend section 75 of the  
Case. Inquire whether the amendment is  
approved. asks for early reply.

31 5 38 7

Transferred to  
6102/38  
General

to 109 Conf.

6.6.38

Trade means by Comm. of Taxes. asks  
that the Board of Inland Revenue may be  
requested to supply information as requested  
as soon as possible.

The problem of the arrangements for the relief of double income tax was discussed further with Mr. Firth at a meeting on Tuesday, the 14th of May, at which Sir A. Wade was also present. Even after refreshing his memory, by reference to the report of the Select Committee which considered the Bill in Kenya, and to the debates in the Legislative Council, Sir A. Wade was unable to enlighten us in regard to the Governor's statement that it would now be difficult to defend a decision not to give personal allowances to non-resident tax payers. After discussion, it was agreed to propose that Sir C. Parkinson should write semi-officially to the Governor on the lines of the draft herewith, which I have now compiled in collaboration with Mr. Bowyer.

It was agreed that the draft should be sent to Mr. Firth for concurrence and I think it should also go to Sir A. Wade, in view of the fact that we are purporting to set out his views on the matter. I submit draft for conson.

When these drafts have issued, the file should be recirculated to Mr. Bowyer for his observations on Nos. 25 and 26, which I have mentioned to him.

*A. Wade*  
17.6.1938  
18.6

DESTROYED UNDER STATUTE

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To Mr. Fitch - Income Tax } Cons  
 18/6/58  
 To Sir A Wade } Cons  
 w/c after 30 Oct to Gov Kyr

25  
 Mr. Fitch BTR agrees that  
 the question of principle is  
 involved in the proposal to  
 collect tax in two instalments.  
 It is done - in certain cases -  
 in this country, and in  
 at least one other  
 some foreign.  
 Reply as to when in  
 principle.

26 Transfer of general file  
 about surplus exemplar  
 of shipping from Ken  
 Mr. Banger  
 25/6

J.J. Paine  
 20/6  
 at once

29 A. de V. Wade sp 20.6.58  
 Comments on draft etc. enclosed in no 28

30. E.M.T. Fitch sp 22.6.58  
 Comments on draft etc. enclosed in no 27

31. Kenya. etc. sp. 23.6.58  
 asks for early reply to no 25

DESTROYED UNDER STATUTE

Sp to h.w. after discussion with  
 Mr. Banger, who has indicated to  
 discuss with Mr. Fitch the suggested  
 addition to para 2. It is not  
 understood.

J.J. Paine  
 24/6

The suggested addition here  
 is intended to mean that  
 the question of the paying agent  
 concession was not raised  
 with regard to dividends?  
 less than the personal  
 allowance since no Kenya  
 tax will be hypothecated  
 deducted in those cases.  
 Mr. Fitch agrees that this  
 duplication is not  
 necessary; it is to be  
 clear to Kenya how?

Mr. Banger  
 25/6

A. de V. Wade  
 25/6

32 Tel to Gov. Nairobi - 75 - 25.6.38

33 To Sir R. Brooks-Popham.

34 To Wals. (4/6 299 and in conj + 33)

To Smith (4/6 299 and 33 + 34)

28 JUN 1938

Re the reply received to 32

Outgoing 287 2/7/38

some plan in the note  
Notice 4/4  
4/7/38

35 See 132 copy 18 7 38  
Ref 32 - consider suggestions made by  
Moggi Committee to be reasonable suggest  
they should not be done. to lower of Income Tax

Draft submitted 10/7  
Clerks' note 10/7

36 [copy to 20 and with change in 1938]  
20 JUL 1938

38 I heard from you the from  
Sir R. Brooks-Popham dated 16.38.

39 Memorandum prepared in connection  
with interview between the 3 of 3 and  
and James Scott 17.6.38 (note 2827/38)

40 Sir R. Brooks-Popham 4/6 299  
Comments on the position regarding  
grant of paid allowances

This letter does not carry us very much further, though it is curious that, on the question of personal allowances, the Governor has not discussed the possibility of giving personal allowances only to pensioners, and not to other persons with small incomes, since Somerset House would be quite prepared to make an arrangement which would dispose of the difficulties of the East African Power and Lighting Company, if it were decided not to grant personal allowances to non-residents, other than pensioners. The explanation is no doubt, however, that the Governor regards himself as committed to granting personal allowances to all persons of small means.

In paragraph 8 the Governor makes a constructive suggestion which is, however, a matter for the experts at Somerset House to consider, and is not one on which the Colonial Office can usefully comment. As, however, the Governor mentions that this suggestion follows on others already made by Mr. Mundy in the semi-official correspondence with Somerset House (of which we have not had copies), but which have not been regarded as feasible by Somerset House, I am inclined to doubt whether anything will come of it.

As regards action, we can quite clearly do nothing more than to send a copy of this letter to Mr. Firth for consideration. I submit draft accordingly.

J. J. P. [Signature]

21.7.38.

A. J. M. 21.7

To Firth (no 40).

23 JUL 1938

the no. 40  
part of 40

? Put by 38 & 39: we need to act  
to call a reply to 41 is in  
and the B.I.R.'s news can be  
passed on to Sir R. Brooke Popham.

Clarke White  
28/7

J.P. Pomeroy  
28/7

42

Stamps  
Ackns 37. and expresso gratitude for  
action taken.

Put by  
Clarke White 1/8

4/8/38  
no. 40

The Firth said the telephone (only  
and he liked to let us have a reply  
to 41) in a day or so.

Clarke White  
1/8  
19/8/38

Call no reply received to no 41.

J.P. Pomeroy  
2/8

On 7/8 Mr Firth said the B.I.R.  
reply was being held up owing to  
the absence on leave of some

Who normally deal with the Kenya  
micropay. On the cars I think  
perhaps it is best to wait three weeks.

Clarke White  
28/8

43.

Firth (no.) 9/9/38  
The news suggesting arrangements with  
the B.I.R. and the proposed to advise  
E.A. Pomeroy & Lighting Co. to bring agent reply.

872

J.P. Pomeroy  
12/5

DESTROYED UNDER STATUTE  
To Firth. (no. 9)  
4/8/38 (Ref 40)

13 SEP 1938

46  
Mr C. de V. loads 3/8  
states that the board has protested bitterly  
at the situation in which he and his colleagues  
are placed. Inquiries when reply to 40 may be  
expected.

I have updated in copy L.V.

Part 9.

J.P. Pomeroy  
15/9  
done

DESTROYED UNDER STATUTE  
14. 9. 38

MT Brown (E.A. Pomeroy & Lighting Co.)

has many of ~~memorandum~~ to say that  
 he had had a very cryptic letter  
 from Nairdi stating that the Govt.  
 of course was not prepared to accept  
 an arrangement which would permit  
 the Govt. to get ~~double~~ double income tax  
 relief, & asking ~~me~~ to get into touch  
 with Somerset Ho. Mr. Brown however  
 did not see that any useful purpose  
 would be served by his doing so until  
 he knew something more of the  
 scheme and has been evolved -  
 Nairdi, & I promised to let him  
 know as soon as we received a  
 reply from the Govt.

J.J. Pascoe  
 12/2.

48 See B. Wade & Co. Re. Pascoe — 9/10/38  
 Re: Board's proposals afford satisfactory basis  
 for settlement suggest minor alterations Requests  
 matter be expedited

I am now in town - but I  
 care it that, before getting  
 into touch with Mr. Brown, the  
 name under (48) should be sent  
 to Somerset House for details?  
 Kenya claims that these further  
 proposals have no departure  
 from the principles already

agreed to by Somerset House: 7.30  
 for as I can see, his claim is  
 justified.

Mountbatten  
 26.10

~~49~~ I have sent copy of No 48 & encs.  
 to Mr. Fitch, Somerset Ho., &  
 arranged for Mr. Brown to get  
 into touch with him on Friday, &  
 at. time he will have had  
 an opportunity of considering the  
 proposals suggested by Kenya.  
 Now wait for Mr. Fitch's reply

J.J. Pascoe  
 27/x

49 To E.M.T. Fitch (50) (Nairobi) encs — 26.10.38.

50 Island Revenue — 3/11/38  
 Towards observations on draft rules proposed  
 by Kenya

51 To Governor J.M. 100 <sup>100</sup> encs — 4/11/38

52 To: Superintendent (K) (50) encs — 4.11.38

53 To: Mr. Fitch (S.H.). (47c 51) encs — 5.11.38



54 Governor Del 185 \_\_\_\_\_ 21/11/38  
Ref 51. Rule approved by Governor in Council for promulgation  
and lays on table of Leg Co, Dec 7<sup>th</sup> when resolution  
will be moved fixing Jan 1<sup>st</sup> 1939 as date of  
commencement of operation.

The Telegraph section have assisted in  
making a connection in this tel.  
I have told Mr Brooke's <sup>assistant Mr Brooke</sup> (EA Power a <sup>very</sup> busy  
Lighting Co) & Mr Fisher (D.S. of I.R.)  
of the contents of 54. A copy  
should now go to Mr Fisher with  
Mr Parkin's compliments. (The person  
to whom I talked at the EA Power Co. is  
conversant with the arrangements & is  
getting in touch with the B.I.R.)  
Closing while 2/11

55 To Enid Park (BSE) 1/2 w/c 64 \_\_\_\_\_ 21/11/38

56 E.T. 7<sup>th</sup> of 6 \_\_\_\_\_ 21/11/38  
In case states suggest steps be taken by Leg Co  
to telegraph result of proceedings of 4/10 at earliest  
possible moment

It is not quite clear whether or not  
the Rules will certainly be in force by  
the evening of Dec 7<sup>th</sup>. In the Indian  
Tax Adminn the Gov is given power  
to make rules in the ordinary way, i.e.  
without consulting Leg Co; and there is  
nothing in the Standing Order of Leg Co  
whenever the moving of a resolution

such as that freshadvised in the tel  
is necessitated. Perhaps the Gov  
has departed from the usual procedure  
and decided to give an opportunity  
for debate in order to give an  
opening for the expression of the  
"unofficial" view. The debate once  
started might be lengthy, so it is  
not certain, it seems, that Dec 7<sup>th</sup> will  
see the business through.

? To Gov as in draft herewith  
been received for short letter asking  
58 and sending Mr Fisher a copy of the  
tel. Closing while 2/11

Got of tel. & then read  
copy to the Dick with my copies.  
& send copy 58 to Kanga 4/11

J.J. Parker  
23/11  
above.

57 To Gov. Kanga - tel 203 - 1.12.38

58 To: L. Yacc (B.I.R.) (47057) Dec. 6.12.38

59 To: Kanga 735 (w/c 56) 8.12.38



60

Governor del 204  
Income Tax rules as in draft approved  
by Leg Co 11/13/37. wife fr 11/37.

I read this to Mr. Fisher over  
the telephone this afternoon.  
Now send copy to him with Mr.  
Paskin's copies & recs.  
Clothe, White 9/12 above

To Leg B.R. (L.S. 60) 1/2 9/12

? put by Clothe, White 19/12

I intended not to know (L.S. Paskin's  
Lighting Co) and not see them  
how they were 2/12

9-12

1/12

62

E.M. Lusk to  
Ackno 61 Requests copy of actual text of Rules  
as soon as available.

The rules will be gazetted: they are not  
contained in the Gazette of Canada.

? recs in green with Gazette file  
when next batch of Gazette is in

Clothe, White 20/12

1/12 Paskin

23/12

63 Kenya 3pm - (on 38000/38) - 20 12 38  
Inc. 12 copies of Income Tax (Non-Residents  
Alliance) Rules, 1938. Income Tax Form  
(Annex. No 2) Rules, 1938. (Copies to Library)

? send 2 copies each to Mr. Fisher  
(B.R.) & Mr. Brooke (E.A. Paskin &  
Lighting Co) with Mr. Paskin's  
compliments. Clothe, White 2/12

ref. ⑤

a further batch  
of Gazette has  
been recd but  
there is nothing  
relevant in them

1/12 Paskin  
11 29/12

64 To: L. Fisher (B.R.) (472 copies, 62). B.R.C. } 31.39  
65 To: L. Brooke (471 copies, 62). B.R.C.

Kenya 3pm - 20/12/38.  
(on 38008/38)

63<sup>14</sup>

GOVERNMENT NOTICE

THE INCOME TAX ORDINANCE, 1937  
RULES

IN EXERCISE of the powers conferred upon him by section 10 (2) of the Income Tax Ordinance, 1937, His Excellency the Governor in Council has been pleased to make the following Rules

1. These Rules may be cited as the Income Tax (Non-Residents Allowances) Rules, 1938.

2. In these Rules unless the context otherwise requires "the Ordinance" means the Income Tax Ordinance, 1937.

3. In ascertaining the chargeable income of a non-resident individual who is a British subject other than an individual referred to in paragraph (a) or in paragraph (b) of the sub-section (2) of section 10 of the Ordinance there shall be allowed deductions of—

(a) Two hundred and twenty-five pounds in the case of an individual who, if he were resident, would be entitled to claim deductions under both section 15 and section 16 of the Ordinance.

or

(b) Two hundred pounds in the case of an individual who, if he were resident, would be entitled to claim a deduction under section 15.

or

(c) One hundred and forty pounds in the case of any other individual.

and

(d) One-fifth of the amount chargeable to tax under the Ordinance of—

(i) Any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, or given to the individual in respect of the

past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay, or not; and

- (ii) Any income which is immediately derived by the individual from the carrying on or exercise by him of his trade, business, profession, or vocation either as an individual, or, in the case of a partnership, as a partner personally acting therein.

Provided that the total deductions to be allowed under these Rules shall be reduced by two pounds for every pound by which the total income of the individual from all sources, whether accrued in, derived from or received in the Colony or not exceeds the amount of the deductions so allowable.

4. A certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom or by or on behalf of any taxing authority with regard to which the Commissioner is satisfied that it computes and assesses the total income of any individual from all sources shall be receivable in evidence for the purpose of computing the amount of the deductions to be allowed under these Rules.

By Command of His Excellency the Governor in Council:  
Nairobi,

This ..... day of ..... 1938.

*Clerk to the Executive Council.*

GOVERNMENT NOTICE

THE INCOME TAX ORDINANCE, 1937  
RULES

IN EXERCISE of the powers conferred upon him by section 89 of the Income Tax Ordinance, 1937, His Excellency the Governor in Council has been pleased to make the following Rules:—

1. These Rules may be cited as the Income Tax Forms (Amendment No. 2) Rules, 1938, and shall be read as one with the Income Tax (Forms) Rules, 1937, hereinafter referred to as the Principal Rules.

2. Rule 3 of the Principal Rules is hereby amended by inserting therein immediately after the word "hereto" which occurs in the fifth line of sub-paragraph (a) the words "Provided that the form of claim specified in section 20 shall be supplemented by the Form I.T.A (N.R.) set out in the Schedule hereto in the case of a non-resident British subject who claims a deduction under the Income Tax (Non-Resident Allowances) Rules, 1938"

By Command of His Excellency the Governor in Council:  
Nairobi,

This ..... day of ..... 1938.

*Clerk to the Executive Council.*

SCHEDULE

No. .... Form I.T. 1 (N.R.)  
Please quote above number  
in any communication  
relating to this form.  
YEAR OF ASSESSMENT IS .....

COLONY AND PROTECTORATE OF KENYA

INCOME TAX ORDINANCE—SECTION 10 (2)

CLAIM FOR DEDUCTIONS TO BE COMPLETED BY A  
NON-RESIDENT BRITISH SUBJECT  
YEAR ENDING 31ST DECEMBER, 19 .....

1 STATEMENT OF INCOME NOT LIABLE TO KENYA INCOME TAX  
State exactly from what source derived (The annual value of  
any property occupied must be included.)

Nature of Income	Amount of Income
.....	£
.....	.....
.....	.....
.....	.....
TOTAL	.....

2. (a) Do you claim to be a British subject? .....
- (b) If so, on what grounds? .....
- (c) Where were you born? .....
- (If you are a widow, what was the full name and nationality of your late husband and where was he born?) .....
- (d) Have you become naturalized in any other country? .....
- (e) If you are a naturalized British subject, what was the date of the Certificate of Naturalization, what was its number, and where was it issued? .....

## 3. WIFE

Full name of wife .....

who was living with the taxpayer or wholly maintained by him during the year ended 31st December, .....

## 4. CHILD

Living during the year ended 31st December, ....., and under sixteen years of age on 1st January, ....., or who, if over that age, was receiving full-time instruction at any University, College, School or other Educational Establishment, or was articled or indentured. "Child" includes a step-child, an illegitimate child, or an adopted child who was during the year ended 31st December, ....., wholly maintained by the individual.

Full name of child	Date of birth	Name and address of the university, college, etc., in the case of a child over sixteen years of age	In the case of step-child, illegitimate child or adopted child state whether wholly maintained

5. DECLARATION.—I hereby declare that the above statements and particulars are true and correct in every respect and that the amount of income declared, together with the amounts declared on Form I F 1 for the same year, represent the whole of my income from every source whatever (including any income of my wife) whether liable to Kenya Income Tax or not for the year ending 31st December, 1933

Date .....

Signature of Claimant .....

\*To be struck through if unmarried.

## COLONY AND PROTECTORATE OF KENYA

## INCOME TAX ORDINANCE, 1937

## DEDUCTIONS ALLOWED TO A NON-RESIDENT BRITISH SUBJECT

## NOTES AND EXPLANATIONS

A non-resident British subject whose total income from all sources whether derived from Kenya or not does not exceed certain limits may claim deductions of:—

One-fifth of the amount of any earned income including a pension chargeable to Kenya Income Tax; and, £140 in the case of a single individual;

or, £200 in the case of an individual who, if resident in Kenya, could claim a deduction in respect of a wife under section 15 of the Ordinance;

or, £225 in the case of an individual who, if resident, could claim a deduction in respect of the wife under section 15 and also in respect of a child under section 16 of the Ordinance.

The total of these deductions must be reduced by two pounds for every pound by which the total income of the individual from all sources exceeds the amount of the deductions.

EXAMPLE.—A British subject having his wife living with him has a total income of £300 of which £250 is derived from a pension from Kenya and £50 from sources outside the Colony:—

He is entitled to a deduction of one-fifth of £250	£50
	and 200
	250
Less Twice (£300—£250)	100
	£150

The Tax payable will then be £250 less £150 = £100 at Sh. 1 in the £.

Any non-resident British subject who claims such a deduction should complete the form of declaration of income overleaf.

Where the claimant has already made a declaration of total income to the United Kingdom Inland Revenue Department a certificate issued by that Department as to the amount of his total income from all sources will be accepted in lieu of the declaration overleaf.

SECTION 15.—In ascertaining the chargeable income of an individual who is resident in the Colony and who proves to the satisfaction of the Commissioner that he had during the year immediately preceding the year of assessment a wife or wives living with or wholly maintained by him there shall be allowed a deduction of one hundred and fifty pounds.

SECTION 16.—In ascertaining the chargeable income of an individual who is resident in the Colony and who proves to the satisfaction of the Commissioner that he had any child living at any time within the year preceding the year of assessment who was either under

the age of sixteen or who if over the age of sixteen years at any time within that year was receiving full-time instruction at any university, college, school, or other educational establishment, or was serving under articles or indentures with a view to qualifying in a trade or profession there shall be allowed a deduction of seventy-five pounds in respect of one child, and a deduction of sixty pounds in respect of each subsequent such child.

Provided that the total deduction to be allowed under this section shall not exceed a total amount of two hundred and fifty-five pounds.

The expression "child" in this section includes a step-child, an illegitimate child, or an adopted child who was during the year preceding the year of assessment wholly maintained by the individual.

INCOME TAX  
PROPOSED RULES UNDER SECTION 40 (2)  
ALLOWANCES TO NON RESIDENTS

INCOME	Present Liability	EFFECT OF PROPOSED RULES		
		Deductions Due	Tax Payable	Relief
	SK	£	SK	SK
<b>Single</b>				
£100	100	100	—	—
£150	137	170	—	100
£175	175	175	—	150
£200	200	140	60	175
£225	225	100	120	140
£250	250	70	180	105
£300	300	—	300	70
£325	325	—	325	—
£350	350	—	350	—
£375	375	—	375	—
<b>Married</b>				
£175	175	220	—	175
£200	200	240	—	200
£225	225	245	—	225
£250	250	250	—	250
£275	275	215	60	215
£300	300	190	120	190
£350	350	140	240	140
£400	400	40	360	40
£425	425	—	425	—
£450	450	—	450	—
£475	475	—	475	—
£500	500	—	500	—
<b>Married With Children</b>				
£200	200	275	—	200
£275	275	290	—	275
£300	300	255	45	255
£325	325	185	145	185
£400	400	115	285	115
£425	425	45	405	45
£475	475	10	465	10
£500	500	—	500	—

SECRETARIES' OFFICE,

INLAND REVENUE,

SOMERSET HOUSE, LONDON, W.C.2.

T. 1162/19/37.

19 DEC 1938

17th December, 1938.

Dear Paskin,

Kenya.

38054/1 61  
Thank you for the copy of Kenya telegram No. 204 of the 8th December.

The company has been admitted to the paying agent arrangement in regard to the dividend payable on 16th December. They understand that separate application will have to be made in regard to future dividends as occasion arises, and that the grant of paying agent relief depends upon there being no change in the general conditions.

We should be grateful for a copy of the actual text of the Rules as soon as this is available.

Yours sincerely,

*Emihall*

J. J. Paskin, Esq.

35054/1/38 19

COPY FOR REGISTRATION

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 8th December, 1938

Received 10.35am 8th December, 1938.

No 204.

57. Your telegram No 213. Income tax rules as in draft approved by the Legislative Council today with effect from 1st January 1937.

C.D.  
E. of Dec  
12

Coded sheet  
5 pm  
60 1.12.54  
JPS

38054/1/35<sup>20</sup>  
57  
X

Mr. Cobley White 29/11  
Mr. Parkin 30/12  
Mr. A. J. Dawe.  
Sir H. Moore.  
Sir G. Tomlinson.  
Sir J. Shuckburgh.  
Perm. U.S. of S.  
Parly. U.S. of S.  
Secretary of State.

No 213

Your tel No 1860

Income Tax ~~is not~~  
~~clear to what extent~~  
~~proceedings on Dec 7<sup>th</sup>~~  
~~may be regarded as~~  
~~formal.~~ Please  
telegraph as early as  
possible informing me  
when the Rules have  
come into force.

**DRAFT (Tel)**

Governor  
Nairobi

Company are  
making provisional  
arrangements on  
basis that  
resolution will  
be passed on  
Dec. 7<sup>th</sup> but  
Board of Directors  
Reserve point  
out that  
confirmation of  
arrangement is  
contingent upon

I am accordingly  
be glad to be  
informed by

FURTHER ACTION.

Rego for  
acknowledgement  
to 56.

Copy to Mr. Parkin (S. R.)  
with Mr. Parkin's copy. NOTED



SECRETARIES' OFFICE,

INLAND REVENUE,

SOMERSET HOUSE, LONDON, W.C.2.

T.1162/19/37.

25th November, 1938.

Dear Paskin,

Kenya: East African Power & Lighting Company

Thank you for the copy of Kenya telegram No.185 of the 21st November.

It seems that the Rules will be laid before the Legislative Council and the resolution moved on the 7th December next.

We understand that the Company's dividend is payable on the 16th December and that the Company are making their arrangements on the assumption that the resolution will be duly passed and that everything will be in order by that date. We have had provisional discussions with them on that basis but, as the Company well understand, final arrangements are awaiting confirmation that the Rules have been passed and are in operation. I do not know to what extent the procedure of laying the Rules and moving the resolution may be regarded as formal. But if there is any delay in the matter suggesting that the Rules may be amended or deferred for further consideration, and it is not possible to apply the paying agent arrangement to this dividend, the Company

/will

J. J. Paskin, Esq.

Copy to Kenya (59)

will have very little time to make other arrangements.

You will doubtless telegraph to Kenya asking them to report the result of the proceedings on 7th December by telegraph at the earliest possible moment.

Yours sincerely,

*Emithell*



COPY FOR REGISTRATION

5A<sup>13</sup>

38054/1/38  
21 NOV 1938

TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 21st November 1938. Received 9.48 a.m. 21st November.

21 NOV 1938  
C. C. C. C.

no. 185.

51

Your telegram no. 180. rule as in draft approved by the Governor in Council for promulgation and <sup>laying</sup> on the table of the Legislative Council, December 4th when the resolution will be moved fixing January 1st 1939 as the date of commencement of operation.

No Draft

52 24

Downing Street.

4th November, 1938.

38084/1/38

Dear Wade,

In connection with our telegram No. /80 of today's date, I enclose a copy of a letter and a memorandum which I have had from Firth on the subject of the draft Rules under Section 10 of the Income Tax Ordinance which you sent to me with your letter No. S/N/TAL.5/4.XVIII/75 of the 19th of October.

Yours sincerely,

(Signed) J. J. PASKIN

SIR ARNOLD WADE, C.W.O., O.B.E.

Secretaries' Office,

Inland Revenue,

Somerset House, London. W.C.2

T.1162/19/37.

3rd November 1938.

Dear Paskin,

East African Power and Lighting Co.  
Kenya Income Tax.

I enclose a note on the Kenya alterations to the proposals enabling the company to be admitted to paying agent relief in the United Kingdom which I suggest should be communicated to Kenya with all possible speed. You will see that the promulgation of Rules in the terms enclosed with the Kenya memorandum would enable the paying agent arrangement to be applied to the forthcoming dividend provided that effect is given to the rules in Kenya before the dividend is declared.

But the limitation introduced by Kenya will create a differentiation in the matter of Kenya allowances between contributory pensioners and other non-resident British subjects. This is, of course, not a matter within our province and in the circumstances has no bearing on the application of the paying agent arrangement. It may be presumed that Kenya has fully considered what may be involved in this disparity but we feel that it could not be allowed to pass without comment.

We are in communication with Brook of the East African Power and Lighting Company in regard to necessary preliminaries of applying the 'paying agent' arrangement, but it is being impressed upon him that any arrangements made must be provisional and depend for their operation upon action being taken by Kenya in time.

Yours sincerely,  
(Sgd.) E.M.T.Firth.

J. PASKIN, ESQ., M.C.

KENYA INCOME TAX

Allowances to non-resident  
British subjects

East African Power and Lighting Co. Ltd.

The alterations of the draft Rules which the Kenya Government propose in regard to the amounts and conditions of the allowances to be granted to non-resident British subjects present no difficulty so far as concerns the application to the East African Power and Lighting Company of the arrangements for allowing relief from United Kingdom income tax in respect of Kenya income tax through the company's paying agent in London on dividends paid to United Kingdom shareholders. The allowances as amended will stand at £140 for a single man, £200 for a married man and £225 for a married man with children, together with a special allowance in the case of earned incomes and certain pensions, subject in all cases to reduction in the amount of the allowances of £2 in respect of each pound by which the total income exceeds the amount of the allowances. The grant of allowances on this scale would comply with the conditions indicated in the Board's memorandum of the 9th September, and as soon as the allowances receive the force of law in Kenya the company could be admitted to the "paying agent" arrangement as aforesaid.

2. There are, however, certain aspects of the proposed amendments which call for comment. It should be stated at the outset that these relate to matters of general principle in the Kenya Ordinance on which the decision is a matter for the Kenya authorities, and they have no bearing upon the application of the "paying agent" arrangement in the present case.

3. It is stated in paragraph 8 of the Kenya Memorandum under reply that the proposed rules must be confined to non-residents other than those who come within the application of paragraphs

27

paragraphs (a) and (b) of Section 10 (2). These paragraphs relate to persons, or their dependants, in receipt of contributory pensions and such are entitled to a fixed allowance of £150 irrespective of their circumstances, i.e. married or single, and of their total income.

Other non-residents (including other classes of pensioners) who are British subjects, who come within the operation of the Rules, will be entitled under the Rules as drafted to allowances which vary with their personal circumstances and total income and which may be more or less favourable than the fixed allowance according to the circumstances of the particular case.

Such disparity of treatment has no justification in principle and may well give rise to complaints between different classes of non-residents and different classes of pensioners. This will depend upon the numbers of the persons likely to be affected and their circumstances and total incomes.

4. It may be presumed that the Kenya authorities have fully considered this aspect of the matter. The disparity would be avoided by the assimilation of non-resident British subjects generally to the basis of the draft Rules and this was the intention of the proposals put forward in the Board's Memorandum of 9th September. But as it is stated that the Rules must be confined as indicated above, legislation would presumably be necessary to alter the allowances granted under Section 10 (2) (a) and (b) and it has been gathered that it is desired to avoid the necessity of amending the Kenya Income Tax Ordinance. A further difficulty is doubtless, the fact that the Rules apply to non-resident British subjects, whereas the allowances granted under Section 10 (2) (a) and (b) appear not to be so restricted and to apply to non-residents generally.

The disparity could apparently be removed in the other

direction

18

direction by providing in the Rules that the allowance granted thereby should be subject to an overriding maximum of £150. It is, of course, appreciated that this would in many cases nullify the effect of the allowances thereby granted and would not give effect to the desire expressed in paragraph 2 of the Memorandum for a greater measure of relief.

5. Paragraph 5 of the Kenya Memorandum proposes to extend to earned incomes the one-fifth allowance for which the Rules provide in case of certain pensioners. (Here again it should be emphasised that this extension would not affect the application of the "paying agent" arrangement in present circumstances.) But it is observed that the Kenya Ordinance of 1937 contains no provision for an earned income allowance in the case of residents in Kenya, and a disparity would thus be created in the case of non-residents with earned income in Kenya as compared with Kenya residents. The Kenya Memorandum states that the number of such cases is likely to be very small and it is appreciated that the other personal allowances are on a more generous scale in the case of residents and result in higher limits of exemption generally from liability and this may dispose of the practical aspect of the matter.

6. The grant of the one-fifth allowance to non-resident British pensioners in the case of the pensions coming within (d) of the draft rules is doubtless intended to give effect to the proposal to grant special allowances to other than contributory pensioners and may be justified by reference to the differentiation between earned and unearned income. But it should be pointed out that by confining it to certain classes of non-resident pensioners as provided in the Rules the disparity between such cases and the cases which fall under Section 10(2) (a) and (b) is increased.

7.



7. So much for the general considerations which arise for consideration and decision by the Kenya authorities. It is perhaps desirable to emphasise once more that they have no bearing upon the immediate question with which the Board have throughout been concerned, namely, the conditions upon which the East African Power and Lighting Company could be admitted to the "paying agent" arrangement in the United Kingdom. These conditions would be satisfied by the promulgation of Rules in the terms enclosed with the Kenya despatch under reply. It is assumed that the Rules will apply as from 1st January 1937, when the tax was first imposed.

8. It is of special importance to repeat that the admission of the company to the "paying agent" arrangement in regard to the forthcoming dividend is dependent upon the necessary rules being given the effect of law in Kenya before the dividend is declared. The Company's representatives are in communication with the Board in London in regard to the preliminary arrangements but it has been impressed upon them that such arrangements are provisional only and depend for their operation upon the position in Kenya at the date when the dividend is declared.

9. The Board have no observations upon the proposal in paragraph 9 of the Kenya Memorandum, except to say that it is a matter for the Kenya authorities and not one which would appear to require their approval. They would be prepared to supply claimants at their request with the necessary certificate of total income in the United Kingdom.

10. The Board would be glad if they could be informed at the earliest date possible of the action that may be taken in Kenya.

C. O.

Mr. Passin

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Partly. U.S. of S.

Secretary of State.

Ans'd 54  
4/XI  
at once

38054/1/38

coden'd sent  
7.0.38  
4.11.38  
7420

51  
30  
C  
R 5 00  
D

No. 180.

Income Tax @ Wades letter

19<sup>th</sup> October @

~~Board of Inland Revenue~~  
Issue of Rules in draft  
would enable Board of  
Inland Revenue to apply  
provisory agent arrangements  
to forthcoming dividend  
if Rules can be fine  
before dividend is declared  
wh. is normally end of Nov.  
They assume Rules will be  
applied as from 1<sup>st</sup> Jan '33

DRAFT. Tal.

Gov.  
Navies

They have no  
objection to  
further rule  
suggested -  
para 9 of memo @

[Eff. concurred  
with m: Fick,  
B.J.R.]

They point out  
however that draft  
Rules create differentiation  
in the matter of allowances  
between contributory  
pensioners (Section 2(2)(a) and (b))  
and then non resident  
British subjects, but  
that implications are  
previously matter for

FURTHER ACTION.

Cop2 to m: Fick  
B.J.R., with  
m: Passin's comp

No 53

news follows  
by air mail

Your consideration of <sup>news follows</sup> apart  
from this news is no  
objection to immediate issue  
of Rules as in draft <sup>news</sup> leaving  
~~question of possible amendments~~  
until ~~you~~ <sup>you</sup> have had  
opportunity of considering news  
~~also follows by air mail~~

Company is in touch  
with Board in regard to  
preliminary arrangements  
which however are provisional  
pending issue of Rules.  
Please telegraph date on  
which Rules will come into  
force.

SECRETARIES' OFFICE.

INLAND REVENUE,

SOMERSET HOUSE, LONDON, W.C.2

3rd November, 1936.

T.1162/19/37.

Dear Paikin,

East African Power & Lighting Co.  
Kenya Income Tax

I enclose a note on the Kenya alterations to the proposals enabling the company to be admitted to paying agent relief in the United Kingdom which I suggest should be considered in Kenya with all possible speed. You will see that the promulgation of Rules in the terms enclosed with the Kenya Memorandum would enable the paying agent arrangement to be applied to the forthcoming dividend provided that effect is given to the rules in Kenya before the dividend is declared.

But the limitation introduced by Kenya will create a differentiation in the matter of Kenya allowances between contributory pensioners and other non-resident British subjects. This is, of course, not a matter within our province and in the circumstances has no bearing on the application of the paying agent arrangement. It may be presumed that Kenya has fully considered what may be involved in this disparity but we feel that it could not be allowed to pass without comment.

We are in communication with Brook of the East African Power & Lighting Company in regard to necessary preliminaries of applying the

J. J. Paikin, Esq., M.C.

paying

Checked by  
L. Stone

'paying agent' arrangement, but it is being impressed upon him that any arrangements made must be provisional and depend for their operation upon action being taken by Kenya in time.

Yours sincerely,

*Emith*

— — —  
—

Kenya Income TaxAllowances to non-resident  
British subjectsEast African Power & Lighting Co. Ltd.

The alterations of the draft Rules which the Kenya Government propose in regard to the amounts and conditions of the allowances to be granted to non-resident British subjects present no difficulty so far as concerns the application to the East African Power & Lighting Company of the arrangements for allowing relief from United Kingdom income tax in respect of Kenya income tax through the company's paying agent in London on dividends paid to United Kingdom shareholders. The allowances as amended will stand at £140 for a single man, £200 for a married man and £225 for a married man with children, together with a special allowance in the case of earned incomes and certain pensions, subject in all cases to reduction in the amount of the allowances of £2 in respect of each pound by which the total income exceeds the amount of the allowances. The grant of allowances on this scale would comply with the conditions indicated in the Board's memorandum of the 9th September, and as soon as the allowances receive the force of law in Kenya the company could be admitted to the "paying agent" arrangement as aforesaid.

2. There are, however, certain aspects of the proposed amendments which call for comment. It should be stated at the outset that these relate to matters of general principle in the Kenya Ordinance on which the decision is a matter for the Kenya authorities, and they have no bearing upon the application of the "paying agent" arrangement in the present case.

3. It is stated in paragraph 8 of the Kenya Memorandum under reply that the proposed rules must be confined to non-residents other than those who come within the application of paragraphs (a) and (b) of Section 10(2). These paragraphs relate to persons, or their dependants, in receipt of contributory pensions and such are entitled to a fixed allowance of £150 irrespective of their circumstances, i.e. married or single, and of their total income.

Other non-residents (including other classes of pensioners) who are British subjects, who come within the operation of the Rules, will be

residents in Kenya, and a disparity would thus be created in the case of non-residents with earned income in Kenya as compared with Kenya residents. The Kenya Memorandum states that the number of such cases is likely to be very small and it is appreciated that the other personal allowances are on a more generous scale in the case of residents and result in higher limits of exemption generally from liability and this may dispose of the practical aspect of the matter.

6. The grant of the one-fifth allowance to non-resident British pensioners in the case of the pensions coming within (d) of the draft rules is doubtless intended to give effect to the proposal to grant special allowances to other than contributory pensioners and may be justified by reference to the differentiation between earned and unearned income. But it should be pointed out that by confining it to certain classes of non-resident pensioners as provided in the Rules the disparity between such cases and the cases which fall under Section 10 (2) (a) and (b) is increased.

7. So much for the general considerations which arise for consideration and decision by the Kenya authorities. It is perhaps desirable to emphasise once more that they have no bearing upon the immediate question with which the Board have throughout been concerned, namely, the conditions upon which the East African Power & Lighting Company could be admitted to the "paying agent" arrangement in the United Kingdom. These conditions would be satisfied by the promulgation of Rules in the terms enclosed with the Kenya despatch under reply. It is assumed that the Rules will apply as from 1st January 1937, when the tax was first imposed.

8. It is of special importance to repeat that the admission of the company to the "paying agent" arrangement in regard to the forthcoming dividend is dependent upon the necessary rules being given the effect of law in Kenya before the dividend is declared. The Company's representatives are in communication with the Board in London in regard to the preliminary arrangements but it has been impressed upon them that such arrangements are provisional only and depend for their operation upon the position in Kenya at the date when the dividend is declared.

9. The Board have no observations upon the proposal in paragraph 9

36

of the Kenya Memorandum, except to say that it is a matter for the Kenya authorities and not one which would appear to require their approval. They would be prepared to supply claimants at their request with the necessary certificate of total income in the United Kingdom.

10. The Board would be glad if they could be informed at the earliest date possible of the action that may be taken in Kenya.



THE SECRETARIAT,  
NAIROBI.

19th October, 1958.

Ref.No. S/B/TAX 5/4.VIII/75.

Dear Paskin,

45

Thank you for your letter of the 15th September and the letter and memorandum from the Board of Inland Revenue on the subject of double Income Tax relief.

The Board's proposals afford a satisfactory basis for a settlement of the question, and we are indeed grateful to you for all the trouble you have taken and to the Board for the generous attitude they have adopted.

There are one or two minor alterations which we suggest should be made to the Board's proposals. They do not, however, involve any departure from the principle which has now been accepted. These further proposals are clearly explained in the enclosed memorandum, and I do not

-1-

think ....

J.J.PASKIN, ESQ., M.C.

think that you will have any difficulty in getting the Board to agree to them.

It is particularly urgent that the final consent of the Board should be given in time to permit the Company to pay its November dividend under deduction of tax at the reduced rate and I hope that you will do all that you can to achieve this.

Yours sincerely,

Adams

KENYA INCOME TAXEAST AFRICAN POWER & LIGHTING CO., LTD.  
ALLOWANCES TO NON-RESIDENTS

The proposals set out in the Memorandum accompanying Firth's letter of the 9th September which have already been accepted in principle have not been fully examined as to their practical application and there are several alterations in detail which it is felt the Board will be able to accept, particularly as they conform more closely with the conditions set out on Page 1 of the Memorandum.

2. On working out the actual allowances it appears that a considerable burden is still left to be borne by persons with small incomes and the formula has been examined to see whether it could be reconstructed to give a greater measure of relief. It has been found that if the initial allowance is increased to £140 in the case of a single man and £200 in the case of a married man and the restriction of the relief to £3 for every pound of the excess there is a great improvement in the allowances for smaller incomes with a comparatively small decrease for higher incomes.

3. It is, therefore, suggested that the formula should be revised. The result would be (where the income is wholly pension):-

- (a) The exemption limit from Kenya Tax would be increased from £125 to £175 for a single person and from £187 to £250 for a married person.
- (b) The relief would cease at £200 for a single person and £250 for a married person.
- (c) The measure of additional work involved both in Kenya and the United Kingdom would be reduced by the elimination of a larger number of smaller incomes.

- (d) In the case of single persons the relief would be kept exactly within the conditions laid down and in the case of a married person where the relief should cease at £394 the limit would be £429 only.

4. Attention has also been given to the question of whether the allowances should be granted on a notional basis where the whole of the income is not derived from Kenya. As the new proposals give a much sharper decrease in the allowances it is considered that this question can be ignored.

5. It is felt that it will be difficult to defend politically the restriction of the one-fifth allowance to pensioners only and it is hoped that the Board will agree to this allowance being extended to all income which is within the definition of Earned Income in the United Kingdom. The number of cases other than Pensioners will be very small and the conditions laid down by the Board will not be affected.

6. A number of cases have already been noted in which the burden of tax on Pensioners with children will still be heavy. But for the fact that the conditions upon which child allowance is granted in Kenya do not coincide exactly with those in the United Kingdom there would be no difficulty in extending the allowance without infringing the conditions laid down by the Board.

As, however, it is unlikely that any cases will arise in which an allowance would be granted here and not in the United Kingdom, (and the Board have already indicated their willingness to allow the relief to be granted for incomes up to £500) it is suggested that a deduction for a married man with children might be put at £225 giving a limit of relief at £485.

7. A statement is enclosed showing the effect of the proposed alterations for various incomes.

8. If the suggestions meet with the Board's approval the Rules to be made under Section 10(2) will be as set out on the accompanying sheet. It will be noted that the Rules must be

confined to persons other than those already dealt with in Section 10(2) and that as all allowances are automatically extinguished before the one-fifth allowance reaches £100 there is no need to provide for a restriction.

9. If the Board approve, a further rule might be made in the lines of Section 44(2) of the Kenya Ordinance to enable a certificate of total income and allowances to be receivable in evidence for the purpose of granting the relief. It would ensure that the relief granted here would agree exactly with the United Kingdom figures and would save the taxpayer the trouble of making two declarations of total income.

10. As regards Paragraph 7 of the Memorandum I understand that the Company are prepared to give an undertaking if required.

11. The Company has enquired whether it will be possible to pay its November dividend under deduction of tax at the reduced rate and it is hoped that the Board will now be in a position to give the necessary authority.

12. It is fully appreciated that it may be necessary to reconsider the position generally at some future date.

---

COLONY & PROTECTORATE OF KENYA

ALLOWANCES TO NON-RESIDENTS.

Allowances

Tax payable

Income	Allowances		Tax payable		Extra Re- lief on new Allow- ances (or Reduced in Red.)	Proposed	
	Proposed by Board	New Pro- posals	Proposed by Board	New Pro- posals		by Board (in Red - Investment Income only)	New Pro- posals
<b>Single</b>							
100	120	180	-	-	-		
180	110	170	40/-	-	40/-	} EXEMPT £125      £175	
175	95	175	80/-	-	80/-		100      £140
200	80	140	120/-	60/-	60/-		
225	65	105	180/-	120/-	40/-	} LIMITS OF RELIEF	
220	50	70	200/-	180/-	20/-		125      £175
300	20	-	280/-	300/-	20/-		
325	5	-	320/-	325/-	-		
350	2	-	325/-	350/-	-		
355	-	-	355/-	355/-	-		
							to      to £354      £300
<b>Married</b>							
175	185	235	-	-	-	} EXEMPT £187      £250	
200	180	240	20/-	-	20/-		
225	165	245	60/-	-	60/-		
250	150	250	100/-	-	100/-	} LIMITS OF RELIEF	
275	135	215	140/-	60/-	80/-		187      £25
300	120	180	180/-	120/-	60/-		
350	90	110	260/-	240/-	20/-		
400	60	40	340/-	360/-	-		
450	42	-	388/-	450/-	-		
480	30	-	420/-	450/-	-		
475	15	-	480/-	475/-	-		
500	-	-	500/-	500/-	-		
							to      to £500      £429
<b>Married with children</b>							
250	150	275	100/-	-	100/-	} EXEMPT £187      £281	
275	135	280	140/-	-	140/-		
300	120	255	180/-	45/-	135/-		
350	90	185	260/-	185/-	95/-	} LIMITS OF RELIEF	
400	60	115	340/-	285/-	55/-		187      £281
450	30	45	420/-	405/-	15/-		
475	15	10	480/-	465/-	-		
500	-	-	500/-	500/-	-		
							to      to £500      £485

143

KENYA INCOME TAX

ALLOWANCES TO NON-RESIDENTS

PROPOSED AM. OF ORDER SECTION 10(B)

"In ascertaining the chargeable income of a non-resident individual who is a British subject other than an individual referred to in paragraph (a) or in paragraph (b) of the subsection under which these rules may be made there shall be allowed deductions of:-

(a) £225 in the case of an individual who as resident would be entitled to claim deductions under both section 15 and section 16.

(b) £300 in the case of an individual who as resident would be entitled to claim a deduction under section 15,

or

(c) £140 in the case of any other individual,

and

(d) One fifth of the amount chargeable to tax under the Ordinance of

(i) any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay, or not; and

(ii) any income which is immediately derived by the individual from the carrying on or exercise by him of his trade, profession, or vocation either as an individual, or, in the case of a partnership, as a partner personally acting therein.

Provided that the total deductions to be allowed under these rules shall be reduced by £2 for every £1 by

which the total income of the individual from all sources, whether accrued in, derived from or received in the Colony or not exceeds the amount of the deductions so allowable".

---



The Secretariat,  
Nairobi,  
Kenya Colony

6th September, 1958

My dear Paskin,

I am writing to you on the subject of income tax and the East African Power & Lighting Co., about which we had such an entertaining and instructive gathering in Dawe's office just before I came out here.

You will, I am sure, have seen our Governor's letter of the 11th July to Parkinson, which is our last contribution to the solution of the problem. I have had H.F. Ward in my office this afternoon protesting bitterly at the situation in which he and his company find themselves placed. He says that so long as investors have to submit to the double deduction, nobody can be induced to invest sixpence in the company. I rather believe this to be true, because it agrees with what we were told in Dawe's office. Apparently, the trouble and delay involved in recovering the Kenya tax make everybody shy off. I gather that Ward particularly wants to get some new capital, but he is completely defeated by this double income tax. He complains, with some appearance of justice, that it is very hard that he who has adopted a consistently reasonable attitude towards Government on the subject of income tax,

and has/

J.J. Paskin, Esq., M.C.,

Colonial Office

and has all along been a supporter of the tax, should be the only person in the British Empire to be penalised in this manner. He fears that if nothing can be done he may have to transfer the registration of his company from Kenya to London, which would be a great pity for a number of reasons.

40 Now, the real point of this letter (having told you what you know already) is to ask you when we can expect an answer to the letter of the 11th July referred to above. Will the Inland Revenue authorities cooperate with us to the extent of coming to some kind of arrangement such as that outlined in paragraph 8 of that letter? If there is nothing to be done, the sooner we know that the better, and then we can decide whether (a) to leave things as they are, though you will note 40 from paragraph 5 of Sir Robert's letter that he is quite unable to contemplate this; or (b) to allow Ward to transfer the registration of his company to London; or (c) to revise our ideas in some way or other about the personal allowance, possibly by way of adopting the fixed allowance principle in spite of the objections to it.

I know that you will sympathise with me in my efforts to pacify Ward and let me have an answer as soon as you conveniently can.

Yours sincerely,

A. B. Wade

pe 83. 4 10 8/38

38054/1/38.

47

C. O.

- Mr. Peskin. 12/9/38.
- Mr. Bourgen 12/9/38.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh
- Permi. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

C. D.  
 12 SEP  
 11 132

DOWNING STREET.

13 September, 1938.

DRAFT.

CONFIDENTIAL.

SIR ARMIGEL WADE, C.M.G., O.B.E.,  
 Secretariat,  
 Nairobi.

Dear Wade.

*Jan 2:11 9/9*  
*News*  
*(aff available)*

In the absence of  
 Parkinson and Dawe, who are at  
 present on leave, I am writing to  
 you with reference to Sir Robert  
 Brooke-Popham's confidential letter  
 of the 11th of July on the subject  
 of double Income Tax relief.  
 On the receipt of that letter we  
 again urged Somerset House to see  
 whether they could not devise some  
 arrangement which would enable them  
 to admit the East African Power  
 and Lighting Company to the "Paying

FURTHER ACTION.

Agent" relief, and the result is shown  
in the enclosed copies of a letter and  
memorandum which I have now received  
from Pirth.

You will see that the proposals  
which are now submitted are a modification  
of those suggested in Sir Robert  
Brooke-Popham's letter, and we hope that  
they will afford a basis for a settlement  
of this very troublesome matter.

With kindest regards,

Yours sincerely,

*Sgt. J. Paskin*

SECRETARIES' OFFICE,  
INLAND REVENUE,

SOMERSET HOUSE, LONDON, W.C.2

T. 1182/19/37.

9th September, 1938.

Dear Paskin,

Kenya Income Tax  
East African Power & Lighting Co.

Your letter of the 23rd July (35054/2/38).

We have been over all the ground again in the light of the Governor's reply of the 11th July and you will be glad to hear that we are able to put forward a variation of his proposals on which we should be prepared, though not without some hesitating, to admit the company to the "Paying Agent" relief as they desire. This proposal is set out in the enclosed memorandum which might be forwarded to Kenya for their consideration.

I must emphasize that from the point of view of the United Kingdom Income Tax the only really satisfactory course is to adhere to the position already taken up. But you have stressed the political difficulties which surround the whole question of Income Tax in Kenya and the Board are prepared, in the special circumstances, to give a trial to the enclosed proposal. This proposal represents a development of our general practice in "paying agent" cases. It may involve a good deal of additional work in connection with individual claims and may possibly have repercussions if a similar situation should arise in other Colonies.

Yr/

J. J. Paskin, Esq.

If it were found that our apprehensions on these points were realized in fact, you will understand that it might be necessary to reconsider the position generally at some future date.

Yours sincerely,

*E. W. Hall*

Kenya Income Tax

East African Power & Lighting Co.

D

The difficulties in the way of allowing double income tax relief in respect of Kenya Income Tax through the Company's parent agent in London on dividend paid to United Kingdom shareholders are suggested in paragraph 4 of the Board's letter of the 25th April 1951. The relief was refused on the ground that relief were granted only in respect of the tax payable in Kenya and the shareholders were not entitled to a deduction of this tax by reference to personal allowances. Section 10 of the Finance Act 1948 through the Finance Act 1951 (Kenya) Income Tax Act have been given in respect of tax payable in Kenya, and it is not necessary to recover any double tax allowance in respect of tax payable in Kenya in appropriate cases. The administrative difficulties in the way of tracing and adjusting such allowances might be considered to be somewhat substantial. Increased reference to Kenya may be necessary to determine the rate of tax payable in Kenya. These difficulties might to some extent be overcome if the rates and conditions of the personal allowances in Kenya for non-resident British subjects were such that:

- (1) the only persons entitled to allowances were individuals who should not be liable to United Kingdom Income Tax at the full standard rate and
- (2) the Kenya liability and amount would normally be computed by Inspectors of Taxes in the United Kingdom on the basis of information referring to the Kenya authorities.

In such cases the individual would refer a claim to the parent agent or United Kingdom Income Tax, and any double relief allowed through the parent agent could be recovered in full by the taxpayer claimant.

It would appear in the light of the Director's reply of the 11th July that these conditions would probably be acceptable to Kenya and that the amendments to Section 10(2) of the Kenya Ordinance suggested in the letters of the 1st and 10th June last from the Kenya Income Tax Department could be accepted so as to satisfy them. It would be necessary to discuss

rates of the personal allowances at not more than £150 for a married man and not more than £100 for a single man, the allowances being diminished by reference to the extent to which the total income of the claimant exceeded the amount of the fixed allowance. With these rates no Kenya allowance would be due in the case of a married man with a total income exceeding £300 (£200 in the case of a single man) and such persons in the United Kingdom would not be liable to United Kingdom Income Tax at the standard rate on any part of their income, so that repayment claims would be expected in their case and would afford the opportunity for adjusting the dominion income tax relief.

3. The Rules to be made under the proviso to Section 10(2) would read as follows:-

"In ascertaining the chargeable income of a non-resident individual who is a British subject there shall be allowed deductions of -

- (a) £150 in the case of an individual who as resident would be entitled to claim a deduction under Section 15 or
- (b) £100 in the case of any other individual and
- (c) Subject to a maximum of £100, one-fifth of the amount chargeable to tax under the Ordinance of any pension, superannuation or deferred pay given in respect of the past services of the individual or of the husband or parent of the individual, in any office or employment of profit, or in respect of the past services of any person, whether the individual, or the husband or parent of the individual, shall have contributed to such pension, superannuation allowance or deferred pay or not;

Provided that the total deductions to be allowed under these Rules shall be reduced by £1 for every £1 by which the total income of the individual from all sources, whether accrued in, derived from or received in the Colony or not exceeds the amount of the deductions so allowable."

4. The allowance under (c) does not meet the requirements set out above, but the number of cases in which such an allowance is likely to be made to shareholders of this company will, no doubt, be very small, and can be ignored.

5. If Kenya are prepared to accept this suggestion, it would be possible to grant the paying agent arrangement to this company with very little danger of loss of revenue or increase of work in the United Kingdom.



6. The paying agent arrangement would then operate as follows in the case of shareholders receiving dividends from this company of less than £700 per annum.

Kenya income tax would be deducted from the dividends at 1/-d. in the £ (assuming that the whole of the company's profits were liable to Kenya tax), and relief would be allowed through the paying agent by reference to Kenya income tax at 1/-d in the £. Thus the paying agent would deduct a combined rate of Kenya and United Kingdom tax equal to the United Kingdom standard rate.

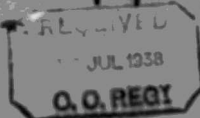
The shareholder would make a repayment claim in the United Kingdom, and if the Kenya personal allowances were computed on the basis that the total income for the purposes of Section 10(2) of the Kenya Ordinance for a calendar year is the same as the total income for United Kingdom tax purposes for the income tax year ending on the following 5th April, the Inspector of Taxes in the United Kingdom would easily be able to compute the Kenya allowances and the approximate final Kenya liability, and so recover any excess relief.

In the case of shareholders receiving dividends of more than £700 per annum from this company (there are understood to be four only) Kenya income tax would be deducted at 2/-d. in the £, and it is suggested that relief should be allowed through the paying agent at 1/-d - any additional relief to be claimed in the ordinary way when the shareholder had obtained his refund on account of reduced rate from Kenya.

7. It has been assumed that the company will continue to pay dividends only between 6th April and 31st December in each year so that all the dividends for a Kenya income tax year fall within one United Kingdom tax year.

8. The Board must emphasize that the grant of relief through a paying agent in the circumstances indicated above constitutes a development of the principles upon which such relief has been authorised in the past and may entail a measure of additional work for the department. The suggestion is put forward to meet the special representations that have been made in the present instance and it will be understood that the position will require consideration in the light of experience of the actual working of the arrangements and in particular in regard to possible extensions in the

event of similar situations arising elsewhere. Should the occasion arise, it might be necessary to reconsider the position generally at some future date.



42<sup>54</sup>

**LLOYD'S,**  
LONDON, E.C.3.

29th July, 1938.

Sir,

37. I am directed to acknowledge the receipt of your letter of the 20th instant (Reference No. 38054/1/38), with regard to certain provisions of the Kenya Income Tax Ordinance, 1937, from which it is noted that a report has been received from the Governor of Kenya to the effect that the suggestions made in my letter of 20 the 26th May are likely upon full examination to provide a satisfactory solution of the difficulties which arise in applying this Ordinance to insurances effected in Kenya by Lloyd's Underwriters.

The Committee of Lloyd's are now acting upon the suggestion made by the Governor that they should communicate direct with the Commissioner of Income Tax, Nairobi.

20. I am grateful to you for advising me that Clause 16, to which reference was made in my letter of the 26th May, was deleted from the Bill before it passed into law, and I am much obliged to you for sending me a copy of the Ordinance as passed.

I am directed by the Committee of Lloyd's to ask you to be so good as to convey to Mr. Secretary MacDonald an expression of their best thanks for the action he has been so good as to take in this matter on their behalf.

I am,

Sir,

Your obedient Servant,

*W. J. Macdonald*  
For Clerk to the Committee.

The Under Secretary of State,  
COLONIAL OFFICE,  
S. W. 1.

C. O.

Mr. Paskin. 21/7/38

Mr. Dawson 21.7

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Parnt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

For Mr. Paskin's signature.

DOWNING STREET.

25 July, 1938.

**DRAFT.**

Dear Firth,

E.M.T. FIRTH, BBQ.

Somerset House.

I enclose a copy of the Governor's reply to our letter of the 28th of June on the subject of his Income Tax difficulties. You will see that he still finds himself unable to agree to adopt either of the solutions suggested by you, but that he has now himself made a suggestion, in paragraph 6 of his letter, and I am afraid that there is nothing for it but to ask you to consider it as sympathetically as possible. I need hardly repeat that the Colonial Office is most anxious that some

solution

FURTHER ACTION.

11/7/38 (140)

solution should be found for this  
problem, if at all possible.

Yours sincerely,

(Signed) J. J. PASKIN.

Not yet sent  
10.7.38  
56  
40  
GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

11th July, 1938.

CONFIDENTIAL

Dear *Parkinson*

Thank you for your Confidential letter of the 28th June on the subject of Income Tax.

I think it would be better to deal with the various issues separately.

2. In not wanting to refuse allowances to certain non-residents we are not concerned with the ordinary investor who puts his money into a Kenya Company; on the contrary the fact that these people are being charged was one of the reasons for the acceptance of the tax in the Colony. The persons we have to consider are the small pensioners and such people as widows who have a very small income, partly or wholly derived from Kenya and who at present will be charged at Sh.1/- in the £ on the whole of their Kenya income. During the discussion in Select Committee these cases were specifically mentioned and Section 10(2) was drafted to enable

allowances/

Sir A.C.C. Parkinson K.C.M.G.

*Copy  
Smith (41)*

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

-2-

allowances to be given. This is clearly stated in the Select Committee's Report and while it was mentioned only briefly in Council there is no doubt that the allowances were promised. Out of 420 Asian pensioners drawing less than £150 per annum no less than 300 are non-residents and if they are to be charged I feel sure questions will be asked immediately in Legislative Council. That no action has yet been taken by the Elected Members is explained by the fact that pending settlement of this whole matter no assessments have been raised on non-resident pensioners. Representations have already been made by the European Civil Servants' (Gold Coast) Association on behalf of the European pensioners.

3. The grant of a fixed allowance of £150 would have the effect of exempting nearly all non-resident individuals from tax. Complete statistics are not yet available, but at least 1,700 individuals who pay tax, certainly in small amounts either on dividends or on direct assessment, would escape and I am confident that Elected Members would not be prepared to accept this. Their point of view is that a wealthy man drawing £150 from the Colony/

Colony should certainly pay his share of the tax if the residents have to pay, whether he gets relief in the United Kingdom or not.

4. There is a second point in regard to a fixed allowance in that it would still need the elaborate arrangement set out in paragraph 7 of the Board's letter of the 15th April to deal with shareholders receiving more than £700 a year in dividends and it might not overcome the Company's difficulty in raising capital. It has not been possible, of course, to ascertain the Company's views.

5. I am quite unable to contemplate the continuance of the present position with the Company.

6. I feel that the Board do not fully appreciate the very difficult position in this Colony. Income Tax has already been introduced and rejected twice and even now it can be regarded as accepted by the Elected Members on trial only. At the last session of Legislative Council they pressed for the appointment of an ad hoc committee to investigate the working of the tax, to which its opponents would present a very elaborate case against/



against its continuance. The request was refused but Government has already undertaken to submit full statistics to the Standing Finance Committee in July and that Committee will decide whether any further investigations are necessary. It will be appreciated that nothing must be done which would assist the opponents of the tax at this stage. Any rules made under Section 10(2) must be laid before Legislative Council and for political reasons, it would be gravely embarrassing if the Government were compelled to admit that its attitude towards non-residents was necessitated by the fact that a specific instance has arisen in which a Company has been prevented from raising capital owing to the operations of the Income Tax Ordinance.

7. There remains paragraph 3 of your letter which, if it can be taken as an exact statement of the position, raises a little hope. It is stated that the reason why a working arrangement cannot be made is that relief might be granted in respect of tax which was not actually due.

8. It should be repeated and emphasised that the allowances contemplated are to be given only/

only to (a) pensioners, and (b) persons of small incomes (or in other words, persons who would not be liable to British Income Tax at the full standard rate). Now if either of these two classes of persons were in receipt of dividends from the Company it is not thought that the Board of Inland Revenue would have any difficulty in adjusting the few cases where excessive relief might have been granted through the Paying Agents either upon examination of the taxpayer's Income Tax Return when he should declare any dividends paid under deduction of less than the standard rate of tax, or repayment claims when the vouchers should be examined. Any rules which were made could be so framed that the assessing authority would know whether there was any title to relief in Kenya and would be able to correct any over allowance, whether a claim for relief was made to Kenya or not. Proposals have already been put forward by the Commissioner of Income Tax in letters addressed to the Board on the 2nd and 10th March last which might be adapted to fit in with such a scheme. If necessary, the claimant could be required to produce a certificate of total income from the British Revenue Authorities

to ensure that relief given here would agree exactly with that given in the United Kingdom.

As a further safeguard lists of the actual dividends paid would be available for circulation among the assessing authorities.

9. Some 450 claims by shareholders of the Company have already been dealt with here and there is no indication in any of them that the liability would be affected by the allowances we want to give.

It may well be that not one of the Company's shareholders would be involved.

10. In asking for special arrangements, it is realised that the Board is concerned with the principle involved but I think they should take into consideration what is believed to be the trivial amount of tax which is in question and the absolute necessity of avoiding political issues. The scheme suggested in paragraph 8 seems to have overcome the only objection put forward by the Expert, and while it may involve the Board of Inland Revenue in a certain amount of additional work there appears to be no reason why they should not be able to accept it, at least for a year or two.

62  
GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

-7-

11. Incidentally it may not have been made sufficiently clear in the correspondence that the East African Power and Lighting Company is at present the only Company registered in Kenya with a paying agent in London. I believe the reason for this is that it originally started by taking over a local concession here. It is however I think extremely unlikely that the same position will arise again since I am advised that normally any other Company raising money on the London Market would register in the United Kingdom.

Yours

Sincerely  
W. Brooke-Johnson

MEMO prepared in connection  
with interview between S of S &  
Income Tax. Lord Francis Scott

17 June 38

Income tax was imposed in 1937, following the recommendation of Sir Alan Pim, in the face of great opposition from the Unofficial Members. ~~The agitation against the tax was in danger last autumn of considerably hampering Government, if not of endangering a first class political crisis.~~

Lord Francis Scott and Mr Grogan who, although opponents of income tax, were anxious that a more soothing atmosphere should be restored, suggested to the Governor, who passed on the suggestion to Lord Harlech, that he, the Governor, should be authorised to make an announcement to the effect that the decision as regards continuation or abolition of income tax would be made by the Governor when he was satisfied that sufficient <sup>experience of its operation had been gained & suitable</sup> ~~facts and figures~~ <sup>were available from which to draw correct conclusions.</sup> This suggestion was not accepted, it being explained to Mr. Grogan by Lord Harlech at an interview, and to the Governor for transmission to Lord Francis Scott, that no Secretary of State who remained responsible to Parliament was in a position to give such an assurance. Lord Harlech, however, told Mr Grogan that he was prepared to have the working of income tax examined by an absolutely impartial outside enquiry after the experiment had been given a fair trial. ('Fair trial' was understood to mean two or three years.) The Income Tax Ordinance only came into full operation last July and up-to-date ~~only~~ <sup>only</sup> the results of the first six months' working are available. On the 26th of April, however, it was reported in the "Times" that a

motion

1 on  
38054/4/37.Nos. 3 & 4 on  
38054/4/37.

64

motion was put down in the Legislative Council that day on behalf of the European Elected Members that a specific ad hoc committee should be appointed to enquire into the operation of the Ordinance with wide terms of reference.

Lord Francis Scott may, or may not, be aware that a difficulty has arisen in connexion with the arrangements for relief of double income tax. The position is that, owing to certain complicated technicalities, which I need not specify, it has been necessary for both the U.K. and the Kenya income tax (totalling 7/- in the £) to be deducted from the dividends paid in this country by the East African Power and Lighting Company. As a consequence the Company is finding great difficulty in raising further capital, and the Governor is afraid that unless some means can be devised whereby only the U.K. tax need be deducted (thus avoiding the necessity for the individual shareholders to claim double taxation relief) these difficulties will lead to an accentuation of the agitation for the repeal of income tax in Kenya.

If Lord Francis Scott mentions this question he can be told that the question is under active consideration with the experts of Somerset House and that we are about to communicate with the Governor on the question of what can be done in Kenya to enable Somerset House to give the relief asked for by the Company. The question hinges on the personal allowances to Kenya

income tax payers who are not resident in Kenya.

60  
38

6

Extract from semi-official letter from  
Sir Robert Brooke-Popham dated 1st June, 1938.

\* \* \*

The worst trouble I expect is over Income Tax. For some reason abolition of Income Tax has become an article of faith amongst certain people who thereby make themselves entirely impervious to any logical argument. They include certain lawyers with an extensive command of the English language - at any rate as regards condemnatory adjectives. One of them headed a deputation to see me a little while ago and talked for forty minutes without producing a single argument of any sort. As the duration of the interview was limited, it saved the trouble of a reply beyond the bald statement that I was entirely unconvinced. Lord Francis Scott eventually supported Income Tax. Most of the farming community knew in their hearts that Income Tax is right, but a good many of the Europeans in trade and industry are strongly against it, including one or two people to whose views I attach a good deal of importance. I think most of their arguments can be met, if necessary, by modifications of the Income Tax Ordinance, but we are up against one awkward matter concerning the East African Power and Lighting Company. Official correspondence is still going on about that, so I won't add any more except to say that unless the Board of Inland Revenue can see their way to meet us, a very strong handle is placed in the hands of the opponents to Income Tax. I have always adopted the attitude that I had nothing to do with the introduction of Income Tax and therefore can adopt an unbiased attitude in the matter, but that I am convinced  
the



47

the most important requirement for Kenya at the present time is a period of political peace, when we can get on to the job of constructive development; and it is for this reason that I am opposed to any change such as abolition of Income Tax. I have, however, promised that all the figures for Income Tax shall be submitted to the Standing Finance Committee and that I myself will examine those figures to see whether Income Tax is causing genuine hardship on a large scale.

C. O.

Mr. Costley-White. 18/7/38.

Mr. Parkin 18/7 f.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. D.  
R 19. JUL  
0 20

DOWNING STREET.

20 July 1938.

DRAFT.

THE CLERK OF THE COMMITTEE,

LLOYD'S.

Sir,

I am etc. to refer to

the letter from this Office of the

(21) 30th of May in which attention is

drawn to certain difficulties in

connection with the provisions of

Section 28(1) of the Kenya Income

Tax Ordinance, 1937.

*Ordinance XII of 1937  
copy in file*

2. A report has been

received from the Governor of Kenya

to the effect that the suggestions

made in your letter are likely upon

full examination to provide a

satisfactory solution, *as he suggests that* / It would be

convenient if you would communicate

direct

FURTHER ACTION.

direct in the matter with the  
Commissioner of Income Tax in Kenya,  
~~referring to this Department only in~~  
the event of any real difficulty  
arising. The address of the  
Commissioner of Income Tax is  
<sup>the</sup>  
~~w/o Chief Secretary, Nairobi.~~

3. I am also to observe that  
Clause 16, to which reference is made  
in the latter part of your letter of  
the 26th of May, was deleted from the  
Bill before it passed into law. A copy  
of the Ordinance as passed is enclosed  
herewith.

I am, etc.

(Signed) J. J. PASKIN.

C. O.

Mr. Paskin. 24/6/38.

Mr. Buryan 25/6

Mr. Daine 25.6

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Parnt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

For Mr. Paskin's signature.

DOWNING STREET.

28 June, 1938.

4 DRAFTS

E.M.T. FIRTH, ESQ.

Somerset House.

(30)

Dear Firth,

Thank you for your letter

No.T.1162/19/37 of the 23rd of June about the draft letter to the Governor of Kenya on the subject of double income tax relief.

I now enclose a copy of the letter as sent, together with a copy of correspondence with Wade about this draft. I <sup>hope</sup> ~~am not sure~~ that you will <sup>not mind</sup> ~~altogether approve~~ of my having referred to your view that it would be improper for the Colonial Office to "prompt" Kenya to make use of arguments tending to

suggest

To Gen. (K.)  
From Wade 20/6 (No. 29)  
(without enc.)  
To Wade (K.)

FURTHER ACTION.

that the respective burdens in the two cases may be transferred to the U.K. Exchequer by way of double Income Tax relief. This objection applies also, of course, to your suggested amendment to paragraph 4.

3. As regards B on page 5, Firth says that this does not quite represent the practical result. As however we have been asked to delete this and the preceding sentence for the reason explained above, we cannot make the addition which you have suggested, and we have come to the conclusion that the best thing would be to omit paragraph 5 altogether, and consequentially to omit the words which I have crossed out in the middle of page 4.

4. As regards your comment at C. on page 6, I am afraid that your suggested addition would put upon us an expression of a rather more decided preference for the granting of a personal allowance than we think would be justified. In the circumstances, it has seemed best for us

to

G. O.

Mr.

Mr.

Mr.

Sir H. Moors.

Sir G. Tomlinson.

Sir C. Batemley.

Sir J. Shackburgh.

Parnt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

71  
to assume the responsibility for the preference expressed in paragraph 8 of the draft, instead of attributing it to you. As regards the question whether there is a reciprocal arrangement with South Africa, the Governor has asked for particulars of all the parts of the Empire with which there are such arrangements, and we are sending out this information by despatch.

5. ~~As we have now had a telegram from the Governor asking for an early reply to his despatch we have thought it best to avoid the further delay that would be involved in attempting to elaborate the draft. We hope that, as the letter stands, it will be sufficient to enable the Governor with the assistance of Mundy on the technical aspects of the matter, and of yourself, on your return, on the political aspects,~~  
*is answering to him*  
*asked for*

to

to decide whether the objections to one or other  
of the suggested solutions are so serious as  
to outweigh the consequences of a continuance of  
the present unsatisfactory position.

Yours sincerely,

*Ag. J. J. Parkin*

Annad 40

Downing Street,  
28 June 1958.

Confidential.

Dear *Brooke Popham*

On the receipt of your confidential telegram No. 56 of the 18th of May we asked Somerset House again to consider whether there are any means, other than those suggested in their letter of the 25th of April, of meeting the difficulties that have arisen about double income tax relief for the East African Power and Lighting Company, and the Department has now had two discussions, (at the second of which Wade was present) with the expert at Somerset House who is dealing with this matter.

2. I am afraid that, in spite of the most careful examination of the question, Somerset House is unable to suggest any other means of meeting your difficulties, and that they will consequently be unable to admit Kenya companies with paying agents in London to the arrangement for giving double income tax relief at the source unless Kenya is prepared to agree not to grant

personal

AIR CHIEF MARSHAL,

SIR ROBERT BROOKE-POPHAM, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.

personal allowances to non-residents (other than pensioners) or alternatively unless a fixed personal allowance, irrespective of total income, is granted to non-residents.

3. They have examined the possibility of allowing relief for Kenya tax to the paying agent by the deduction of United Kingdom tax at a reduced rate, accompanied by an arrangement with the Income Tax authorities in Kenya whereby the Inland Revenue authorities here would be informed of any cases in which subsequent refunds of Kenya tax were allowed, in order that they might then recover from the shareholder the excessive relief allowed through the paying agent. But it is clear that such an arrangement would break down because no one would take the trouble to re-claim a refund of tax in Kenya if he knew that he would be faced with further liability for an equivalent amount in this country. The result would be that relief against United Kingdom tax might be allowed in respect of tax that was not due in Kenya and for this reason there is no possibility of adopting a solution on these lines.

4. The Department was therefore thrown back on to a further



Further consideration of your objections to the two solutions suggested by Somerset House.

6. As regards the abolition of personal allowances to non-residents, other than pensioners (should it not rather have been "a decision not to grant such allowances"?), you said in your confidential despatch No.100 of the 18th of May, that this would constitute a reversal of policy already accepted and publicly declared and that it would be difficult to defend such a change. The Department was rather puzzled by this statement as it was not clear why Kenya should be so much concerned about the ordinary investor in this country who happened to have put his money into a company operating in Kenya. As the Department knew how anxious you are for an early solution of this problem, Wade was asked to come into the discussions in case he could throw light on the political aspects of the question. The Report of the Select Committee on the Bill and the debates in the Legislative Council were examined, but nothing was found to explain why this matter should be invested with such a degree of political importance as is suggested

76

suggested in your despatch. It was agreed therefore that it would be necessary to refer back to you on this point.

6. On the whole however, we should be inclined to prefer the second alternative, i.e. giving a fixed allowance to non-residents (as was proposed in the original Bill). This would be more in conformity with the principles embodied in the model Colonial Ordinance of 1922 (Ord 1788), as we understand that you are getting much more revenue from this tax than was originally contemplated, the objection that this course would involve a loss of revenue may not perhaps be so serious as it might otherwise have been. It is recognised that this solution might involve certain complications if another Kenya Company should appoint a paying agent in London. The Kenya authorities would have to ensure that in the case of a non-resident holding shares in both companies, the personal allowance was not granted twice over. It was thought however that it ought to be possible for the Kenya authorities to take suitable steps to guard against this.

7.

7. In all the circumstances I am afraid that, much as we sympathise with your difficulties, we have no alternative but to suggest that you should again consider whether the objections to the two alternative courses suggested by Somerset House are so serious as to outweigh the possible consequences of a continuance of the present situation in regard to the East African Power and Lighting Company.

8. Forgive this tedious and technical letter. It is a forbidding topic. But I thought it might be of help to you if I set it out in some detail.

*Yours sincerely*

A. C. G. PARKINSON

C. O.

R 16

38052/1/38

32 18  
Coded & sent

Mr. Paine

24/6

Mr. Bourne

15 attached

no 175

3 pm 25/6/38

Mr.

(25) Your resp. of 31<sup>st</sup> Aug No 312.

Sir H. Moore.

No objection in principle.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

17/11

C O
R 21/11/38
D 27/6/38

DRAFT. Tel.

Governor  
Nairobi

FURTHER ACTION.

SECRETARIES' OFFICE,

INLAND REVENUE,

SOMERSET HOUSE, LONDON, W.C.2

T. 1162/19/37

23rd June, 1938.

Dear Paskin,

Kenya.  
East African Power & Lighting Co.

I should like to suggest amendments at a few points in the draft despatch to the Governor of Kenya of which you sent me a copy with your letter of the 18th. (38054/1/38).

27

Paragraph 2, page 2, line 4: before "companies"

✓

insert "Kenya".

Paragraph 2, at end: insert "(in the latter event, in respect only of dividends exceeding the amount of the allowance.)".

7

Paragraph 3: As we are not prepared to adopt a solution on these lines we should, for our part, have preferred to omit this paragraph altogether. But I appreciate the motive for its inclusion, as further evidence that real efforts are being made to find a solution for Kenya. I would, however, suggest some amendments which I have incorporated in a redraft as follows:-

✓ (3) They have examined the possibility of allowing relief for Kenya tax to the paying agent by the deduction of United Kingdom tax at a reduced rate,

accompanied/

J. J. Paskin, Esq.

15

accompanied by an arrangement with the Income Tax authorities in Kenya whereby the Inland Revenue authorities here would be informed of any cases in which subsequent refunds of Kenya tax were allowed, in order that they might then recover from the shareholder the excessive relief allowed through the paying agent. But it is clear that such an arrangement would break down because no-one would take the trouble to reclaim a refund of tax in Kenya if he knew that he would be faced with further liability for an equivalent amount in this country. The result would be that relief against United Kingdom tax might be allowed in respect of tax that was not due in Kenya and for this reason there is no possibility of adopting a solution on these lines."

Paragraph 5, page 4, line 2: query: omit "the politicians in".

Paragraph 6: I suggest that the last two sentences ("the position of the settler ..... very great matter") should be omitted. They afford no answer to the argument that there would be a differentiation between the two cases in relation to Kenya tax and it is not desirable that Kenya should be prompted to make use of arguments tending to

suggest/

81

suggest that the respective burdens in the two cases may be transferred to the United Kingdom Exchequer by way of double Income Tax relief. This palliative may be safely left to Kenya to discover. Moreover, this relief may not in all cases result in the complete elimination of the lower rate of tax and may still leave the pensioner better off as compared with the settler. In any case the last sentence beginning "as compared with" does not quite represent the practical result.

Paragraph 9, last sentence: there might well be difficulties in recovering the tax from non-resident shareholders so as to prevent the grant of an excessive allowance. It might perhaps be better, as less encouraging, to substitute "possible" for "comparatively simple".

Yours sincerely,

E. Witholt

---

Preslois 22  
Bentley 29.  
Farnham  
25/6/38

Dear Parkin

28 I thank you for letting me see  
your draft which seems to me to be a  
clear statement of the position - I have  
however a few suggestions

Ref A on p 10 I think the Kenya

Govt wd reply "we are not worrying  
about investors who have put money  
into our Companies but about  
potential investors who will be  
discouraged? I suggest something on the  
following lines -

"It was not clear why the  
politicians in Kenya should  
object to a provision which in  
effect would be an expedient  
for transferring money from the  
O.K. to the Revenue of Kenya  
(investor's investments who happened  
to have put their money into  
companies operating in Kenya would  
not suffer by reason of the  
withholding of personal allowances  
for they would receive from the

copy (investments) in a window box  
(copy) (copy) (copy) (copy)

\* Or would not  
suffer materially  
in the B.



2 83

U.K. the amount that they paid to Kenya. Whatever objections there may be on general grounds to such a procedure it is difficult to see why ~~the~~ residents in Kenya should not cordially welcome it.

There is one point which we may have overlooked and that is the position of investors in Kenya Companies who live in e.g. S. Africa or elsewhere - whether in the Empire or not. I don't know what reciprocal arrangements there are, if any, between the Union & Kenya - I should think probably none - so that if there are any persons, other than pensioners, deriving income from Kenya & living outside the U.K. they would have a grievance. This might be mentioned at the end of para 6.

Ref B on p 6. I am afraid this isn't clear to me & I doubt if it will be to the Journal. I thought that

the general principle was to be that no one is to be taxed twice on the same income & that is whatever is paid in Kenya in respect of a certain ~~tax~~ source of income will be recovered from the U.K. in respect of tax paid on that source - eg.

The Pensioner has an income of £1000 p.a. derived solely from his Kenya pension. With his personal allowance of £150 his taxable income

if with the £150  
first £700 =  
1/6% for £150.

to Kenya becomes £850. He pays to Kenya £46. 5 (?) The U.K. however takes from him about 1/4 (?) of his income say £250 but returns him his £46. 5.

if with the £150  
first £700 =  
1/6% for £300

The better however with no personal allowance has a taxable income of the full £1000 on which he pays to Kenya £57. 10. To the U.K. he pays the £250 exactly as the Pensioner & will be not get back the £57. 10. Since he has paid to Kenya in respect of the same source of income?

If there is really to be a difference  
 in favour of the Pensioner as to the  
 extent of the 10/- that would probably  
 be enough to cause a row in Kenya.  
 If this is so I think we had better not  
 pretend that it doesn't matter but say  
 something like this -

“Admittedly this would be an  
 anomaly which it would be  
 difficult to defend theoretically: in  
 practice it would probably be no  
 great matter.”

I realize also that there might  
 be ~~practical~~ objections in the  
 interests of persons domiciled (other  
 than pensioners) drawing income  
 from Kenya but resident in  
 countries with which there are no  
 reciprocal arrangements if they  
 are granted no personal allowances.  
 It might however be possible to  
 treat their cases (I suppose they  
 would be very few) as special  
 cases.”

Ref 6 on p 6. I think this might be elaborated. I don't quite like the idea of being charged with being willing to sacrifice Kenya revenue without a little more argument. I suggest something like this after "non-residents".

A personal allowance is in accordance with the generally accepted view that it is reasonable that income not exceeding a certain sum per annum should be free from taxation. This view finds expression in almost every income tax law in the world and is of general application throughout the British Empire. To deny this relief on grounds of domicile seems illogical, the admitted by it is done in the case of Nyasaland, Fiji where non-residents do not receive the benefit (this is no longer true of Ceylon)"

I expect this is fine isn't it?

I think I was told this at the C.O. on Tuesday

Yours sincerely  
Adelbridge

question, Somerset House is unable to suggest any other means of meeting your difficulties, and that they will consequently be unable to admit companies with paying agents in London to the arrangement for giving double income tax relief at the source unless Kenya is prepared to agree not to grant personal allowances to non-residents (other than pensioners) or alternatively unless a fixed personal allowance, irrespective of total income, is granted to non-residents.

3) They have examined the possibility of allowing the deduction of United Kingdom tax only, accompanied by an arrangement with the Income Tax authorities in Kenya whereby the Inland Revenue authorities here would be informed of any cases in which subsequent refunds of Kenya tax were allowed, in order that they might then recover from the person concerned the corresponding amount of United Kingdom tax that would then be due. But it is clear that such an arrangement would break down after the first year because no one

G. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

**DRAFT.**

**FURTHER ACTION.**

one in his senses would take the trouble to claim a refund in Kenya if he knew that he would promptly be ~~denied~~ <sup>denied</sup> ~~denied~~ for the same amount in this country.

4) The Department was therefore thrown back on to a further consideration of your objections to the two solutions suggested by Somerset House.

5) As regards the abolition of personal allowances to non-residents, other than pensioners, (should it not rather have been "a decision not to grant such allowances"?). You said in your ~~confidential~~ despatch No.100 of the 18th of May, that this would constitute a reversal of policy already accepted and publicly declared and that it would be difficult to defend such a change. The Department was rather puzzled by this statement as it was not clear

(16)



courses suggested by Somerset House are so serious as to outweigh the possible consequences of a continuance of the present situation in regard to the East African Power and Lighting Company.

8) Of the two alternatives, Wade was inclined to favour giving a fixed allowance to non-residents, as was proposed in the original Bill. He points out that you are getting much more revenue from this tax than was contemplated and that this may possibly be a source of embarrassment. The objection that this course would involve a loss of revenue is therefore not so serious as it might otherwise have been.

Moreover, on general principles we should prefer a solution that did not involve giving no personal allowance to non-residents. Such a solution would also dispose of the point mentioned in paragraph 6.

9) It is recognised that this solution might involve certain complications if another Kenya Company should appoint a paying agent in London. The Kenya authorities would have to ensure that in the case of a non-resident holding shares in both companies,

the

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Parlt. U.S. of S.

Parly. U.S. of S.

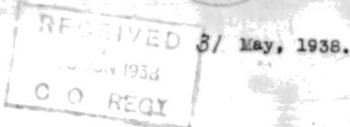
Secretary of State.

the personal allowance was not granted twice over. It was thought however that it ought to be comparatively simple for the Kenya authorities to take suitable steps to guard against this.

DRAFT.

FURTHER ACTION.





Sir,

I have the honour to address you on the subject of a proposed amendment to the Income Tax Ordinance, 1937, which my advisers have represented to be desirable, and to request that you will inform me whether you would be prepared to agree to the proposal.

2. Section 75 of the Ordinance reads as follows:-

"75 (1). Subject to the provisions of sub-section (2) of this section tax shall be payable within ninety days after the service of a notice of assessment under section 66 of this Ordinance or by the thirtieth day of September in the year of assessment, whichever date is the later.

(2)(a). Any person who leaves the Colony before the thirtieth day of September in any year of assessment and who at the time of his departure has not been assessed for that year of assessment shall pay the tax for that year of assessment within ninety days after the date of his return to the Colony or within ninety days after the date of the service of a notice of assessment under section 66 of this Ordinance, whichever date is the later.

(b). Any person who leaves the Colony before the thirtieth day of September in any year of assessment and who at the time of his departure has been assessed for that year of assessment but has not paid the tax for that year of assessment shall pay the tax for that year of assessment within ninety days after the date of his return to the Colony.

(3). For the year of assessment commencing on the first day of January, 1937, sub-section (1) and sub-section (2) of this section shall be read as if the word "November" were substituted for the word "September"."

I am advised by the Commissioner of Income Tax that from the financial point of view the effect of the section is as follows:-

THE RT. HON.  
MALCOLM MACDONALD, M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWING STREET, LONDON, S.W.1.



2.

- (a) The yield during the current year will be at least double, even three times, the budget estimate.
- (b) Many taxpayers will have to pay two years' tax within the financial year.
- (c) It will be almost impossible to make a reasonable budget estimate in future years.

3. My advisers have suggested that a simple and effective remedy would be an amendment of the Ordinance, which would divide the tax into two instalments, payable on the 30th September and the 31st March respectively. It is proposed that the amending legislation should take the form of a section on the following lines, replacing the present section 75 of the Ordinance:-

"The tax shall be payable in two equal instalments, the first within ninety days after the service of a notice of assessment under section 66 of this Ordinance or by the thirtieth day of September in the year of assessment, whichever date is the later, and the second within ninety days after the service of a notice of assessment under section 66 of the Ordinance or by the thirty-first day of March in the year following the year of assessment, whichever date is the later."

My advisers are of opinion that the result of this would be that the yield of the current year would approach a normal year's yield, and that in future the amount of one instalment of tax would be known when the Revenue Estimates are being considered; the relief to the taxpayer should also be received favourably, and there will be an additional advantage in that it will be possible to average the tax liability over two years in any period of alternate depression or boom.

4. I am advised that it would not be necessary immediately to introduce amending legislation, but that under the Ordinance as it stands, since failure to pay Income Tax

due/

due is not an "offence" but renders the person concerned liable to civil action only, the Commissioner is entitled to accept payment in two instalments and to remit penalty on the second; and I am satisfied that certain administrative arrangements proposed, details of which have been prepared, will be suitable for the purpose, pending amendment of the law.

b. I am not, however, aware whether this concession is made in other Colonial Income Tax Ordinances, and I therefore considered it desirable to refer the matter to you in the first place. I shall be glad, therefore, to learn whether you are prepared to agree in principle to the proposal, in which event the administrative arrangements, to which reference is made above, will be brought into force at once, and the necessary amendment of the Ordinance effected at an early convenient opportunity.

c. I should be grateful for an early reply to this despatch.

I have the honour to be,

Sir,

Your most obedient, humble servant,

R Brooke-Popham

AIR CHIEF MARSHAL

G O V E R N O R.

24

10th June, 1938.

Dear Wade,

Since I wrote to you this morning I have been having a conversation with a representative of the Board of Inland Revenue about the problem of double income tax which arises in connection with the East African Power and Lighting Company.

The Governor is very anxious for something to be done as soon as possible to get us out of the present impasse: and I think it would be a great advantage if we could have a talk to you about it. There are certain points about the attitude of the Kenya Government which are not entirely clear to us.

Would it be possible for you to come here at 12 noon on Tuesday, the 14th, and discuss this topic? If you can, I would get a man from the Inland Revenue to come along too. But do not bother if it is in any way inconvenient. I can easily arrange another time.

Yours sincerely,  
(Sgd.) A. J. DAVE.

SIR ARMIGEL WADE, C.H.G., O.B.E.

23

1st June, 1938.

Dear Firth,

This refers to your official letter T.1162/19/37 of the 25th April and our official letter of the 21st May about the taxation position of the East African Power and Lighting Company.

16

I now enclose a copy of the official despatch received from the Governor: and the purpose of this letter is to suggest that the best way of pursuing the question would be for it to be discussed orally between the members of our two Departments who are familiar with the points at issue. The matter, as you will appreciate, is not without urgency and I think it would be a good thing if the discussion could take place some time next week. If you agree, we can no doubt fix up the rest on the telephone.

In the meantime I have had a talk with Mr. Brook, the London Secretary of the Company, who has given me a copy of his letter of the 11th February to the

E.M.T. FIRTH, ESQ.

the Chief Inspector of Taxes at Somerset House.

Yours sincerely,

(Sgd.) A.J. DAWK.

FL/R/P.


 97  
20  
LLOYD'S,  
LONDON, E.C.3.

 dupl  
26th May, 1938.

Sir,

I am directed to beg that you will inform the Secretary of State for the Colonies that the Committee of Lloyd's would be grateful if he would be so good as to assist them if possible, in regard to the following matter.

An Ordinance came into operation in the Colony and Protectorate of Kenya on the 1st January 1937, entitled "The Income Tax Ordinance, 1937", and Lloyd's Underwriters have reported to the Committee of Lloyd's that an opinion has been expressed by the Income Tax Authorities in Kenya to the effect that Income Tax is payable under this Ordinance in respect of Kenya insurances placed at Lloyd's by Insurance Brokers in the Colony who are alleged to be acting in the capacity of Agents for certain Lloyd's Underwriters.

The Section of the Ordinance under which it is contended that Income Tax can be levied is No.28 (1), which reads as follows:-

"A person not resident in the Colony (hereinafter in this section referred to as a non-resident person) shall be assessable and chargeable to tax in the name of his trustee, guardian, curator, or committee, or of any attorney, factor, agent, receiver, branch or manager, whether such factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and to the like amount as such non-resident person would be assessable and chargeable if he were resident in the Colony and in the actual receipt of such income:

The Under-Secretary of State,  
COLONIAL OFFICE,  
Whitehall,  
S.W.1.

Copy to Kenya (22) (23)

Provided that in the case of any individual who is not resident in the Colony no deduction, other than the deduction allowed under Section 16 of this Ordinance, shall be allowed.

A non-resident person shall be assessable and chargeable to tax in respect of any income arising whether directly or indirectly, through or from any factorship, agency, receivership, branch or management, and shall be so assessable and chargeable in the name of the factor, agent, receiver, branch or manager."

In order that the Secretary of State may have a full appreciation of the position, I am to explain that insurances are placed at Lloyd's in the following ways, namely:-

(a) A person (say in Kenya) wishing to insure his property with Lloyd's Underwriters communicates direct with a firm of Lloyd's Insurance Brokers in London, who places the risk with the Underwriters here;

(b) A person (say in Kenya) consults a local Insurance Broker, who, in turn, communicates with a Lloyd's Insurance Broker, who places the risk with Lloyd's Underwriters. In this case it frequently happens that the local Insurance Broker merely asks the London Insurance Broker to place the insurance on the best terms and conditions, and does not definitely instruct him to place it at Lloyd's;

(c) A firm of Insurance Brokers (say in Kenya) obtains from a firm of Lloyd's Insurance Brokers a "Cover" from certain Lloyd's Underwriters which authorises the local Insurance Broker to give immediate insurance cover on behalf of those Underwriters on certain conditions and rates and within certain limits. Under such an arrangement the Lloyd's Underwriters agree to hold the Assured covered pending the issue and receipt by him of the actual Insurance Policy, which is signed and completed in London.

It is obvious, of course, that Kenya insurances

placed at Lloyd's under the methods (a) and (b) do not come under the Income Tax Ordinance, as it is quite clear that these insurances are placed with Lloyd's Underwriters in London, and no question of agency arises. It may be contended, however, that the local Insurance Broker operating in Kenya under method (c) may be regarded as being in some sense an Agent for the Underwriters on the "Cover", although it could be argued that this is not so, seeing that the actual underwriting of the Policy is still done in London by the Underwriters at Lloyd's. The Underwriters, however, do not wish to press this point, and assuming that the Income Tax Authorities in Kenya still maintain that Kenya insurances effected with Lloyd's Underwriters under method (c) are liable to Income Tax under Section 28 (1) of the Ordinance, the Underwriters have been considering how the amount of Tax to be assessed can be arrived at, and in this connection there appear to be several difficulties.

For instance, the Section provides that in the case of an individual who is not resident in the Colony, no deduction other than the deduction allowed under Section 16 shall be allowed, and Section 16 reads:-

"In ascertaining the chargeable income of an individual who is not resident in the Colony there shall be allowed a deduction of one hundred and fifty pounds."

You will appreciate that a "Cover" may be operated in Kenya by a local Broker for a large number of Lloyd's Underwriters, and that each of these Underwriters is a separate entity and acts for his own account and risk. The effect of this is that the local Broker in Kenya is really acting as Agent (that is, admitting that he is an Agent) for each of the Lloyd's Underwriters, and, in the event of there being 200 individual



Underwriters on the "Cover", no Income Tax would be payable until the chargeable income from the "Cover" exceeded an aggregate of £30,000. The likelihood of such a figure being reached is, of course, very small, and I may say that it is not at all unusual for many more than 200 names to appear on one Lloyd's Policy.

At the same time, Underwriters at Lloyd's do not desire to take advantage of what might be regarded by some as a technicality and thereby lay themselves open to criticism that they escape taxation which has to be borne by Insurance Companies operating in the Colony. The Underwriters have therefore asked the Committee of Lloyd's to suggest to the Authorities in Kenya that, in order to meet the difficulty of assessment under the Act, Income Tax on Underwriters' chargeable income from "Covers" operated for them in Kenya should be commuted from a Tax on profits to a Tax on the premiums received by them on such "Covers", the figures of these premiums being obtained by the Authorities from the local Insurance Brokers in the Colony who operate the "Covers".

I am instructed to say that the Committee of Lloyd's would be grateful if the Secretary of State for the Colonies would be so good as to ascertain from the Government of Kenya whether they would be agreeable to such an arrangement, in which case the Underwriters would be glad to negotiate with the Government as to the rate in the £. to be paid on such premiums.

I am,  
Sir,  
Your obedient Servant,

*W. J. Poxford*

Clerk to the Committee.

COPY.

Letter by M. Brooke

D.C. 13

101

26. 8. 38

19

11th February, 1938.

Your Ref: H/705.

The Chief Inspector of Taxes,  
East-Wing,  
Somerset House,  
LONDON, W.C.2.

Dear Sir,

With reference to my interview with Mr. Marshall on the 7th instant, I am writing to confirm the information I then gave him that due to the fact that the Paying Agents in London of this Company are forced, in addition to the deduction of Kenya income tax, also to deduct United Kingdom tax at the full rate from dividends paid to British shareholders, we have been informed by our Brokers that while the above state of affairs exists the dealers on the Stock Exchange refuse either to bid for or to underwrite certain shares of the Company which the Directors desire to issue in the immediate future.

The position is most serious as the Company at the moment has a large bank loan becoming due for repayment and the Directors in Nairobi desire to make an issue of Preference shares in order to repay the loan in accordance with the terms of borrowing.

Whilst the Company clearly appreciates that any provisional Dominion income tax relief given to the paying Agents is a purely concessional arrangement and that such a concession has not been granted in the case of this Company due to the uncertainty which exists as to the Kenya Government's intentions under Section 10 2(a) proviso, yet my Directors feel that some arrangement should be possible and we shall be glad if the position could receive your sympathetic consideration.

So far as our Nairobi office can ascertain unofficially, Section 10 2(a) proviso is being kept open until the Government have decided whether or not any allowances should be given; but it is understood that the present Section 10 will probably be deleted

The Chief Inspector of Taxes,  
East Wing,  
Somerset House.

11/2/38.

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and a new section inserted very early in 1938, drafted in terms which should overcome any difficulties regarding a provisional allowance to the Paying Agent. The only trouble is, our office states, that it is thought in Nairobi that even if Section 10 is revised, there may be some other obstacle which would militate against the granting of provisional relief by the United Kingdom authorities.

In addition therefore to advising us whether some scheme can be worked out under which provisional relief can immediately be given to the Paying Agents, I shall be glad if you will let me know specifically if there is anything else in the Kenya Ordinance which is likely to prevent the granting of the concessional relief, should Section 10 be amended in a manner satisfactory to the Board of Inland Revenue.

It is understood that the amendment should be on the lines that the Kenya Tax on British non-residents must be at a flat rate and that once provisional relief is granted, there can be no possibility of any further relief being obtained by the British non-resident in Kenya.

Yours faithfully,

London Secretary.

REF: DCB/APG

COPY.

No. T.1162/19/37.

Clifton House,  
83-117 Euston Road,  
LONDON, N.W.1.

D.I.T.

16th March, 1938.

Sir,

Income Tax  
Relief in respect of Kenya Income Tax  
The East African Power & Lighting Co. Ltd.

With reference to your letter of 11th February, addressed to the Chief Inspector of Taxes, and referred by him to the Board of Inland Revenue, I am directed by the Board to say that they regret that the arrangement by which relief from Dominion income tax is granted through a Paying Agent cannot be applied in the case of your Company's dividends, in view of the provisions of Section 10 of the Kenya Income Tax Ordinance. As regards the other enquiry in your letter, I am to inform you that in the event of amendment of the Ordinance the Board will be prepared to give further consideration to the matter.

I am, Sir,

Your obedient servant,

(Signed) D.C. LYNCH.

D.C. Brook, Esq.  
The East African Power & Lighting Co. Ltd.

17th March, 1938.

The Inspector of Foreign Dividends,  
Clifton House,  
83-117 Easton Road,  
LONDON, N.W.1.

Sir,

Income Tax.

Relief in respect of Kenya Income Tax.

I am in receipt of your letter of the 16th March, reference T/1162/19/37, and note that Section 10 of the Kenya Income Tax Ordinance is the reason why provisional relief from Dominion Income Tax granted through a paying agent cannot be applied in the case of this Company's dividends.

With regard to the other enquiry contained in my letter of the 11th February, it is observed that the Board will be prepared to give further consideration in the event of an amendment. This we appreciate; we would, however, like confirmation that to enable Paying Agent relief to be granted that (a) such an amendment must be on the lines that the Kenya tax on non-residents must be at a flat rate so that once provisional relief is granted there can be no possibility of further relief being granted to such British non-residents by the Kenya Authorities and that (b) any other form of amendment for example, granting personal allowances, would be a bar for all time to the granting of provisional Dominion Income Tax relief through the paying agent.

I am, Sir,

Your obedient Servant,

REF: DCB/APG

London Secretary.

Circular to Agents entrusted with the payment  
in the United Kingdom of Colonial Dividends.

INLAND REVENUE,

NUMBER 1 HOUSE,

LONDON, W.C. 2

1st November, 1920

GENTLEMEN,

**RELIEF IN RESPECT OF DOMINION INCOME TAX.**

1 I am directed by the Board of Inland Revenue to invite your attention to Section 24 of the Finance Act, 1920, which for the year beginning 6th April, 1920, supersedes Section 25 of the Income Tax Act, 1918 (Section 43 of the Finance Act, 1916). A copy of Section 24 is enclosed.

2 In the case of dividends or interest payable by a Dominion Company and assessable to United Kingdom Income Tax in respect of the whole of its profits and entrusted for payment to an Agent in this country, the Board are prepared to continue the practice under which relief in respect of Dominion Income Tax is allowed to the shareholders, etc., through the Paying Agent by deduction of United Kingdom Income Tax from the dividends or interest at a rate less than the full standard rate (now 6s. 6d. on the £).

3 Applications from Paying Agents for authority to deduct United Kingdom Income Tax at a rate adjusted to allow Dominion Income Tax relief should be addressed to the Special Commissioners of Income Tax, York House, 23, Kingway, London, W.C. 2, and will only be entertained subject to the following conditions:-

- (a) A separate application must be made in respect of each dividend, etc., from which it is desired to deduct United Kingdom Income Tax at an adjusted rate.
- (b) The Paying Agent must take all the steps necessary for the determination of the rate of relief allowable, and must furnish such information as may be required for this purpose, including particulars of-
  - (i) the nature and amount of the Company's income assessed directly to the Dominion Income Tax (where more than one Dominion Income Tax is charged, separate particulars should be given regarding each tax),
  - (ii) the deductions allowed therefrom in arriving at the amount actually charged to the Dominion Income Tax,
  - (iii) the amount actually charged to the Dominion Income Tax,
  - (iv) the rate or rates of Dominion Income Tax and the amount of tax charged,
  - (v) the Dominion taxation year for which the tax was charged and the date on which such year ended. (If particulars for the Dominion taxation year ending in the United Kingdom taxation year are not available, the Board will normally be prepared to consider applications based on particulars for the latest Dominion taxation year for which they can be obtained).

(vi) the nature and amount of any income of the Company subjected to Dominion Income Tax before receipt (e.g., dividends received from other Dominion Companies), and the rate of Dominion Income Tax to which such income was subjected before receipt,

(vii) the nature and amount of any income of the Company exempt from Dominion Income Tax (e.g., income derived from certain Dominion War Loans) or from a source outside the Dominion,

(viii) any Dominion Income Tax charged in respect of dividends or interest paid by the Company, shewing on what part of such dividends or interest the tax has been charged, if not on the whole.

Statements should be submitted reconciling in detail the above particulars with the figures shown in the Company's printed accounts, a copy of which for the year concerned should be forwarded.

Official evidence of payment of the Dominion Income Tax should also be furnished. The above particulars must be supplied year by year as soon as they are available.

(c) United Kingdom Income Tax at the full standard rate (now 6s. 0d. in the £) must be deducted from any dividends or interest in respect of which specific authority to deduct at a lower rate has not been obtained.

(d) When a claim has been admitted, the relative dividend or interest warrants, etc., issued in respect of registered holdings should indicate clearly the amount of the gross dividend or interest (see paragraphs 5 and 6) and the amount of United Kingdom Income Tax deducted, and should contain an explanatory memorandum regarding the amount of the gross dividend or interest as liable to United Kingdom Income Tax and the nature and amount of the relief granted in respect of Dominion Income Tax.

In the case of bearer shares or bonds a similar statement is to be incorporated in any notice of payment of dividend or interest issued by the Company or published by them by advertisement or otherwise.

4. The rate of relief in respect of Dominion Income Tax will be computed by reference to the full standard rate of United Kingdom Income Tax (now 6s. 0d. in the £). A shareholder whose "appropriate rate of United Kingdom tax" is less than the standard rate may thus receive through the Paying Agent a greater rate of relief in relation to his dividend or interest than is due to him; and in such a case the excessive relief allowed will be recoverable in the manner provided by sub-section (3) of Section 27. On the other hand where the Dominion rate of tax exceeds one half of the United Kingdom standard rate a shareholder whose "appropriate rate of United Kingdom tax" exceeds the standard rate may make a further claim.

5. Special attention is drawn to sub-section (4) of Section 27 which discontinues the allowance of Dominion Income Tax as a deduction in the computation of liability to United Kingdom Income Tax, and under which in the case of dividends or interest of a Dominion Company distributed to residents in this country an addition for Dominion Income Tax is to be made, for the purposes of the charge to United Kingdom Income Tax, to the net amount of the dividend or interest received in this country. Under proviso (b) to the sub-section, where a Dominion does not grant relief from Dominion Income Tax in respect of the payment of United Kingdom Income Tax, the addition to be made is to be the amount of the relief granted under the Section. For the present, therefore, the addition to the net amount of the dividend or interest received by a Paying Agent in this country, in order to arrive at the gross amount on which United Kingdom Income Tax is chargeable, will be calculated by reference to the rate of relief from United Kingdom Income Tax allowed to shareholders, etc., through the Paying Agent.

The United Kingdom Income Tax to be deducted from the dividend or interest and paid over to the Revenue is therefore the tax computed on the gross amount of the dividend or interest, the gross amount being such an amount as after deduction of tax at the rate of relief allowed gives the net amount of the dividend or interest received by the Paying Agent.

The position may be illustrated by the following example—

Full standard rate of United Kingdom Income Tax	6 0 in the £
Less rate of relief in respect of Dominion Income Tax	(say) 2 0
Rate of United Kingdom Income Tax to be deducted	4 0
Net dividend received by Paying Agent	(say) 4 6 per share.
Gross dividend = 4s. 6d. + $\frac{1}{2}$ of 4s. 6d. (or $\frac{1}{2}$ of 4s. 6d.) = 5s. 0d.	
Tax to be deducted by Paying Agent and paid over to the Revenue— 4s. 0d. in the £ on the Gross Dividend of 5s. 0d.	1 0
Amount received by shareholder	3 6

6. The enclosed specimen forms of counterfoils of dividend warrants, with an endorsed memorandum, have been designed to meet the convenience of Paying Agents and (with such modifications as the circumstances of any particular case may necessitate) will normally be found to satisfy the requirements of paragraph 3 (d) above.

The following examples may be useful—

EXAMPLE I

Shareholder holds 1000 shares.

Dividend declared (say) 4s. 3d. per share free of Dominion taxes.

Full standard rate of United Kingdom Income tax	6 0 in the £
Less rate of relief in respect of Dominion Income Tax	(say) 3 0
Rate of United Kingdom Income Tax to be deducted	3 0

Gross dividend  $\frac{1}{2}$  of 4s. 3d. = 5s. 0d. per share, being the amount which after deduction of tax at 3s. 0d. in the £ (the rate of relief allowed) gives the net amount declared free of Dominion tax, viz. 4s. 3d. per share.

Amount of  
Warrant—£175.  
(i.e. 3s. 6d. × 1000).

Amount of dividend declared	4 3 per share.
Less United Kingdom Income Tax at 3s. 0d. in the £ on the gross amount of the dividend of 5s. 0d.	1 0
Net amount	3 6

EXAMPLE II.

Shareholder holds 100 shares.

Dividend declared (say) 5s. 0d. per share less a particular Dominion Income Tax at 8d. in the £ (2d. per share) but free of other Dominion taxes, equivalent to a net dividend of 4s. 10d. per share after payment or deduction of Dominion Income Tax.

Full standard rate of United Kingdom Income Tax	.....	6 0	in the £
Less rate of relief in respect of Dominion Income Tax	..... (say)	2 0	" "
Rate of United Kingdom Income Tax to be deducted	.....	4 0	" "

Gross dividend  $\frac{2}{3}$  of 4s. 10d. = 5s. 4 1/2d. per share, being the amount which after deduction of tax at 2s. 0d. in the £ (the rate of relief allowed) gives the net amount declared after deduction of the particular Dominion Income Tax (2d. per share), viz. 4s. 10d. per share.

Amount of dividend declared	.....	5 0	per share.
Less the particular Dominion Income Tax at 8d. in the £	.....	2	" "
Amount of Warrant—£18:15:11 (i.e. 3s. 9 1/2d. x 100).	.....	4 10	" "
Less United Kingdom Income Tax at 4s. in the £ on the gross amount of the dividend of 5s. 4 1/2d.	.....	1 0 89	" "
Net amount	.....	3 9 11	" "

7. The Income Tax deducted should be accounted for on the periodical returns made by Paying Agents to the Board's Inspector of Foreign and Colonial Dividends, York House, 23, Kingsway, London, W.C. 2.

8. This circular supersedes the circulars dated 25th September, 1916, and 10th October, 1917.

I am,  
GENTLEMEN,  
Your obedient Servant,

*R. V. Kind Hopkins*

Secretary.

*Personal*

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

18th May, 1932.

Dear Parkinson,

About Income Tax. I am just amending a draft reply to the official despatch from the Colonial Office - Confidential-(2) of the 30th April. There are two points that I can't put into an official despatch but that I want you to bear in mind.

2. First, the Colonial Office sent us out a model Ordinance which they suggested we should adopt in introducing Income Tax. This presumably emanated in the first instance from the Board of Inland Revenue. We made certain modifications to this model Ordinance with the object of satisfying unofficial opinion and of enabling us to get agreement of any sort on Income Tax. The modifications that we made are the source of the present trouble. I feel that the Income Tax authorities in England ~~are~~ <sup>maybe</sup> inclined to adopt the attitude that as we insisted on these alterations, we must suffer the consequences, and so are not being as ready to meet us as they otherwise would be.

3. The second point is this: as I understand the position, it is the policy of the Colonial Office to introduce Income Tax throughout the Colonies, and therefore it is up to the Colonial Office to bring any pressure to bear that they legitimately can on the Board.....



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

the Board of Inland Revenue to help us out of our difficulties. There is still a powerful and very vocal body of opponents to Income Tax and a day seldom passes without a letter on the subject in the "East African Standard". Most of the arguments can be refuted. This particular one, which only concerns the East African Power and Lighting Company at the present moment, is a legitimate and a strong argument and one that Government would have great difficulty in refuting unless the problem can be solved. So I want to impress upon you very strongly that it is not the welfare of one particular Company that is at stake, but the whole subject of Income Tax in Kenya.

Yours sincerely,

R Brooke-Poplam

MAJOR SIR A. C. C. PARKINSON, K.C.M.G., O.B.E.,  
COLONIAL OFFICE,  
DOWNING STREET, S.W.1.  
LONDON.

KENYA

No. 100

CONFIDENTIAL



16  
109  
GOVERNMENT HOUSE  
NAIROBI  
KENYA

18th May, 1938.

Sir,

8. I have the honour to acknowledge the receipt of your predecessor's Confidential (2) despatch of the 30th April, concerning the double payment of Income Tax by the East African Power and Lighting Company. I should like to express this Government's appreciation of the trouble taken by the Board, and of the careful attention which has been given to the problem.

2. The solutions offered by the Board of Inland Revenue depend upon the cessation of personal allowances to non-residents other than the allowance to pensioners or, alternatively, upon the adoption of a fixed personal allowance, irrespective of income, to all non-resident British subjects. Unfortunately, neither of these conditions can be accepted by this Government. In the first place, the abolition of personal allowances to non-residents other than contributor pensioners would constitute a reversal of policy already accepted...

*Amund. 22*

THE RIGHT HONOURABLE,  
SAMUEL MACDONALD, M.P.,  
SECRETARY OF STATE  
FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W.1.

accepted and publicly declared and it would be difficult to defend such a change. In the second place, the institution of a fixed personal allowance as proposed by the Board, would lead to a loss of revenue and, what is more, to the abandonment of a source of revenue which can only be tapped through the agency of income tax. It will no doubt be remembered that the inclusion of this particular source of revenue formed a strong argument in favour of the imposition of income tax in this Colony, and its exclusion, after the Ordinance has been in operation for barely twelve months, would furnish the opponents of income tax with a formidable weapon. Moreover, even if this latter proposal were to be accepted, the position of those shareholders of the Company who would not be completely exempted would remain complicated.

3. While the proposals made by the Board of Inland Revenue do not provide a solution acceptable to this Government, it is nevertheless essential that a solution should be found; a solution which, for political reasons, must not be dependent upon the departure from any one of the principles on which the local acceptance of income tax rested. I have already informed your predecessor that there still exists a strong and determined body of opinion antagonistic to income tax. The consequence of its becoming known that the East African Power and Lighting Company were prevented by the operation of  
 Income...

Income Tax from raising further capital in London would be to endanger seriously the future of Income Tax in Kenya. It is therefore necessary that some arrangement should be concluded without delay.

4. While my advisers are unable to suggest a solution which would fall within the procedure laid down by the Board of Inland Revenue for the allowance of relief through the paying agent, it is felt that the Board should be able to allow, as a special case, some small departure from their existing procedure, in order to arrive at a solution without disturbing the general principles reflected in the Kenya Ordinance. I may say at once that this Government would be prepared to take all necessary steps to facilitate the conclusion of any such working arrangement which would, to the satisfaction of the Board, adequately safeguard the United Kingdom revenue. I refrain from making any concrete suggestion for two reasons. First, since a concession is being sought, it would appear that the Board will be better able to decide what particular terms would be most suitable. Secondly, in view of the urgency of the question, it is felt that the examination by the Board of local proposals would probably be a waste of time. I feel confident that the Board will find it possible to devise a procedure to meet the special circumstances set out in this despatch.

S...

5. I fully realize the difficulty with which the Board is faced and which arises from the fact that the Kenya Ordinance departs from the model Ordinance in regard to allowances to non-residents. You will no doubt impress upon the Board that this departure had to be made in order to render the Bill more acceptable to the Elected Members and to facilitate its passage, an object which was, in fact, achieved; and while I cannot hold out any hope of a change in policy in this respect in the near future, I can say that this point will be reconsidered as soon as political circumstances are favourable.

6. In conclusion, I would say that the urgency of the matter lies in the fact that the East African Power and Lighting Company cannot delay indefinitely the raising of further capital. While I am personally satisfied that the Company has not misrepresented any of the facts, the real point is that this Government would be placed in a most embarrassing situation if it became public knowledge that Income Tax in this Colony was even adversely affecting, not to say definitely preventing, the raising of money in the United Kingdom.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*D. Brooks-Popham*

AIR CHIEF MARSHAL,  
GOVERNOR

3805 4/11/38

C. O.

Mr. Paine 19/5

Mr. Dawn 20/5

Mr.

X Sir H. Moore

fs. 21/5

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

S.O. for Sir H. Moore's vj.

23 MAY 1938

Private & Confidential.

Dear Mr. Brook

(12) I have your letter of the 18th of May

in which you have kindly offered to come to the

C.O. to explain the results

of your discussion of

Somerset House in the

of the whole case which

can be found to resolve the difficulties

you propose in connection with double

taxation relief. As you say, the subject is

complex, but

3 DRAFTS

D.C. Brook Esq.

FURTHER ACTION.

I am afraid that the  
 is being what it  
 C.O. can do to assist  
 by taking steps to  
 ensure that the possibilities  
 of finding some solution of  
 your difficulties are fully  
 explored by the Revenue authorities  
 in the capacity of the  
 To this  
 extent you can certainly rely  
 on our good offices. If you  
 feel that it would help towards  
 M. A. J. Davis, the Head of the  
 East African Dept.  
 finding a solution, I am afraid  
 will be ready to discuss the matter  
 with you. I am afraid, however, that  
 the question lies outside my  
 particular province  
 to deal with. I am  
 afraid, however, that  
 I suggest that you should  
 get into touch with him  
 with a view to arranging an appointment.  
 I may mention that we have had  
 a telegram from the Gov., saying that  
 he is sending a further despatch on  
 the subject, & of course, when it arrives  
 we shall have to take it into consideration.  
 I am to forward Home for consideration.

H. MOORE

C. O.

- Mr. Paine 19/5
- Mr. Dawn W.S.
- Mr.
- X Sir H. Moore 18.2/5
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

3 DRAFTS

Major H.F. Ward

The question, as you will  
 appreciate, is not really  
 within my province, but  
 I have made enquiries and  
 you can rest assured that  
 the C.O. is fully alive to your  
 difficulties and has in

FURTHER ACTION.

38054/1/38.

S.O. for Sir H. Moore's sig.

23 MAY 1938

Private & Confidential.

Dear Ward

Thank you for  
 your letter of the 10<sup>th</sup> of May  
 on the subject of the  
 difficulties under which  
 your Company is labouring  
 in connection with double  
 taxation relief. You  
 will of course realize  
 that it is little that  
 we can do in  
 matters of this kind,  
 beyond taking steps to  
 ensure that the  
 possibilities of finding  
 some solution of your  
 difficulties are fully  
 explored by the Revenue authorities  
 in the capacity of the  
 M. A. J. Davis.

reference your office to that  
effect. I have also had a  
letter from Mr. D.C. Brown & J  
arranging for him to  
be the head of the East African  
Dept. in case there is anything  
further that we can do to  
assist in solving these problems.

With kind regards to your wife &  
myself.

H. MOORE

38054/1/38.

C.O.

Mr. Pashin 19/5 Immediate

Mr. Dawn 20/5

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Gluckhurg.

Paras. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Sir,

21 May 1938

With ref. to your letter  
No. T. 1162/15/37 of the 25<sup>th</sup> of  
April, ~~in~~ in regard to  
the arrangements for double  
transaction relief in the case of  
the East African Powers &  
Lighting Co. I am in a  
hurry to you, for the  
concern of the B. of S.R., a  
copy of a tel. from the Sec.  
of Kenya stating that, ~~in~~  
for political reasons, the  
proposals made in the  
letter under reference are  
inapplicable locally. A  
copy of the Prop. mentioned  
in the tel. will be  
transmitted to you Dept.  
as soon as it is received,  
but Mr. Macdonald will be  
obliged to you if, in the meantime,

3 DRAFTS.

The Secretary  
B. of S.R.

Kenya Tel. 58  
(No. 10).

FURTHER ACTION.



preliminary exam. is to give  
to the student whether there are any  
other means of meeting the  
difficulties in this case.

}

(50) Howard

# The East African Power & Lighting Company, Limited.

(Incorporated in Kenya Colony under the Indian Companies Acts 1882 to 1900 as applied to that Colony.)

London Office:

66, QUEEN STREET,  
LONDON, E.C.4.

PRIVATE & CONFIDENTIAL.

18th May, 1938.

PERSONAL.

Sir Henry Monck-Mason Moore, K.C.M.G.,  
Colonial Office,  
Downing Street,  
Whitehall, S.W.1.

Dear Sir Henry,

Major H.F. Ward, Chairman of the Company in East Africa, with whom I have been in close co-operation on the question of Kenya Income Tax as it affects this Company, has told me that he has mentioned this matter to you.

*Handwritten: 15*

The subject is intricate, as you know, and certain of the difficulties to which Major Ward has referred are in some ways peculiar to this Company. I have had considerable discussions with the Foreign Dividends Department at Somerset House and if it would in any way assist, I should be very happy to come along to explain to you, personally, the disadvantages under which we are labouring at the moment and to let you know how far I have gone and results obtained in my various interviews with the Revenue Authorities in London.

If you think an interview would serve any useful purpose, I shall be pleased to come down to the Colonial Office if you will let me know when you could see me.

Yours faithfully,

*Handwritten Signature*  
London Secretary.

TELEPHONE 2555

TELEGRAMS  
ELECTRIC NAIROBI

HPW/PN.

THE EAST AFRICAN  
POWER & LIGHTING CO LTD

NAIROBI  
KENYA COLONY

10th May, 1938.

Private and Confidential.  
Personal.

My dear Sir Henry,

I wonder whether in view of your intimate connection with Kenya you could stretch a point and interest yourself personally, with a view to discovering what amendments to the local Income Tax Ordinance will satisfy the Foreign Dividends Department of the British Inland Revenue sufficiently to enable them to extend the concession which applies to the majority of British Overseas possessions, namely, that in respect of British shareholders of a Company resident abroad, there shall only be ~~payable~~ an amount not exceeding the total British Tax. As you know, this is done by allocating the British rate of tax as between the Foreign Dividends Department and the local tax commissioners of the British possession concerned.

I know full well that this has been referred officially to the Colonial Office by His Excellency but I feel certain that if it was possible for you to take a personal interest in the matter, as against the ordinary process of office routine, an answer could be found to this question.

*Answer by*

The matter is most serious because until this question is answered, we are quite unable to sell any shares on the London market and the only alternative would be to transfer the registration of the Company in Kenya (where it has been all its life) to London and this would heavily penalise those local firms and individuals who have invested their working capital or savings in shares of the Company. It would not affect anybody connected with the administration of the Company but it would affect those I mention and, to a certain extent, it would be rather a smack in the face for Kenya.

Further, as the fact is bound to become known if we are forced to ~~transfer~~ registration, it would again

raise ...

raise the issue of Income Tax in a flaring shape locally - a matter that I am particularly anxious to avoid as I believe Income Tax is quite necessary to our economic structure.

With the sincerest good wishes to you and your wife and apologies if I have in any way done wrong,

Yours sincerely,

Sir Henry Monck-Mason Moore,  
K.C.M.G.,  
Colonial Office,  
Downing Street,  
WHITEHALL, S. W. 1.

Telegram from the Governor of ~~India~~ to the Secretary  
of State for the Colonies

RECEIVED

18 MAY 1938

Dated 18th May, 1938. Received 12.7pm 18th May, 1938.

C.O. REG.

No. 58. Confidential.

3605 2/738

8 Your despatch of the 30th April  
confidential (2) Income tax. For political reasons  
Board proposals are inceptible of application locally.  
I urge that the Board be approached immediately with  
a view to alternative arrangements on the lines  
of paragraph 9 of enclosure to my despatch of the  
24th March No.64 confidential even though some  
departure from the Board's existing procedure may be  
necessitated. Despatch follows but in view of  
extreme urgency should be glad if the Board could  
commence reconsideration of the question at once.

Copy to B.S.R. - 12

C. O.

C. O.  
NO. ADR  
26

36054/1/38 Kenya

Mr. Costley-White

17/4/38

Mr. Parkin

27

Mr. Douglas

28

Sir H. Moore

Sir G. Tomlinson

Sir C. Bottomley

28/4 f

Sir J. Shuckburgh

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State

DOWNING STREET.

30 April, 1938.

Sir,

I have etc. to acknowledge

DRAFT. CONSON.

(1) the receipt of your confidential

despatch No. 64 of the 24th of March

(7) and to forward a copy of a letter,

with enclosure, from the Board of

Inland Revenue, in which the question

of the double payment of income tax,

raised in connection with the East

African Power and Lighting Company,

is examined in full. You will, no

doubt, ~~know me in due course~~  
with your ~~obtain~~ on the suggestion  
which, if any, of the ~~solutions~~  
contained in para 7 of the Board's letter  
suggested by the Board it is found  
(after consultation with the C. should  
convenient to adopt.  
You had ~~found~~ (1/1/38).

I ~~am~~ etc.

P.T.P.

KENYA

CONFIDENTIAL (2)

GOVERNOR

Fr. B.I.R. 25/4/38

(7)

FURTHER ACTION.

Cope to B. I. R. / L. J.

*Handwritten vertical note:*  
B.I.R. 25/4/38



Any further communication should be addressed to:—

THE SECRETARY.

Taxes

INLAND REVENUE,  
SOMERSET HOUSE, LONDON, W.C.2.

quoting the following reference:

T.1182/19/37.

INLAND REVENUE,  
SOMERSET HOUSE,  
LONDON, W.C.2.

25th April, 1938.

RECEIVED  
2 APR 1938  
G.O. REGY

Sir,

*Copy being sent to Kenya*

3

I am directed by the Board of Inland Revenue to refer to your letter of the 1st instant (38054/1/38) enclosing a copy of a despatch (No. 64 of 24th March, 1938) from the Governor of Kenya in regard to certain questions raised in relation to taxation by the position of the East African Power and Lighting Company.

2. Under the Kenya Income Tax Ordinance a company is chargeable to tax in Kenya at the rate of two shillings on every pound of chargeable income (Section 21(2)), and every company registered in the Colony is entitled to deduct from the dividends paid to shareholders tax at the rate paid or payable by the company on the income out of which the dividend is paid (Section 22(1)). Under United Kingdom income tax law, dividends of a Dominion (or Colonial) company which are entrusted to an agent in this country for payment to United Kingdom shareholders are (saving the application of the arrangement referred to in the following paragraph 3) subject to deduction by the agent of United Kingdom income tax at the full standard rate and the shareholder would thereupon be entitled to a measure of relief from United Kingdom income tax in respect of the Dominion income tax, in accordance with the provisions of Section 27 of the Finance Act, 1920. The East African Power and Lighting Company Ltd. has represented that, notwithstanding these provisions for double taxation relief, the deduction of two taxes at the full rate (Kenya tax at 2/- in the £ and United Kingdom Income Tax at 5/- in the £) from dividends paid to United Kingdom shareholders would have a depressing effect upon the value of the Company's shares which could not be contemplated and further would be an insuperable bar to the raising of fresh capital on the London market. The Board are not in a position to express any opinion upon this aspect of the matter.



3. There is however an arrangement in force in the United Kingdom under which a twofold deduction of tax may be avoided in the case of dividends payable by a Dominion company (not assessable to United Kingdom Income Tax in respect of the whole of its profits) and entrusted for payment to an agent in this country. In such cases relief in respect of Dominion Income Tax is allowed to the shareholders etc. through the paying agent by the deduction of United Kingdom Income Tax from the dividends at a rate less than the full standard rate. A copy of a circular dealing with this arrangement is enclosed. The East African Power and Lighting Company Ltd. has sought the application of this arrangement in the case of dividends paid to United Kingdom shareholders but for the following reasons the application has had to be refused.

4. The object of the United Kingdom arrangement is to give relief at the source, i.e. through the paying agent, in respect of the payment of Dominion Income Tax, and so to avoid, so far as possible, the necessity of a twofold charge of tax at full rates and subsequent claims to relief by the shareholders. It is plainly not possible to apply the arrangement if the shareholder may be entitled to claim relief or repayment from the Dominion in respect of the Dominion Tax, for the result would be to grant relief for tax which was not in fact due - and the arrangement is not in fact applied in such cases, e.g. Companies of India, where relief is granted to small incomes irrespective of the taxpayer's residence. In the case of Kenya, the personal reliefs and allowances by means of which relief from the standard rates of tax may be obtained are in general restricted to persons resident in Kenya and so could not be claimed by shareholders resident in the United Kingdom. But there is an exception in Section 10 of the Ordinance: this section provides in Subsection (2) for the grant of a personal allowance of £150 to certain defined classes of non-resident pensioners and also empowers the Governor to make rules for determining further allowances for other non-resident individuals or classes of non-resident individuals. The object of this provision is stated in the Select Committee's report (page 4) to be to make provision for pensioners in receipt of small non-contributory

pensioners and other non-residents whose small incomes are derived solely or to a very large extent from the Colony. No such rules have yet been made, but paragraph 9 of the Memorandum forwarded by the Governor suggests that this remains the intention of the Government. From these provisions it appears that such non-resident persons (who may be shareholders of the company) may be, or may become, entitled to complete exemption or to reduction of liability in Kenya. From an examination of the list of shareholders it appears that there are some 1200 ordinary shareholders on the London register of whom only 30 receive dividends of over £100 per annum and 500 Preference Shareholders of whom 30 only receive over £100 per annum. In the event of a fixed personal allowance being granted in Kenya to non-residents with small incomes, it would seem that the majority of the shareholders would be entitled to exemption from Kenya tax and no claim to Dominion Income Tax relief would arise. While this possibility remains, the Board have felt unable to sanction the grant of relief under the arrangement through the London paying agents.

*Ex if tax on  
over only  
Source of  
income in  
Kenya  
absolutely*

5. The Kenya Commissioner of Income Tax has suggested, in semi-official correspondence with the Board's Inspector of Foreign Dividends, that the difficulties would be met by a declaration by the Governor-in-Council that no rules would be made under Section 10(2) and the possibility, as a last resort, of amending the law so as to refuse allowances to non-residents is mentioned in paragraph 10 of the Memorandum. Except for the provision as to personal allowances for non-residents, the Kenya Ordinance contains no provision which would preclude the grant of Dominion Income Tax relief through the paying agent of a Kenya company. Moreover, it may be stated that the grant of a personal allowance of £150 as at present to certain classes of non-resident pensioners would not of itself be regarded as of sufficient importance to preclude the application of the arrangement. If, therefore, it were clearly established that the personal allowances to non-residents were to remain, as at present, limited to such classes of pensioners, and the rates of tax to non-residents were not otherwise reduced below a minimum rate, there would be no objection to granting a measure of relief through the paying agent in the case of the East African Power and Lighting Company.

The Board have, however, felt a difficulty in corresponding with the Commissioner and the Company on this aspect of the matter, since the grant of

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(Part I)

personal allowances to non-resident British subjects is a feature of the general policy underlying the Model Income Tax Ordinance for Colonies, which was drawn up by the Departmental Committee of 1922. This feature has been recommended to the Kenya Government and although it would appear from the despatch No.74 of 7th May, 1937, that Kenya does not intend to adopt it - and other instances might be found of Colonial ordinances which contain no such allowances - the Board have not thought it proper to indicate that a solution of the Company's difficulties might be found in that course which would run counter to the general policy mentioned. It will further be appreciated that if personal allowances to non-resident British subjects are not granted, the burden of relieving the double taxation in such cases will fall upon the United Kingdom Exchequer.

6. In the meantime the Kenya Government has itself taken steps to meet the Company by making an order (of 25th November, 1937) under Section 90 of the Ordinance, by which the rate of tax due from the Company upon that portion of the Company's income out of which dividends not exceeding £700 per annum to any one shareholder are paid shall be at the rate of Sh.1 in the £. This rate of Sh.1 represents the minimum rate of tax to which, apart from the question of personal allowances, every person chargeable to tax is liable under Section 21(1), and the Kenya Government hope that relief from United Kingdom tax by reference to this rate may be given at the source through the paying agent from dividends paid to United Kingdom shareholders. The grant of relief through the paying agent by reference to a minimum rate of Sh.1 would present no practical difficulties and could be admitted, were it not for the question of allowances, as discussed in the foregoing paragraph.

7. The Board have considered whether, in the event of personal allowances being granted in Kenya to non-residents with small incomes, it would nevertheless be possible to allow relief through the paying agent as the company desires. A difficulty is at once met in the fact that the character of the personal allowances to non-residents that may be granted in Kenya is not yet determined. It is not stated whether it is proposed to grant an allowance of a fixed amount to persons of small incomes or to grant exemption to persons with incomes below a certain figure. The Select Committee of the Legislative Council reported in favour of granting allowances to non-residents

whose small incomes are derived solely or to a very large extent from the Colony. If a personal allowance is granted which is in any way dependent upon the amount of the non-resident's total income, whether derived from Kenya or from other sources, the resultant rate of Kenya tax which the taxpayer will pay on his income will depend in each case upon the circumstances of the particular case and will vary with the amount of the total income. It would not be possible to be assured of a minimum rate of Kenya tax applicable to all cases by reference to which relief could be given at the source through the paying agent, and it would not therefore be possible to admit the Company to the paying agent arrangement. If, however, a personal allowance of a fixed amount (say £100) is given to non-resident British subjects, without reference to total income, either from Kenya or from all sources, (following the personal allowance already granted to non-resident pensioners, which appears in no way to be dependent on total income), the situation would appear to be as follows:

Assuming an allowance of £100, which could be set against the dividends from the Company, 1620 approximately of the 1700 United Kingdom shareholders who receive £100 or less per annum in dividends would be exempt from Kenya tax, and it is suggested that the Company should pay such dividends in full without the deduction of Kenya tax and should be relieved by Kenya from Kenya tax on the amount of the income so paid. This could apparently be done by an extension of the Order in Council of the 25th November by the addition at the end of the words - "and that the rate of tax upon that portion of the Company's income out of which dividends not exceeding (say) £100 per annum to any one shareholder are paid shall be nil." The effect of this would be that in the majority of cases no Kenya tax would be deducted from the dividends and no difficulty would arise.

With regard to the remaining (80) shareholders, Kenya income tax would be deducted by reference to a rate of 1/- in the £ (2/- in a few cases where the dividends exceed £700) and Dominion Income Tax relief could be allowed to the paying agent by reference to this rate. It would be necessary to ensure that this relief is not excessive having regard to the circumstances of the United Kingdom shareholders and the paying agents would be asked to furnish an indemnity to the Board against any over-allowance of Dominion Income Tax relief. The shareholders would of course be entitled to the Kenya personal

allowance against this income, and it would be necessary for the tax to be reclaimed from Kenya in respect of these allowances, preferably by the Company on behalf of the shareholders, and with their authority, and paid over to the United Kingdom Revenue. In this way any over-allowance of Dominion Income Tax relief would be counteracted. This would be a matter for arrangement between the Company and its shareholders and also between the Company and the Kenya authorities in regard to the acceptance of claims by the Company on behalf of the shareholders. The terms of the indemnity to be given to the Board by the paying agent would also require careful consideration. It has not been possible to go further into these matters of detail which would obviously require further consideration involving as they do a departure from existing routine arrangements to meet the special circumstances which exist in this particular case, and the proposal is put forward in principle as a suggestion for consideration in the first instance by the Kenya authorities. It has not at this stage, pending the observations of the Kenya Government, been mentioned to the Company and it is not therefore known whether it would meet the difficulties professed by the Company.

A similar procedure could probably be adopted if it were decided to grant total exemption to persons with small Kenya incomes, though the addition of provisions to deal with incomes on the borderline of the exemption limit would create difficulties.

8. It should further be pointed out that if there are other Kenya Companies with paying agents in the United Kingdom - as to which the Board have no information beyond the fact that no similar application has been made - the Kenya authorities might be faced with a request for a similar procedure to be applied to them. This would create difficulties in the case of shareholders in both companies, whose combined dividends exceed the amount of the allowance or exemption limit, from whom Kenya tax would be due and would have to be collected by direct assessment.

9. It is of course possible that the Kenya authorities will adhere to their decision that, for the reasons indicated in the Select Committee's report, it is not practicable to face the reduction of revenue which would be involved in the grant of a personal allowance generally to non-resident British subjects. As

indicated in the foregoing paragraph, the restricted grant of an allowance to non-residents by reference to total income would result in a situation in which a Kenya Company with a paying agent in the United Kingdom could not be admitted to the United Kingdom arrangement for giving Dominion Income Tax relief at the source. In that event it would be a matter for the Secretary of State to consider whether the difficulties professed by the Company would, in the special circumstances of this Colony, be sufficient to warrant acquiescence in a departure from the policy of granting personal allowances to non-residents which is recognised by the Select Committee and the Kenya Government as likely to benefit persons with small incomes. In the first place, however, the Board would propose that the suggestion contained in paragraph 7 above, be put forward, in principle and subject to the elaboration of the necessary administrative arrangements, for the observations of the Kenya authorities.

I am, Sir,

Your obedient Servant,

*Emith*

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92

Circular to Agents entrusted with the payment  
in the United Kingdom of Colonial Dividends.

INLAND REVENUE,

SOMERSET HOUSE,

LONDON, W.C. 2.

1st November, 1920.

GENTLEMEN,

**RELIEF IN RESPECT OF DOMINION INCOME TAX.**

1. I am directed by the Board of Inland Revenue to invite your attention to Section 27 of the Finance Act, 1920, which for the year beginning 8th April, 1920, supersedes Section 55 of the Income Tax Act, 1918 (Section 45 of the Finance Act, 1916). A copy of Section 27 is enclosed.

2. In the case of dividends or interest payable by a Dominion Company (not assessable to United Kingdom Income Tax in respect of the whole of its profits) and entrusted for payment to an Agent in this country, the Board are prepared to continue the practice under which relief in respect of Dominion Income Tax is allowed to the shareholders, etc., through the Paying Agent by deduction of United Kingdom Income Tax from the dividends or interest at a rate less than the full standard rate (now 6s. 6d. in the £).

3. Applications from Paying Agents for authority to deduct United Kingdom Income Tax at a rate adjusted to allow Dominion Income Tax relief should be addressed to the Special Commissioners of Income Tax, York House, 23, Kingsway, London, W.C. 2, and will only be entertained subject to the following conditions—

- (a) A separate application must be made in respect of each dividend, etc., from which it is desired to deduct United Kingdom Income Tax at an adjusted rate.
- (b) The Paying Agent must take all the steps necessary for the determination of the rate of relief allowable, and must furnish such information as may be required for this purpose, including particulars of—
  - (i) the nature and amount of the Company's income assessed directly to the Dominion Income Tax (where more than one Dominion Income Tax is charged, separate particulars should be given regarding each tax),
  - (ii) the deductions allowed therefrom in arriving at the amount actually charged to the Dominion Income Tax,
  - (iii) the amount actually charged to the Dominion Income Tax,
  - (iv) the rate or rates of Dominion Income Tax and the amount of tax charged,
  - (v) the Dominion taxation year for which the tax was charged and the date on which such year ended. (If particulars for the Dominion taxation year ending in the United Kingdom taxation year are not available, the Board will normally be prepared to consider applications based on particulars for the latest Dominion taxation year for which they can be obtained),

- (vi) the nature and amount of any income of the Company subjected to Dominion Income Tax before receipt (e.g., dividends received from other Dominion Companies), and the rate of Dominion Income Tax to which such income was subjected before receipt,
- (vii) the nature and amount of any income of the Company exempt from Dominion Income Tax (e.g., income derived from certain Dominion War Loans or from a source outside the Dominion),
- (viii) any Dominion Income Tax charged in respect of dividends or interest paid by the Company, showing on what part of such dividends or interest the tax has been charged, if not on the whole.

Statements should be submitted reconciling in detail the above particulars with the figures shown in the Company's printed accounts, a copy of which for the year concerned should be forwarded.

Official evidence of payment of the Dominion Income Tax should also be furnished. The above particulars must be supplied year by year as soon as they are available.

- (c) United Kingdom Income Tax at the full standard rate (now 6s. 6d. in the £) must be deducted from any dividends or interest in respect of which specific authority to deduct at a lower rate has not been obtained.
- (d) When a claim has been admitted, the relative dividend or interest warrants, etc., issued in respect of registered holdings should indicate clearly the amount of the gross dividend or interest (see paragraphs 5 and 6) and the amount of United Kingdom Income Tax deducted, and should contain an explanatory memorandum regarding the amount of the gross dividend or interest as liable to United Kingdom Income Tax and the nature and amount of the relief granted in respect of Dominion Income Tax.

In the case of bearer shares or bonds a similar statement is to be incorporated in any notice of payment of dividend or interest issued by the Company or published by them by advertisement or otherwise.

4. The rate of relief in respect of Dominion Income Tax will be computed by reference to the full standard rate of United Kingdom Income Tax (now 6s. 6d. in the £). A shareholder whose "appropriate rate of United Kingdom tax" is less than the standard rate may thus receive through the Paying Agent a greater rate of relief in relation to his dividend or interest than is due to him, and in such a case the excessive relief allowed will be recoverable in the manner provided by sub-section (3) of Section 27. On the other hand where the Dominion rate of tax exceeds one half of the United Kingdom standard rate a shareholder whose "appropriate rate of United Kingdom tax" exceeds the standard rate may make a further claim.

5. Special attention is drawn to sub-section (4) of Section 27 which discontinues the allowance of Dominion Income Tax as a deduction in the computation of liability to United Kingdom Income Tax, and under which in the case of dividends or interest of a Dominion Company distributed to residents in this country an addition for Dominion Income Tax is to be made, for the purposes of the charge to United Kingdom Income Tax, to the net amount of the dividend or interest received in this country. Under proviso (b) to the sub-section, where a Dominion does not grant relief from Dominion Income Tax in respect of the payment of United Kingdom Income Tax, the addition to be made is to be the amount of the relief granted under the Section. For the present, therefore, the addition to the net amount of the dividend or interest received by a Paying Agent in this country, in order to arrive at the gross amount on which United Kingdom Income Tax is chargeable, will be calculated by reference to the rate of relief from United Kingdom Income Tax allowed to shareholders, etc., through the Paying Agent.

The United Kingdom Income Tax to be deducted from the dividend or interest and paid over to the Revenue is therefore the tax computed on the gross amount of the dividend or interest, the gross amount being such an amount as after deduction of tax at the rate of relief allowed gives the net amount of the dividend or interest received by the Paying Agent.

The position may be illustrated by the following example—

Full standard rate of United Kingdom Income Tax	6 0 in the £
Less rate of relief in respect of Dominion Income Tax (say)	2 0 "
Rate of United Kingdom Income Tax to be deducted	4 0 "
Net dividend received by Paying Agent (say)	4 6 per share.
Gross dividend = 4s. 6d. + $\frac{1}{2}$ of 4s. 6d. (or $\frac{2}{3}$ of 4s. 6d.) = 5s. 0d.	
Tax to be deducted by Paying Agent and paid over to the Revenue—	
4s. 6d. in the £ on the Gross Dividend of 5s. 0d.	1 0 "
Amount received by shareholder	3 6 "

6. The enclosed specimen forms of counterfoils of dividend warrants, with an endorsed memorandum, have been designed to meet the convenience of Paying Agents and (with such modifications as the circumstances of any particular case may necessitate) will normally be found to satisfy the requirements of paragraph 3 (d) above.

The following examples may be useful—

EXAMPLE I.

Shareholder holds 1000 shares.

Dividend declared (say) 4s. 3d. per share free of Dominion taxes.

Full standard rate of United Kingdom Income tax	6 0 in the £
Less rate of relief in respect of Dominion Income Tax (say)	3 0 "
Rate of United Kingdom Income Tax to be deducted	3 0 "

Gross dividend  $\frac{2}{3}$  of 4s. 3d. = 5s. 0d. per share, being the amount which after deduction of tax at 3s. 0d. in the £ (the rate of relief allowed) gives the net amount declared free of Dominion tax, viz. 4s. 3d. per share.

Amount of  
Warrant—£175.  
(i.e. 3s. 6d. x 1000).

Amount of dividend declared	4 3 per share.
Less United Kingdom Income Tax at 3s. 0d. in the £ on the gross amount of the dividend of 5s. 0d.	1 0 "
Net amount	3 3 "



EXAMPLE II.

Shareholder holds 100 shares.

Dividend declared (say) 5s. 0d. per share less a particular Dominion Income Tax at 8d. in the £ (2d. per share) but free of other Dominion taxes, equivalent to a net dividend of 4s. 10d. per share after payment or deduction of Dominion Income Tax.

Full standard rate of United Kingdom Income Tax	£	6	0	in the £
Less rate of relief in respect of Dominion Income Tax	(say)	2	0	" "
Rate of United Kingdom Income Tax to be deducted		4	0	" "

Gross dividend  $\frac{1}{2}$  of 4s. 10d. = 5s. 4-44d. per share, being the amount which after deduction of tax at 2s. 0d. in the £ (the rate of relief allowed) gives the net amount declared after deduction of the particular Dominion Income Tax (2d. per share), viz. 4s. 10d. per share.

Amount of  
Warrant—£18:15:11  
(i.e. 3s. 9-11/ × 100).

Amount of dividend declared	£	5	0	per share.
Less the particular Dominion Income Tax at 8d. in the £		2	"	"
		4	10	" "
Less United Kingdom Income Tax at 4s. in the £ on the gross amount of the dividend of 5s. 4-44d.		1	0-69	" "
Net amount		3	9-11	" "

7. The Income Tax deducted should be accounted for on the periodical returns made by Paying Agents to the Board's Inspector of Foreign and Colonial Dividends, York House, 23, Kingsway, London, W.C. 2.

8. This circular supersedes the circulars dated 26th September, 1916, and 10th October, 1917.

I am,

GENTLEMEN,

Your obedient Servant,

*R. V. Hind Hopkins*

Secretary.

131

Circular to Agents entrusted with the payment  
in the United Kingdom of Colonial Dividends.

INLAND REVENUE,

SOMERSET HOUSE,

LONDON, W.C. 2.

1st November, 1920.

GENTLEMEN,

**RELIEF IN RESPECT OF DOMINION INCOME TAX.**

1. I am directed by the Board of Inland Revenue to invite your attention to Section 27 of the Finance Act, 1920, which for the year beginning 6th April, 1920, supersedes Section 59 of the Income Tax Act, 1918 (Section 45 of the Finance Act, 1914). A copy of Section 27 is enclosed.

2. In the case of dividends or interest payable by a Dominion Company (not assessable to United Kingdom Income Tax in respect of the whole of its profits) and entrusted for payment to an Agent in this country, the Board are prepared to continue the practice under which relief in respect of Dominion Income Tax is allowed to the shareholders, etc., through the Paying Agent by deduction of United Kingdom Income Tax from the dividends or interest at a rate less than the full standard rate (now 6s. 6d. in the £).

3. Applications from Paying Agents for authority to deduct United Kingdom Income Tax at a rate adjusted to allow Dominion Income Tax relief should be addressed to the Special Commissioners of Income Tax, York House, 23, Kingway, London, W.C. 2, and will only be entertained subject to the following conditions—

- (a) A separate application must be made in respect of each dividend, etc., from which it is desired to deduct United Kingdom Income Tax at an adjusted rate.
- (b) The Paying Agent must take all the steps necessary for the determination of the rate of relief allowable, and must furnish such information as may be required for this purpose, including particulars of—
  - (i) the nature and amount of the Company's income assessed directly to the Dominion Income Tax (where more than one Dominion Income Tax is charged, separate particulars should be given regarding each tax),
  - (ii) the deductions allowed therefrom in arriving at the amount actually charged to the Dominion Income Tax,
  - (iii) the amount actually charged to the Dominion Income Tax,
  - (iv) the rate or rates of Dominion Income Tax and the amount of tax charged,
  - (v) the Dominion taxation year for which the tax was charged and the date on which such year ended. (If particulars for the Dominion taxation year ending in the United Kingdom taxation year are not available, the Board will normally be prepared to consider applications based on particulars for the latest Dominion taxation year for which they can be obtained).

(vi) the nature and amount of any income of the Company subjected to Dominion Income Tax before receipt (e.g., dividends received from other Dominion Companies), and the rate of Dominion Income Tax to which such income was subjected before receipt.

(vii) the nature and amount of any income of the Company exempt from Dominion Income Tax (e.g., income derived from certain Dominion War Loans or from a source outside the Dominion),

(viii) any Dominion Income Tax charged in respect of dividends or interest paid by the Company, shewing on what part of such dividends or interest the tax has been charged, if not on the whole.

Statements should be submitted reconciling in detail the above particulars with the figures shown in the Company's printed accounts, a copy of which for the year concerned should be forwarded.

Official evidence of payment of the Dominion Income Tax should also be furnished. The above particulars must be supplied year by year as soon as they are available.

(c) United Kingdom Income Tax at the full standard rate (now 6s. 0d. in the £) must be deducted from any dividends or interest in respect of which specific authority to deduct at a lower rate has not been obtained.

(d) When a claim has been admitted, the relative dividend or interest warrants, etc., issued in respect of registered holdings should indicate clearly the amount of the gross dividend or interest (see paragraphs 5 and 6) and the amount of United Kingdom Income Tax deducted, and should contain an explanatory memorandum regarding the amount of the gross dividend or interest as liable to United Kingdom Income Tax and the nature and amount of the relief granted in respect of Dominion Income Tax.

In the case of bearer shares or bonds a similar statement is to be incorporated in any notice of payment of dividend or interest issued by the Company or published by them by advertisement or otherwise.

4. The rate of relief in respect of Dominion Income Tax will be computed by reference to the full standard rate of United Kingdom Income Tax (now 6s. 0d. in the £). A shareholder whose "appropriate rate of United Kingdom tax" is less than the standard rate may thus receive through the Paying Agent a greater rate of relief in relation to his dividend or interest than is due to him, and in such a case the excessive relief allowed will be recoverable in the manner provided by sub-section (3) of Section 27. On the other hand where the Dominion rate of tax exceeds one half of the United Kingdom standard rate a shareholder whose "appropriate rate of United Kingdom tax" exceeds the standard rate may make a further claim.

5. Special attention is drawn to sub-section (4) of Section 27 which discontinues the allowance of Dominion Income Tax as a deduction in the computation of liability to United Kingdom Income Tax, and under which in the case of dividends or interest of a Dominion Company distributed to residents in this country an addition for Dominion Income Tax is to be made, for the purposes of the charge to United Kingdom Income Tax, to the net amount of the dividend or interest received in this country. Under proviso (b) to the sub-section, where a Dominion does not grant relief from Dominion Income Tax in respect of the payment of United Kingdom Income Tax, the addition to be made is to be the amount of the relief granted under the Section. For the present, therefore, the addition to the net amount of the dividend or interest received by a Paying Agent in this country, in order to arrive at the gross amount on which United Kingdom Income Tax is chargeable, will be calculated by reference to the rate of relief from United Kingdom Income Tax allowed to shareholders, etc., through the Paying Agent.

The United Kingdom Income Tax to be deducted from the dividend or interest, and paid over to the Revenue is therefore the tax computed on the gross amount of the dividend or interest, the gross amount being such an amount as after deduction of tax at the rate of relief allowed gives the net amount of the dividend or interest received by the Paying Agent.

Circular to Agents entrusted with the payment  
in the United Kingdom of Colonial Dividends.

INLAND REVENUE,

SOMERSET HOUSE,

LONDON, W.C. 2.

1st November, 1920.

GENTLEMEN,

**RELIEF IN RESPECT OF DOMINION INCOME TAX.**

1. I am directed by the Board of Inland Revenue to invite your attention to Section 27 of the Finance Act, 1920, which for the year beginning 6th April, 1920, supersedes Section 55 of the Income Tax Act, 1918 (Section 43 of the Finance Act, 1916). A copy of Section 27 is enclosed.

2. In the case of dividends or interest payable by a Dominion Company (not assessable to United Kingdom Income Tax in respect of the whole of its profits) and entrusted for payment to an Agent in this country, the Board are prepared to continue the practice under which relief in respect of Dominion Income Tax is allowed to the shareholders, etc., through the Paying Agent by deduction of United Kingdom Income Tax from the dividends or interest at a rate less than the full standard rate (now 6s. 0d. in the £).

3. Applications from Paying Agents for authority to deduct United Kingdom Income Tax at a rate adjusted to allow Dominion Income Tax relief should be addressed to the Special Commissioners of Income Tax, York House, 25, Kingsway, London, W.C. 2, and will only be entertained subject to the following conditions:—

- (a) A separate application must be made in respect of each dividend, etc., from which it is desired to deduct United Kingdom Income Tax at an adjusted rate.
- (b) The Paying Agent must take all the steps necessary for the determination of the rate of relief allowable, and must furnish such information as may be required for this purpose, including particulars of—
  - (i) the nature and amount of the Company's income assessable directly to the Dominion Income Tax (where more than one Dominion Income Tax is charged, separate particulars should be given regarding each tax),
  - (ii) the deductions allowed therefrom in arriving at the amount actually charged to the Dominion Income Tax,
  - (iii) the amount actually charged to the Dominion Income Tax,
  - (iv) the rate or rates of Dominion Income Tax and the amount of tax charged,
  - (v) the Dominion taxation year for which the tax was charged and the date on which such year ended. (If particulars for the Dominion taxation year ending in the United Kingdom taxation year are not available, the Board will normally be prepared to consider applications based on particulars for the latest Dominion taxation year for which they can be obtained.)

- (vi) the nature and amount of any income of the Company subjected to Dominion Income Tax before receipt (e.g., dividends received from other Dominion Companies), and the rate of Dominion Income Tax to which such income was subjected before receipt,
- (vii) the nature and amount of any income of the Company exempt from Dominion Income Tax (e.g., income derived from certain Dominion War Loans or from a source outside the Dominion),
- (viii) any Dominion Income Tax charged in respect of dividends or interest paid by the Company, shewing on what part of such dividends or interest the tax has been charged, if not on the whole.

Statements should be submitted reconciling in detail the above particulars with the figures shown in the Company's printed accounts, a copy of which for the year concerned should be forwarded.

Official evidence of payment of the Dominion Income Tax should also be furnished.

The above particulars must be supplied year by year as soon as they are available.

- (c) United Kingdom Income Tax at the full standard rate (now 6s. 6d. in the £) must be deducted from any dividends or interest in respect of which specific authority to deduct at a lower rate has not been obtained.
- (d) When a claim has been admitted, the relative dividend or interest warrants, etc., issued in respect of registered holdings should indicate clearly the amount of the gross dividend or interest (see paragraphs 5 and 6) and the amount of United Kingdom Income Tax deducted, and should contain an explanatory memorandum regarding the amount of the gross dividend or interest as liable to United Kingdom Income Tax and the nature and amount of the relief granted in respect of Dominion Income Tax.

In the case of bearer shares or bonds a similar statement is to be incorporated in any notice of payment of dividend or interest issued by the Company or published by them by advertisement or otherwise.

4. The rate of relief in respect of Dominion Income Tax will be computed by reference to the full standard rate of United Kingdom Income Tax (now 6s. 6d. in the £). A shareholder whose "appropriate rate of United Kingdom tax" is less than the standard rate may thus receive through the Paying Agent a greater rate of relief in relation to his dividend or interest than is due to him, and in such a case the excessive relief allowed will be recoverable in the manner provided by sub-section (2) of Section 27. On the other hand where the Dominion rate of tax exceeds one half of the United Kingdom standard rate a shareholder whose "appropriate rate of United Kingdom tax" exceeds the standard rate may make a further claim.

5. Special attention is drawn to sub-section (4) of Section 27 which discontinues the allowance of Dominion Income Tax as a deduction in the computation of liability to United Kingdom Income Tax, and under which in the case of dividends or interest of a Dominion Company distributed to residents in this country an addition for Dominion Income Tax is to be made, for the purposes of the charge to United Kingdom Income Tax, to the net amount of the dividend or interest received in this country. Under proviso (b) to the sub-section, where a Dominion does not grant relief from Dominion Income Tax in respect of the payment of United Kingdom Income Tax, the addition to be made is to be the amount of the relief granted under the section. For the present, therefore, the addition to the net amount of the dividend or interest received by a Paying Agent in this country, in order to arrive at the gross amount on which United Kingdom Income Tax is chargeable, will be calculated by reference to the rate of relief from United Kingdom Income Tax allowed to shareholders, etc., through the Paying Agent.

The United Kingdom Income Tax to be deducted from the dividend or interest and paid over to the Revenue is therefore the tax computed on the gross amount of the dividend or interest, the gross amount being such an amount as after deduction of tax at the rate of relief allowed gives the net amount of the dividend or interest received by the Paying Agent.

The position may be illustrated by the following example—

	<i>s. d.</i>	
Full standard rate of United Kingdom Income Tax	6 0	in the £
Less rate of relief in respect of Dominion Income Tax	(say) 2 0	" "
	4 0	" "
Rate of United Kingdom Income Tax to be deducted		
Net dividend received by Paying Agent	(say) 4 6	per share.
Gross dividend = 4s. 6d. + $\frac{1}{8}$ of 4s. 6d. (or $\frac{1}{8}$ of 4s. 6d.) = 5s. 0d.		
Tax to be deducted by Paying Agent and paid over to the Revenue		
4s. 0d. in the £ on the Gross Dividend of 5s. 0d.	1 0	" "
	3 6	" "
Amount received by shareholder		

6. The enclosed specimen forms of counterfoils of dividend warrants, with an endorsed memorandum, have been designed to meet the convenience of Paying Agents and (with such modifications as the circumstances of any particular case may necessitate) will normally be found to satisfy the requirements of paragraph 3 (d) above.

The following examples may be useful—

**EXAMPLE I.**

Shareholder holds 1000 shares.

Dividend declared (say) 4s. 3d. per share free of Dominion taxes.

	<i>s. d.</i>	
Full standard rate of United Kingdom Income tax	6 0	in the £
Less rate of relief in respect of Dominion Income Tax	(say) 3 0	" "
	3 0	" "
Rate of United Kingdom Income Tax to be deducted		

Gross dividend  $\frac{11}{8}$  of 4s. 3d. = 5s. 0d. per share, being the amount which after deduction of tax at 3s. 0d. in the £ (the rate of relief allowed) gives the net amount declared free of Dominion tax, viz. 4s. 3d. per share.

	<i>s. d.</i>	
Amount of dividend declared	4 3	per share.
Less United Kingdom Income Tax at 3s. 0d. in the £ on the gross amount of the dividend of 5s. 0d.	9	" "
	3 6	" "
Net amount		

Amount of Warrant—£175.  
(i.e. 3s. 6d. x 1000).

EXAMPLE II.

Shareholder holds 100 shares.

Dividend declared (say) 5s. 0d. per share less a particular Dominion Income Tax at 8d. in the £ (2d. per share) but free of other Dominion taxes, equivalent to a net dividend of 4s. 10d. per share after payment or deduction of Dominion Income Tax.

Full standard rate of United Kingdom Income Tax	6 0 in the £
Less rate of relief in respect of Dominion Income Tax (say)	2 0 " "
Rate of United Kingdom Income Tax to be deducted	4 0 " "

Gross dividend  $\frac{11}{12}$  of 4s. 10d. = 5s. 4.44d. per share, being the amount which after deduction of tax at 2s. 0d. in the £ (the rate of relief allowed) gives the net amount declared after deduction of the particular Dominion Income Tax (2d. per share), viz. 4s. 10d. per share.

Amount of  
Warrant—£18:15:11  
(i.e. 3s. 9.11d. x 100).

Amount of dividend declared	5 0 per share.
Less the particular Dominion Income Tax at 8d. in the £	2 " "
	4 10 " "
Less United Kingdom Income Tax at 4s. in the £ on the gross amount of the dividend of 5s. 4.44d.	1 0.89 " "
Net amount	3 9.11 " "

7. The Income Tax deducted should be accounted for on the periodical returns made by Paying Agents to the Board's Inspector of Foreign and Colonial Dividends, York House, 23, Kingsway, London, W.C. 2.

8. This circular supersedes the circulars dated 25th September, 1916, and 10th October, 1917.

I am,

GENTLEMEN,

Your obedient Servant,

*R. V. Kind Stephens*

Secretary.

C. O.

Mr. Paskin  
Mr. Bowyer  
Mr. Dawe (over)

IMMEDIATE.

*Cined 7*

1 APR 1938

Mr.

Sir H. Moore.

Sir G. Tomlinson.

\* Sir C. Bottomley. *1/4/38 for*

Sir J. Shackburgh.

Parlt. U.S. of S.

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Secretary of State.



*82*

Sir,

I am etc. to transmit to you

for the consideration of the Board of Inland Revenue, a copy of a despatch from the Governor of Kenya in regard to a difficulty that has arisen in connection with the arrangements for relief from double taxation in the case of the East African Power and Lighting Company. It is observed from the memorandum by the Commissioner of Income Tax, which forms the enclosure to the Governor's despatch, that this matter has already been the subject of semi-official correspondence and that the Board have requested that the matter may be referred to them officially.

DRAFT.

THE SECRETARY,  
BOARD OF INLAND REVENUE.

*Kenya 64 Conf. 24/3 (No 1)*

*Copy to Kenya 6*

FURTHER ACTION.

As the Board are aware, there

was strong opposition to the introduction

*SECRET*

of Income Tax in the Colony. Since that date  
a "Taxpayers Protection League" has been formed, (38054/37),  
the avowed object of which is to secure the  
repeal of this legislation, and the agitation  
fostered by this association has already been  
the cause of some concern to the Government of  
Kenya. The Board will appreciate that, if ~~it~~  
~~can be represented that~~ difficulties in connection  
with the arrangements for relief from double  
taxation can be represented as so serious that  
they have operated to render it impossible for a  
Company to raise capital which is required for the  
development of their undertaking in the Colony, the  
opponents of this form of taxation in the Colony  
~~will~~  
~~and~~ not fail to make the most of these difficulties,  
for the furtherance of their agitation.

I am accordingly to express the hope that  
the Board will be able to suggest some method of  
overcoming these difficulties, and to request that  
the matter may be treated as one of some urgency.

I am, etc.

(Signed) J. J. PASKIN.

S/S L... 138  
K 29/3

C.O.

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

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24th March, 1938.

Dear Ormsby-Gore,

I have just signed an official despatch dated the 24th March which is now going by airmail. ~~It~~ is merely a covering letter to a memorandum by the Commissioner for Income Tax on what appears to be a hard case and one which may put a very formidable weapon in the hands of Income Tax opponents. I would be very grateful if the letter could be dealt with as a matter of urgency and a solution found that will meet the difficulty fully explained in the memorandum.

Yours sincerely,

*Albrooke Popham*

THE RT. HON. W. ORMSBY-GORE, P.C., K.P.,  
COLONIAL OFFICE,  
DOWNING STREET, S.W.1.  
LONDON.



KENYA  
No. 64



GOVERNMENT HOUSE  
NAIROBI  
KENYA

CONFIDENTIAL

14 March, 1938.

Sir,

I have the honour to transmit for your consideration the accompanying memorandum prepared by the Commissioner of Income Tax, and to request that, provided you see no objection, the advice of the Board of Inland Revenue may be obtained on the points raised in the memorandum, and transmitted to me as early as possible.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*J. Brooke Popham*

AIR CHIEF MARSHAL,

GOVERNOR

THE RIGHT HON'BLE W. GEMSBY CORRY, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET  
LONDON S.W.1.

*Cyprus 4. P.P.R. - 3  
atms 8*

CONFIDENTIAL

MEMORANDUM.

EAST AFRICAN POWER & LIGHTING CO.

The East African Power & Lighting Company which is registered in Kenya has a London Share Register upon which the bulk of its capital is held. In the normal course, dividends on these holdings suffer a deduction of both Kenya and United Kingdom Income Tax and following the introduction of Income Tax in this Colony the Company was required to deduct Shs.2/- in the £ Kenya Income Tax and Shs.5/- British Income Tax making a total of Shs.7/- in the £.

2. When the dividends reached the individual shareholder he was entitled to claim repayment of Sh.1/- in the £ from the Kenya Revenue and a further Sh.1/- from the United Kingdom Revenue if he was liable to United Kingdom tax at an appropriate rate of Shs.2/- in the £ or over, and if he was not liable to British Income Tax the whole of that tax was repaid and no double payment arose.

3. In the case of a Company of this type the British Board of Inland Revenue will grant a relief by concession whereby an approximate equivalent of the tax each shareholder is entitled to reclaim from the British Revenue is allowed directly to the paying agents of the Company in London. One of the conditions upon which this relief is granted is that the Colony concerned does not allow any personal deductions to non-residents by which the tax ultimately payable is reduced.

4. Section 10(2) of the Kenya Ordinance, however, provides for Rules to be made whereby certain allowances should/

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should be given to non-residents and it is the intention of Government as expressed on page 4 of the Report of the Select Committee of the Legislative Council on the Income Tax Bill, a copy of which was transmitted to you under cover of the Colonial Secretary's Note No.D/Leg. Co.26/3/8/38 of the 6th April, 1937, that such allowances should be granted to non-residents and pensioners who were in receipt of small incomes. Further, representations have been made by the European Civil Servants' (Gold Coast) Association, requesting special consideration for pensioners, to which reference was made in correspondence terminating with the Governor's despatch No.665 of the 6th November, 1937.

54 on 38054/1/37

72 on 38054/1/37

5. In July, 1937, the Company was informed that as a result of the provision for allowances to be granted for non-residents, the concessional relief referred to in paragraph 3 above could not be granted by the Board and tax would have to be deducted at the full rate.

6. The Company immediately made representations to the Commissioner that the deduction of tax of Shs.7/- in the £ from their dividends would have a very serious effect on the value of their shares and their prospects of raising further capital in London, and after negotiations an Order was made by His Excellency the Governor in Council under Section 90 (a copy of which is attached), which empowered the Company to deduct Kenya Income Tax at the rate of Sh.1/- in the £ only, thus reducing the total rate from Shs.7/- to Shs.6/-, and at the time it was understood from the Company that this relief would largely overcome the difficulty they were experiencing in London. Since then, however,

the/

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Company has reported that there has been considerable selling of their shares on the London market.

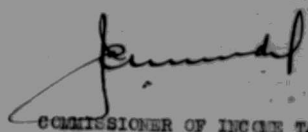
7. In February of this year the Company proposed to make an issue of a further £100,000 Preference Shares for domestic reasons which, it may be stated, were not connected with the financing of the Paragua Tena Power Scheme. The Company has now reported that as a result of the present taxation position the London market absolutely refused to bid for or to underwrite the Issue and the Company were unable to proceed with their flotation. In the near future the Company will probably require some £200,000 additional capital for development work in East Africa and if, as appears to be the case, they will be unable to raise the money in London a very serious position will arise. It will create a strong argument against the imposition of Income Tax in this Colony which it will be difficult to answer and I consider it imperative that a solution to the difficulty should be found.

8. In order to ascertain the view of the Board of Inland Revenue, informal correspondence has been exchanged with them, and they have requested that, in the circumstances any representations on the subject should be made through <sup>the</sup> normal official channel.

9. The purpose of this memorandum is to set out the facts at issue for consideration by the Board of Inland Revenue. My recommendation is that the Board may be asked to advise, having regard to the intention of Government to grant some relief to non-resident persons in respect of small incomes, to which reference is made in paragraph 4 above, what amendments, if any, could be made to the Ordinance which would enable these allowances to be given and the Board to grant concessional relief to the Company.

10. It is earnestly requested that the Board should give the matter their most sympathetic consideration since if no suitable amendment to the Ordinance can be devised Government will have no alternative but to refuse any allowances to non-residents if the Company is to obtain the concessional relief.

As the matter is one of some urgency, it is requested that the Board of Inland Revenue should be asked to furnish their reply as early as possible.



COMMISSIONER OF INCOME TAX.

THE INCOME TAX ORDINANCE, 1937

IN EXERCISE of the powers conferred upon him by section 90 of the Income Tax Ordinance, 1937, His Excellency the Governor in Council has been pleased to exempt (with effect from the 1st day of November, 1937) the East African Power & Lighting Company, Limited, whose registered office is in Hardinge Street, Nairobi, from the provisions of section 21 of the aforesaid Ordinance to the extent that the rate of tax upon that portion of the Company's income out of which dividends not exceeding £700 per annum to any one shareholder are paid, shall be at the rate of sh.1/- in the £.

BY Command of His Excellency the Governor in Council.

Nairobi,  
This 25th day of November, 1937.

R.W. Baker-Seall  
CLERK TO THE EXECUTIVE COUNCIL