

THE GRADUATED PERSONAL TAX ORDINANCE, 1963

No. 48 of 1963

Date of Assent: 9th December, 1963

Date of Commencement: 1st January, 1964

ARRANGEMENT OF SECTIONS

Section

- 1—Short title, commencement and application.
- 2—Interpretation.
- 3—Imposition of tax.
- 4—Assessment of tax.
- 5—Tax when due and payable.
- 6—Method of payment of tax on income derived from employment.
- 7—Method of payment of tax on income not derived from employment.
- 8—Tax cards and stamps.
- 9—Breach of accounting by collector.
- 10—Penalty for late payment.
- 11—Power of collector to demand tax.
- 12—Collection of tax by suit.
- 13—Collection of tax by distraint.
- 14—Collector may issue summons.
- 15—Objection and appeal.
- 16—Records and assessments.
- 17—Mode of proof.
- 18—Power to demand production of receipt.
- 19—Obstruction of collector, etc.
- 20—Remission and refund of tax.
- 21—Exemptions from tax.
- 22—Rules.
- 23—Cessation of application of Cap. 470.

SCHEDULE.

An Ordinance to provide for the payment of a graduated personal tax

ENACTED by the Central Legislature of Kenya, as follows:—

1. (1) This Ordinance may be cited as the Graduated Personal Tax Ordinance, 1963, and shall come into operation on the 1st January 1964.

Short title,
commencement
and application.

(2) This Ordinance shall apply to and in respect of public officers in like manner as it applies to and in respect of private persons.

Interpretation.

^{Act}
2. In this ~~Ordinance~~, except where the context otherwise requires—

“collector” means any person authorized in writing by the council to be a collector for the purposes of this ^{Act} ~~Ordinance~~;

“council” means the ~~City~~ Council of ~~Nairobi~~;

Cap. 11.

“court” includes any African court established or deemed to be established under the African Courts Ordinance;

“income” means the aggregate income of an individual accruing in, derived from or received ~~in the Nairobi Area~~ in respect of—

(a) any trade, business, profession, occupation, vocation or employment, including the value of any quarter rations, board or residence and any allowance received in respect of employment or services, whether in money or otherwise;

(b) dividends, interest or discounts;

(c) any pension, allowance, charge or annuity;

(d) rents, royalties, premiums and any other income arising from property;

“income derived from employment” means income ~~derived from any employer; and “income not derived from employment” shall be construed accordingly;~~

“the Minister” means the Minister for the time being responsible for local government ~~in the Nairobi Area~~;

“graduated personal tax stamp” means such a stamp as is referred to in section 8 of this Ordinance;

“the tax” ^{means} means the graduated personal tax, or any part thereof, payable under this Ordinance, and includes any penalty, or any part thereof, so payable.

Imposition of tax.

3. (1) Subject to the provisions of this Ordinance and of the Constitution, from and after the 1st January 1964 there shall be paid by every individual ~~in the Nairobi Area~~ a tax, to be known as graduated personal tax, at the rates respectively prescribed by the council, with the approval of the Minister, by notice in the Gazette.

(2) The council shall take all necessary steps to fix the rates to be prescribed under subsection (1) of this section at

the meeting at which the estimates of the council are considered and approved, and in any case such rates shall be fixed annually in advance not later than a date prescribed by the Minister.

(3) The rate of tax payable by an individual under this section in respect of any part of his income shall be the appropriate rate so prescribed by the council within whose area of jurisdiction the income accrues, and the tax so payable shall, subject to the provisions of section 6 of this Ordinance as to initial collection by deduction from salary or wages, be due and owing to the council within whose area the income accrues.

(4) For the purposes of subsection (3) of this section, income shall be deemed to accrue in the area where the service or activity giving rise to the income is performed:

Provided that, in the case of a person who earns income in respect of a service or activity performed in areas under the jurisdiction of more than one council, the income shall be deemed to accrue in the area in which the income is received.

4. (1) The tax payable by an individual shall be assessed—

Assessment of
tax.

(a) in so far as his income derives from employment, on his income from employment for each month, as provided for in section 6 of this Ordinance;

(b) in so far as his income does not derive from employment—

(i) in the case of an individual ordinarily resident in Kenya, on his income (other than income derived from employment) for the year immediately preceding the year in which the tax is due:

Provided that, for the year in which an individual exempt from tax under section 21 of this Ordinance ceases to be so exempt, and for the next succeeding year, his tax shall be assessed on the income which ~~may~~ reasonably be expected to accrue to him during those years respectively;

- (ii) in the case of an individual not ordinarily resident in Kenya who arrives in Kenya with the intention of establishing his residence in Kenya, for the first and second years of such residence on the income (other than income derived from employment) which may reasonably be expected to accrue to him during those years respectively;
- (iii) in the case of an individual not ordinarily resident in Kenya who arrives in Kenya in any year without the intention of establishing his residence in Kenya, on the income (other than income derived from employment) which may reasonably be expected to accrue to him during that year.

(2) Without prejudice to the liability of every individual to pay the tax when due, and of any employer under section 6 of this Ordinance to determine the amount to be deducted from salary or wages in respect of the tax, the assessment of income for the purposes of this section shall be carried out by a collector.

Tax when due
and payable.

5. The tax shall be due and payable—

- (a) in respect of income derived from employment, at the times and in the manner prescribed by section 6 of this Ordinance;
- (b) in respect of other income, on the 1st January in each year or, where an individual on the 1st January in any year either is not in Kenya or is exempt under section 21 of this Ordinance, on the date of his arrival in Kenya or on the date of his ceasing to be so exempt, as the case may be:

Provided that the council may, ^{with approval} specify a date other than the 1st January as the date on which the tax shall be due and payable under paragraph (b) of this section in the area under its jurisdiction, and in such case shall publish notice thereof in the Gazette and in one or more newspapers circulating in that area.

Method of
payment of
tax on income
derived from
employment.

6. (1) The amount of the tax due from an individual liable under this Ordinance in respect of income derived from employment shall be deducted on a monthly basis by his employer from the salary or wages due in respect of the

employment, and the employer shall utilize the moneys so deducted in the purchase of graduated personal tax stamps and shall affix on a card made out in the name of the employee stamps of the value of the tax due in respect of that month, cancelling such stamps by writing thereon in ink or by indelible stamp the date on which the salary or wage, after deduction as aforesaid, is paid.

(2) Each such card shall be held by the employer and shall be delivered to the council at the end of each year or, if the employee leaves the employment during the year, to the employee at the time when he so leaves.

(3) The tax for which an individual is liable in respect of income derived from employment shall be satisfied by the delivery of his graduated personal tax card to the council in accordance with this section, and the council shall issue to the employee a certificate of clearance in the form prescribed in respect of that tax :

Provided that—

(i) if the employee has left his employment before the end of the year he shall, within thirty days after the end of the calendar year, tender to a collector his graduated personal tax card stamped in accordance with this section, and the collector shall issue to him the prescribed certificate of clearance;

(ii) a collector may, at the time of delivery or tender of a graduated personal tax card ^{and may, with or without notice} under this section, or at any time within four years thereafter, demand from the individual any additional tax which in the opinion of the collector was properly due and payable, and may similarly demand any penalty for which the individual ^{may} be liable under section 10 of this Ordinance, and the issue of a certificate of clearance may be delayed until such additional tax or penalty has been paid.

(4) Notwithstanding the foregoing provisions of this section, ~~the treasurer of the council~~ may by writing under his hand authorize an employer to account for the deduction of tax by a method other than that of graduated personal tax stamps, and may at any time, after reasonable notice, vary or cancel such authorization.

(5) Any employer to whom this section applies who knowingly or by neglect—

(a) fails to comply with any of the provisions of subsections (1) and (2) or, as the case may be, of an authorization given to him pursuant to subsection (4), of this section; or

(b) deducts from any salary or wages an amount that is less than the amount properly deductible under subsection (1) of this section,

shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or ten times the amount of the tax if any that would otherwise have been deducted, whichever is the greater.

(6) Where, in consequence of an offence under subsection (5) of this section for which a fine is levied and paid, any shortfall of the tax due to a council is shown to have occurred, the amount of the shortfall shall be paid to the council out of the proceeds of the fine.

Method of
payment of
tax on income
not derived
from
employment.

7. The tax due from an individual liable under this Ordinance in respect of income not derived from employment shall be either—

(a) paid by him by means of stamping a graduated personal tax card at the end of each month in the same manner as is prescribed in section 6 of this Ordinance; or

(b) tendered by him to the appropriate collector, who shall accept the amount so tendered and shall issue to the individual a receipt in the form prescribed:

Provided that a collector may, at the time of such payment or acceptance or at any time within four years thereafter, demand from the individual any additional tax which in the opinion of the collector was properly due and payable by the individual, and may similarly demand any penalty for which the individual may be liable under section 10 of this Ordinance.

Tax cards
and stamps.

8. (1) ~~The treasurer of the council~~ shall keep a sufficient stock of graduated personal tax cards for issue free of charge, and of graduated personal tax stamps for sale, to employers for the purposes of section 6, and to taxpayers for the purposes of section 7, of this Ordinance.

(2) Graduated personal tax stamps (including, as regards the employee and the year to which they apply, stamps cancelled in accordance with section 6 (1) of this ~~Ordinance~~ ^{Act}) shall be deemed to be legal tender in payment of the tax.

9. Any collector to whom a stamped graduated personal tax card is tendered under section 6 (3), or who accepts tax under section 7, of this ~~Ordinance~~ ^{Act}, and who wilfully and without lawful excuse—

Breach of
accounting
by collector.

- (a) omits or refuses to issue a certificate of clearance or, as the case may require, a receipt to the tenderer; or
- (b) issues such certificate or receipt for a value other than that tendered; or
- (c) issues a certificate or receipt otherwise than in the form prescribed,

shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

10. Any individual who in respect of income not derived from employment fails to stamp a graduated personal tax card in accordance with section 7 of this ~~Ordinance~~ ^{Act} or to pay the whole of the tax due from him on or before the 31st March in the year in which the tax is due or before the sixtieth day following his entry into Kenya or his ceasing to be exempt from tax, whichever is the later, shall be liable to pay in addition a penalty equal to twice the amount of the tax in respect of which he is in default:

Penalty for
late payment.

Provided that—

- (i) ~~the council may~~ ^{it may} in respect of the tax due to it in any single year, by notice in the Gazette, appoint a day other than the 31st March aforesaid for the application of this section to any specified area, place, class or community of person;
- (ii) where an individual has, before the 31st March or other day aforesaid, paid tax at one of the rates prescribed under section 3 of this ~~Ordinance~~ ^{Act}, and his

liability to a penalty is due only to a higher assessment having been made, the collector shall exempt him from such penalty if the collector is satisfied that—

- (a) the tax was paid in the bona fide belief that the lower rate was applicable; and
- (b) the higher assessment was not brought to the notice of the individual until after the 31st March or other day aforesaid;
- (iii) ~~the treasurer of the council~~ may, on application by the defaulter, remit the whole or part of any penalty due to it under this section.

Power of
collector to
demand tax.

11. (1) Where it appears to a collector that any individual who in the opinion of a collector is liable to tax under this ~~Ordinance~~^{Act} has not tendered the tax within thirty days of the date or the last date on which it is due and payable pursuant to section 5 of this ~~Ordinance~~^{Act}, the collector may at any time thereafter demand from him the amount of tax which in the opinion of the collector is properly due and payable by such individual, and may similarly demand any penalty due, but in each such case shall specify the council within whose area of jurisdiction the income giving rise to the tax demanded is alleged to have accrued.

(2) In making a demand under this section, a collector may require any individual who he has reasonable cause to believe has not paid the tax to which he is liable either to attend before the collector or to send the amount of the tax to the collector, or, if he considers it likely that such requirement will not be obeyed, he may cause such individual to be arrested by a police officer without a warrant and to be taken without undue delay before a court.

(3) Any individual who without lawful excuse fails to obey the requirement of a collector made under subsection (2) of this section shall be guilty of an offence and liable to a fine not exceeding one hundred shillings or to imprisonment for a term not exceeding one month.

Collection of
tax by suit.

12. (1) The tax and any penalty in respect thereof shall be deemed to be a civil debt due to the council within whose area of jurisdiction the income giving rise to the tax accrued.

and may be sued for and recovered with costs by and in the name of a collector, and, without prejudice to any other mode of recovery, shall be a civil debt recoverable summarily.

(2) Any individual who fails to pay tax within thirty days of the date or the last date on which it is due and payable pursuant to section 5 of this Ordinance, may be called upon by a court at the instance of a collector to show cause why the amount of tax due from him should not be recovered by distress or by attachment of salary or wages, and if he fails to show cause as aforesaid the court may order such tax, together with any penalty which is due under this Ordinance to be recovered by distress and sale of his property or by attachment of his salary or wages.

(3) Nothing in this section shall preclude a court, instead of ordering distress or attachment aforesaid, from ordering that the amount due be paid within a specified period, or on such terms as to payment by instalments as the court may think fit.

(4) Where proceedings are taken under this section the court may order the individual in default to pay such sum not exceeding one hundred shillings by way of costs as the court in its discretion may determine.

13. (1) Where a demand made under section 11 (1) of this Ordinance has been served upon an individual in writing and has not, within twenty-one days of such service or such longer period as may be specified in the demand, been complied with, then, notwithstanding that a valid notice of objection to or appeal against the demand has been given or is pending, ~~the treasurer of the council may, instead of suing for the tax demanded, by warrant under his hand authorize an officer of the council to distrain upon the goods and chattels of the individual:~~ *the person authorized by the treasurer under the warrant, together with such servants or agents as such person may consider*

Collection of
tax by distraint.

Provided that, if the full amount of the tax due is not recovered by such distress, a collector may forthwith recover the deficiency by suit.

(2) For the purposes of levying any such distress, the person authorized by the treasurer under the warrant, together with such servants or agents as such person may consider

necessary, may break open in the day-time any premises; and the person so authorized may require any police officer to be present while such distress is being levied and any police officer so required shall comply with such requirement.

(3) A distress levied by the person authorized under such warrant shall be kept for ten days, either at the premises at which such distress was levied or at such other place as the person authorized under the warrant may consider appropriate, at the cost of the person from whom such tax is recoverable.

(4) If the person from whom such tax is recoverable does not pay the tax due together with the costs of the distress within such period of ten days, the goods and chattels distrained upon shall be sold by public auction for payment of the tax due and all such costs; and the proceeds of such sale shall be applied first towards the cost of taking, keeping and selling the goods and chattels distrained upon and then towards the tax due, and thereafter any surplus arising from such sale shall be restored to the owner of the goods and chattels distrained.

Collector
may issue
summons.

14. (1) Notwithstanding anything in this ^{Act} Ordinance or in any other written law, a collector may serve personally—

- (a) on any person on whom he may lawfully make a demand under section 11 (1) of this ^{Act} Ordinance a summons in the prescribed form requiring that person to attend before a court to answer as to his liability to graduated personal tax or to penalty in respect thereof, at such place and at such date and time (not being less than ten days from the date of such service) as are specified in the summons;
- (b) on any person whom he has reason to suspect of having committed an offence under this ^{Act} Ordinance a summons in the prescribed form requiring that person to attend before a court to answer thereto, at such place and at such date and time (not being less than ten days from the date of such service) as are specified in the summons.

(2) A summons under subsection (1) (a) of this section shall be regarded for all purposes as a summons issued under the Debts (Summary Recovery) ^{Act} Ordinance, and a summons

under subsection (1) (b) of this section shall be regarded for all purposes as a summons issued under the Criminal Procedure Code.

Cap. 75.

(3) A copy of the summons shall be placed before the court by which the charge is to be heard before the time fixed for the hearing.

(4) Any person who, having been served with a summons under subsection (1) of this section, fails without reasonable excuse to attend before the court on the date and at the time specified in the summons or to plead guilty in writing shall be guilty of an offence and liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month.

(5) Offences under this section shall be cognizable to the police.

15. (1) Where a collector has, in pursuance of section 11 of this Ordinance, demanded from an individual tax in excess of the minimum rate, such individual may within thirty days of the demand apply to the collector to ^{collect} revise the amount of the demand, stating the extent and grounds of his objection, and if the collector refuses the application such individual may within twenty-one days of the refusal appeal to a court having jurisdiction in the area of the council in which the tax was demanded.

Objection and appeal.

(2) Every appeal under this section shall be instituted by lodging in court a notice in the form contained in the Schedule to this Ordinance, and the appellant shall forthwith serve a copy thereof on the collector against whose refusal he is appealing.

(3) On any appeal under this section, the court may confirm, reduce, increase or annul the assessment on which the demand was based.

(4) Notwithstanding that an appeal has been lodged under this section and has not been determined, one half of the tax demanded, or that part of the tax which is not in dispute, whichever is the greater, shall be payable in accordance with the foregoing provisions of this Ordinance, and if the amount of the tax payable as finally determined is less than the amount paid in accordance with this subsection the amount overpaid shall forthwith be refunded.

Records and
assessments.

16. (1) The council shall cause to be maintained a record of all individuals in the area of its jurisdiction who are liable to pay the tax.

(2) For the purpose of preparing an assessment, a collector may require the individual in respect of whom the assessment is to be made to furnish him, at such time and place as he appoints, with a full and accurate return of income, together with such particulars as the collector may require for the purpose of ascertaining the income of such individual, and may also, if he considers it necessary, require the individual to produce to him all books, documents and other papers relating to his income.

(3) A collector ^{or an assessor} may require any employer, any owner or occupier of land, any company or any co-operative society, or the agent, representative or officer of any of the foregoing, to furnish such information as the collector considers necessary for the maintenance of the record referred to in subsection (1) of this section or for the purposes of assessment.

(4) A collector ~~may require to attend before him, at such time and place as he appoints, any person whom he is satisfied that it would be inappropriate or impracticable to require to furnish in writing a return or particulars under subsection (2), or information under subsection (3), as the case may be, of this section, in order that the collector may examine such person orally on the matter in question.~~

(5) Any person who—

(a) unnecessarily delays to furnish a return in accordance with subsection (2) of this section, or, as the case may be, to attend before a collector on a requisition under subsection (4) of this section; or

(b) on demand, fails to furnish such information as may be required under subsection (3) of this section; or

(c) knowingly makes any false statement, whether orally or in writing, in relation to any matter affecting his or any other person's liability to tax,

shall be guilty of an offence and liable, for an offence under paragraph (a) or paragraph (b) of this subsection, to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month, and for an offence under

1963

Graduated Personal Tax

No. 48

paragraph (c) of this subsection to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.

17. In any proceedings under this Ordinance—

Mode of proof.

(a) a copy of any appointment of a collector purporting to be made under the hand of the clerk of the council shall be prima facie evidence of such appointment;

(b) the amount of tax or penalty certified by a collector as being due and payable by an individual shall be prima facie evidence of that fact.

18. (1) An authorized officer may at any time require an individual to produce the receipt issued to him for the tax last payable by him, and, if he refuses or neglects to produce such receipt, may require him to furnish information as to the collector to whom he has last paid tax, together with such further information as such officer may require for the purpose of ascertaining whether all the tax due has been paid.

Power to demand production of receipt.

(2) Any person who without lawful excuse fails or unreasonably delays to produce his receipt or to furnish such information as aforesaid, or who knowingly gives any false information, to an authorized officer in response to a requirement under this section, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

(3) In this section—

“authorized officer” means any collector, any officer authorized in writing by a collector for the purposes of this section, or any police officer or tribal police officer;

“receipt” includes a graduated personal tax card such as is referred to in section 8, and a certificate of clearance issued under section 6 (3) of this Ordinance.

19. Any person who obstructs or hinders any collector or other officer, or any employer, in the discharge of his duties under this Ordinance shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

Obstruction of collector, etc.

Remission and
refund of tax.

20. (1) Subject to the directions of the council, the ~~treasurer of the council~~ may in respect of any individual residing within the area of jurisdiction of the council remit the tax or part thereof on the grounds of poverty.

(2) Every remission under this section shall be certified in writing by the ~~treasurer of the council~~, and shall have effect for such period as is specified on the certificate:

Provided that on the directions of the council the ~~treasurer~~ may at any time vary or cancel any such certificate.

Exemptions
from tax.

21. (1) There shall be exempted from payment of the tax—

- (a) every individual who has not attained the age eighteen years;
- (b) every married woman living with her husband, if the husband is liable to tax at the maximum rate prescribed by the council within whose area of jurisdiction she is so living;
- (c) every individual visiting Kenya for a period not exceeding six months in duration, provided he is not an owner or lessee of land in Kenya and is not engaged in any employment or business in Kenya.

(2) The Minister may, by notice in the Gazette, exempt from the tax, to such extent as is specified in the notice, any person or ^{Class of persons} ~~any income of a person so specified~~, and may rescind or vary any such exemption. ^{Class}

(3) The onus of proving exemption from the payment of tax under this section shall be on the person claiming the exemption.

Rules.

22. (1) The Minister may make regulations for the better carrying out of the purposes and provisions of this Ordinance, and particularly, but without prejudice to the generality of the foregoing, for prescribing—

- (a) the duties of the council and persons engaged in the administration of this Ordinance;
- (b) the duties of employers and employees under section 6, and of individuals under section 7, of this Ordinance;

1963

Graduated Personal Tax

No. 48

(c) the forms of demands, returns, receipts, graduated personal tax cards and stamps, and other documents;

(d) the fees to be charged for duplicate copies of any document required under this Ordinance.

(2) Notwithstanding anything to the contrary expressed or implied in any written law, regulations under this section may provide for the following sanctions against non-payment of tax, and for such matters as are incidental thereto—

(a) the withholding of licences, permits and authorizations;

(b) the denial of bursaries, scholarships and entrance to educational institutions maintained or partly maintained from public funds to or in respect of tax defaulters or their children or dependants;

(c) the denial of registration on housing lists, and of the allocation of houses or other accommodation;

(d) the denial of any other personal service provided by the council.

(3) Any...

23. The Personal Tax Ordinance shall, with effect from the 1st January 1964, cease to apply in the Nairobi Area;

Cessation of application of Cap. 470.

Provided that, for the purposes of sections 21 and 23 of the Interpretation and General Provisions Ordinance, the Personal Tax Ordinance shall, within the Nairobi Area, be deemed to be a written law which has been repealed by, and re-enacted in, this Ordinance.

Cap. 2.

SCHEDULE

(s. 15 (2))

IN THE COURT OF THE

AT

NOTICE OF APPEAL

under section 15 of the Graduated Personal Tax Ordinance, 1963

TAKE NOTICE that, I hereby appeal against the refusal of the collector to revise the amount of a graduated personal tax or penalty demand made against me under the above Ordinance.

The amount demanded was Sh.

SCHEDULE—(Contd.)

The area of jurisdiction in which the tax was demanded is that of the City Council of Nairobi.

The date of the refusal to revise it was

AND the grounds of my appeal are as stated overleaf.

Signature

Address

Date

Copy to collector: _____

Name of Office

Address