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'SHEDDING LIGHT ON PROFIT REMITTANCES BY KENYAN SUBSIDIARIES OF MULTI-NATIONAL CORPORATIONS – THE QUESTION OF SECTIONS 18 (3) AND 23 OF THE INCOME TAX ACT'

SUPERVISED BY: ATTIA WARRIS

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UNIVERSITY OF NAIROBI

SEPTEMBER, 2008

[Signature]

DATE

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DECLARATION

I declare that, "Shedding Light on Profit Remittances by Kenyan Subsidiaries of Multi-National Corporations – The Question of Sections 18 (3) And 23 of the Income Tax Act" is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Kangetta, Brian

Signed: ................................................. September 2008

Supervisor:

Signed: ................................................. September 2008
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<tr>
<td>DTA</td>
<td>Double Taxation Agreement(s)</td>
</tr>
<tr>
<td>EAC</td>
<td>East African Community</td>
</tr>
<tr>
<td>EPZ</td>
<td>Export Processing Zone</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>IPC</td>
<td>Investment Promotion Centre</td>
</tr>
<tr>
<td>MNC</td>
<td>Multi-National Corporation(s)</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation of Economic Corporation and Development</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern Africa Development Community</td>
</tr>
<tr>
<td>TNC</td>
<td>Trans-National Corporation(s)</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>WTO</td>
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The Income Tax Act, Chapter 470 of the Laws of Kenya

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The Value Added Tax Act, Chapter 476 of the Laws of Kenya

The Companies Act, Chapter 486 of the Laws of Kenya

The Tanzanian Income Tax Act, No. 11 of 2004
ABSTRACT

Kenya’s is an economy that has not realised its full potential in terms of vibrancy and competition. Many an economy the size of Kenya’s are producing many times what the Kenyan economy is in terms of revenue. Economic analysts agree that what may be lacking is investment in the country’s economy, and that the economy still has the capability to handle quite a number of investments.

Persons who look to invest in any country, whether they are locals or foreigners, take a few matters into consideration, matters that will either jeopardise or promote their realising a return on their investment. One of the matters that an investor takes into consideration is the proportion of his realised income that he has to surrender to the Government of the day in form of tax. Tax matters affect the amount of return that an investor will eventually take home with him, and it is therefore important to an investor that he is certain, well before placing the investment, of tax matters that he will face.

First, this work reviews the theory behind taxation, tax planning, national and international tax, and the canon of certainty in taxation, while considering the factors that an investor ordinarily has in mind when making a decision whether or not to invest in a given country or state. Second, the dissertation reviews the provisions of the income tax legislation in Kenya, with an emphasis on taxation of remittances that are ordinarily paid out by subsidiaries of Multi-national Corporations to their mother companies.

The study concludes by conducting a comparative survey of the taxation of remittances in other countries of the world, while considering the steps these have made towards bringing some certainty to the abstract arm’s length principle in transactions between related companies, and finally recommending a framework that Kenya may adopt in developing its own certainty in the same regard.

It is expected that, with certainty in taxation matters of a given country, investors are more confident and attracted to invest in such country. This is what we hope for Kenya.