LEGAL NOTICE NO. 5 (CC/28/II)

# THE EAST AFRICAN INCOME TAX MANAGEMENT ACT

*(Cap. 24)*

## THE DOUBLE TAXATION RELIEF (KENYA/DENMARK) ARRANGEMENTS NOTICE 1973

**Declaration of special arrangements between the Republic of Kenya and the Kingdom of Denmark for relief from double taxation.**

IN EXERCISE of the powers conferred by section 55(1) of the East African Income Tax Management Act, the Authority hereby declares—

*(a)* that the arrangements specified in the Convention set out in the Schedule to this Notice have been made between the Government of the Republic of Kenya and the Government of the Kingdom of Denmark with a view to affording relief from double taxation in relation to income tax and taxes of a similar character; and

*(b)* that it is expedient that those arrangements should have effect.

## SCHEDULE

A Convention between the Government of the Republic of Kenya and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital.

The Government of the Republic of Kenya and the Government of the Kingdom of Denmark desiring to conclude a convention for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital have agreed as follows:–

### ARTICLE 1

### PERSONAL SCOPE

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

Subject to paragraph 5 of Article 26 the taxes which are the subject of the present Convention are:

*(a)* In Denmark:(i) the income taxes to the State:

(1) the ordinary income tax to the State;
(2) the old age pension contribution;
(3) the seamen tax;
(4) the special income tax;
(5) the tax on dividends;

(ii) the communal income taxes:

(1) the ordinary municipal income tax;
(2) the church tax;
(3) the municipal income tax to the County;

(iii) the capital tax to the State;

(Hereinafter referred to as "Danish tax").

*(b)* In Kenya:

(i) the income tax;
(ii) the graduated personal tax;

(Hereinafter referred to as "Kenyan tax").

2. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any substantial changes which have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Convention unless the context otherwise requires:

*(a)* the term "Kenya" means the Republic of Kenya, including any area outside the territorial waters of Kenya which, in accordance with international law, has been or may be designated, under the laws of Kenya concerning the Continental Shelf, as an area over which Kenya may exercise sovereign rights with respect to the exploration for and exploitation of natural resources;

*(b)* the term "Denmark" means the Kingdom of Denmark, including any area within which, under the laws of Denmark and in accordance with international law, the sovereign rights of Denmark with respect to the exploration and exploitation of the natural resources of the continental shelf may be exercised; the term does not comprise the Faroe Islands and Greenland;

*(c)* the terms "a Contracting State" and "the other Contracting State" mean Kenya or Denmark as the context requires;

*(d)* the term "tax" means Kenyan tax or Danish tax as the context requires, but shall not include any tax which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;

*(e)* the term "person" means an individual, a company and any other body of persons treated as an entity for tax purposes;

*(f)* the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

*(g)* the terms "Kenyan enterprise" and "Danish enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Kenya and an industrial or commercial enterprise or undertaking carried on by a resident of Denmark and the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean a Kenyan enterprise or a Danish enterprise, as the context requires;

*(h)* the term "nationals" means:

(i) in respect of Kenya:

all individuals possessing the nationality of Kenya and all legal persons, partnerships and associations deriving their status as such from the law in force in Kenya;

(ii) in respect of Denmark:

all individuals possessing the nationality of Denmark and all legal persons, partnerships and associations deriving their status as such from the law in force in Denmark;

*(i)* The term "competent authority" means:

(i) in the case of Kenya, the Minister for Finance or his authorised representative;

(ii) in the case of Denmark, the Minister of Finance or his authorised representative;

2. In the application of the provisions of the present Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of the present Convention.

## ARTICLE 4

## FISCAL DOMICILE

1. For the purposes of this Convention, the term "resident of a Contracting State" means, subject to the provisions of paragraphs 2 and 3, any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. The terms "resident of Kenya" and "resident of Denmark" shall be construed accordingly.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules:

*(a)* he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

*(b)* if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

*(c)* if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

*(d)* if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

*(a)* a place of management;

*(b)* a branch;

*(c)* an office;

*(d)* a factory;

*(e)* a workshop;

*(f)* a mine, oil well, quarry or other place of extraction of natural resources;

*(g)* a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;

*(h)* a building site or construction or assembly project which exists for more than six months;

*(i)* the provision of supervisory activities for more than six months on a building site or construction or assembly project.

3. The term "permanent establishment" shall not be deemed to include:

*(a)* the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

*(b)* the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

*(c)* the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

*(d)* the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

*(e)* the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State – other than an agent of an independent status to whom the provisions of paragraph 6 apply – shall be deemed to be a permanent establishment in the first mentioned State if:

*(a)* he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

*(b)* he has no such authority, but maintains in that first mentioned State a stock of goods or merchandise belonging to that enterprise from which he regularly fulfils orders on behalf of that enterprise.

5. An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph 6.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, where the activities of such an agent are devoted wholly or mainly to that enterprise he would not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute for either company a permanent establishment of the other.

## ARTICLE 6

## INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other

natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. If an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed to the permanent establishment unless the enterprise proves that such sales or services are not attributable to the activity of the permanent establishment.

3. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

4. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, but this does not include any expenses which, under the law of that State, would not be allowed to be deducted by an independent enterprise of that State.

5. In so far as it has been customary in a Contracting State, according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles of this Article.

6. No portion of any profits arising to an enterprise of a Contracting State shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase of goods or merchandise within that other State by the enterprise.

7. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

8. Where profits include items of income which are dealt with separately in other Articles of this Convention then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in both Contracting States according to the law of each Contracting State.

Provided that where such an enterprise derives profits from such operation in the other Contracting State the tax chargeable in that other State shall be reduced by an amount equal to fifty per cent thereof.

3. The provisions of paragraph 1 of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

4. The term "international traffic" means any voyage of a ship or aircraft operated by an enterprise of a Contracting State, except where the voyage is confined solely to places within the other Contracting State.

ARTICLE 9

ASSOCIATED ENTERPRISES

Where

*(a)* an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

*(b)* the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State; if they are so taxed the tax charged in the Contracting State of which the company paying the dividend is a resident shall not exceed:

*(a)* 20 per cent of the gross amount of the dividends if the recipient is a company which owns at least 25 per cent of the voting shares of the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends;

*(b)* 30 per cent of the gross amount of the dividends in all other cases.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt claims, participating in profits, as well as income from other corporate rights assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident, but does not include any interest or royalties to which Articles 11 and 12 of this Convention apply.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that State; if it is so taxed the tax charged in the Contracting State in which the interest arises shall not exceed 20 per cent of the gross amount of that interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State

or local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that Government or local authority shall be exempt from tax of the first mentioned Contracting State. It is agreed that this paragraph applies to the Industrialisation Fund for Developing Countries of Denmark and the competent authorities of the Contracting States may determine by mutual agreement any other governmental institution to which this paragraph shall apply.

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debtclaims of every kind as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debtclaim from which the interest arises is effectively connected; in such a case, the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debtclaim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount; in that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State; if they are so taxed the tax charged in the Contracting State in which the royalties arise shall not exceed 20 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and

films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected; in such a case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount; in that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Notwithstanding the provisions of paragraph 2 gains by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3 shall be taxable only in that State.

5. The provisions of paragraph 4 shall not affect the right of a Contracting State to levy according to its own law a tax on capital gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first mentioned Contracting State at any time during the ten years immediately preceding the alienation of the property.

ARTICLE 14

MANAGEMENT OR PROFESSIONAL FEES

1. Management or professional fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such management or professional fees may be taxed in the Contracting State in which they arise, and according to the laws of that State, but the tax so charged shall not exceed 20 per cent of the gross amount of the management fees.

3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical, professional or consultancy nature.

4. The provision of paragraphs 1 and 2 shall not apply if the recipient of the management or professional fees, being a resident of a Contracting State, has in the other Contracting State in which the management or professional fees arise a permanent establishment with which the management or professional fees are effectively connected; in such a case the provisions of Article 7 shall apply.

5. Management or professional fees shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the management or professional fees, whether he is a resident of that State, or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the management or professional fees was incurred and such management or professional fees are borne by such permanent establishment, then such management or professional fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Article 14, income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless:

*(a)* he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case so much of the income may be taxed in that other State as is attributable to that fixed base; or

*(b)* he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the

aggregate 183 days in the calendar year concerned, in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16

EMPLOYMENTS

1. Subject to the provisions of Articles 17, 18, 19, 20, 21 and 22, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in the other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first mentioned State if:

*(a)* the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and

*(b)* the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

*(c)* the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 17

DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 15 and 16 income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such, may be taxed in the Contracting State in which those activities are exercised.

2. Notwithstanding anything contained in this Convention, where the services of a public entertainer or an athlete mentioned in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived by that enterprise from providing those services may be taxed in the first mentioned State.

3. The provisions of paragraphs 1 and 2 shall not apply to services of public entertainers and athletes, if their visit to a Contracting State is supported wholly or substantially from public funds of the other Contracting State.

ARTICLE 19

GOVERNMENTAL FUNCTIONS

1. Remuneration paid by, or out of funds created by a Contracting State, a political subdivision or a local authority thereof, to any individual in respect of an employment shall be taxable only in that State. If, however, the employment is exercised in the other Contracting State by an individual who is neither a national of the first mentioned State nor resident in the other State solely for the purposes of rendering those services, the remuneration shall be taxable only in that other State.

2. The provisions of this Article shall not apply to remuneration in respect of an employment in connection with any business carried on by a Contracting State, a political subdivision or a local authority thereof for the purposes of profits.

ARTICLE 20

PENSIONS AND ANNUITIES

1. Any pension (other than a pension of the kind referred to in paragraph 2) or any annuity derived by an individual who is a resident of a Contracting State from sources within the other Contracting State may be taxed in that other State.

2. Any pension paid by, or out of funds created by, a Contracting State, a political subdivision or a local authority thereof, to any individual shall be taxable only in that State.

3. The term "pension" means a periodic payment made in consideration of services rendered in the past or by way of compensation for injuries received during the course of an employment.

4. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 21

STUDENTS AND APPRENTICES

1. A student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first mentioned Contracting State solely for the purpose of his education or training shall be exempt from tax in the first mentioned Contracting State on:

*(a)* payments made to him by persons residing outside that first mentioned Contracting State for the purposes of his maintenance, education or training; and

*(b)* remuneration from employment in that first mentioned Contracting State, in an amount not in excess of 13.500 Danish Crowns or its equivalent in Kenyan currency for any taxable year.

2. The benefits of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years.

ARTICLE 22

TEACHERS

1. A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before such visit, a resident of the other Contracting State shall be exempt from tax in the first mentioned Contracting State on any remuneration for such teaching or research in respect of which he is subject to tax in the other Contracting State.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 23

INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention in respect of which he is subject to tax in that State shall be taxable only in that State.

ARTICLE 24

TAXES ON CAPITAL

1. Capital represented by immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by such property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Notwithstanding the provisions of paragraph 2, ships and aircraft operated in international traffic by an enterprise of a Contracting State and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 25

ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the law of Kenya regarding the allowance as a credit to a Kenyan resident against Kenyan tax of tax payable in a territory outside Kenya, Danish tax payable under the laws of Denmark and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Denmark shall be allowed as a credit against any Kenyan tax payable in respect of that income, provided that such credit shall not exceed the Kenyan tax, computed before allowing any such credit, which is appropriate to the income derived from Denmark.

2.*(a)* Where a resident of Denmark derives income from Kenya which may be taxed in Kenya in accordance with the laws of Kenya and the provisions of this Convention, the amount of Kenyan tax payable in respect of that income shall be allowed as a credit against Danish income tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Danish tax payable under the laws of Denmark which is appropriate to that income, before allowing the credit.

*(b)* Where a resident of Denmark owns capital which in accordance with the provisions of this Convention may be taxed in Kenya, the amount of Kenyan tax payable in respect of that capital shall be allowed as a credit against Danish capital tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Danish tax payable under the laws of Denmark which is appropriate to that capital, before allowing the credit.

3. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State, then the first mentioned Contracting State may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted.

4. For the purposes of paragraph 1 in relation to income tax the term "Kenyan tax paid"—

*(a)* shall be understood to include payments made in respect of the tax allocated to Kenya in any assessment in accordance with Section 88 (2) of the East African Income Tax Management Act;

*(b)* shall be deemed to include any amount which would have been payable as Kenyan tax for any year but for—

(i) any investment deduction granted under paragraph 27 of the Second Schedule to the East African Income Tax Management Act, or

(ii) the lower corporation rate of income tax provided by paragraph 2 of the Second Schedule to the Income Tax (Allowances and Rates) (No. 2) Act, 1971, or

(iii) any other provisions which may subsequently be enacted granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purpose of economic development.

The provisions of sub-paragraph (b)(i) and (ii) shall apply for the first ten years for which this Convention is effective, but the competent authorities of the Contracting States may consult each other to determine whether this period shall be extended.

ARTICLE 26

NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities or any other personal circumstances which it grants to its own residents.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first mentioned State are or may be subjected.

4. In this Article the term "taxation" means taxes of every kind and description.

5. The application of the provisions of this Article shall not be limited by the provisions of Article 2.

ARTICLE 27

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation

not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident. The case must be presented within three years of the date of such action or the latest of such actions as the case may be.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States may communicate directly with each other for the purposes of applying the provisions of this Convention. They may also communicate directly with each other in order to agree on variations in any of the Articles of this Convention which shall then be ratified by an exchange of notes.

ARTICLE 28

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or for preventing fraud or fiscal evasion concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

*(a)* to carry out administrative measures at variance with the laws of the administrative practice of that or of the other Contracting State;

*(b)* to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

*(c)* to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 29

DIPLOMATIC AND CONSULAR OFFICIALS

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

2. Insofar as, due to fiscal privileges granted to diplomatic or consular officials under the general rules of international law or under the provisions of special international treaties, income is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

3. An individual who is a member of a diplomatic or consular mission (except honorary consuls) or permanent delegation of a Contracting State which is situated in the other Contracting State or a third State, shall for the purposes of this Convention be deemed to be a resident of the sending State if:

*(a)* he is not a national of the receiving State; and

*(b)* in accordance with international law he cannot be taxed in the receiving State on any income from sources outside that State.

ARTICLE 30

TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, to any area of the territory of Denmark which has expressly been excepted from the scope of this Convention under the provisions of sub-paragraph (b) of paragraph 1 of Article 3, in which taxes are imposed, identical or substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of this Convention by one of the Contracting States under Article 32 shall also terminate the application of this Convention to any territory to which it has been extended under this Article.

ARTICLE 31

ENTRY INTO FORCE

1. This Convention shall come into force on the date when the last of all such things shall have been done in Kenya and Denmark as are necessary to give the Convention the force of law in Kenya and Denmark respectively, and shall thereupon have effect:

*(a)* in respect of income arising for the year of income 1972 and subsequent years;

*(b)* in respect of capital assessed for the calendar year 1972 and subsequent years.

Cap. 24
Sub. Leg.
p. 228

2. The arrangements for the avoidance of double taxation with respect to taxes on income made between the Government of the United Kingdom and the Government of Denmark by a Convention dated 27th March, 1950 and applied with certain modifications to Kenya by Exchanges of Notes dated 17th January, 1959 and 31st October, 1960 shall cease to have effect from the date on which the present Convention becomes effective.

ARTICLE 32

TERMINATION

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to be effective:

*(a)* in respect of income arising for the year of income next following that in which the notice of termination is given, and subsequent years;

*(b)* in respect of capital assessed for the calendar year next following that in which notice of termination is given, and subsequent years.

In witness whereof the undersigned being duly authorised thereto have signed this Convention and have affixed thereto their seals.

Done in duplicate at Nairobi this 13th day of December, 1972, in the English language.

For the Government of the Republic of Kenya:

MWAI KIBAKI

For the Government of the Kingdom of Denmark:

HANS KUHNE