

PAY ROLL LEVY ACT, 1985

ARRANGEMENT OF SECTIONS

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THE UNITED REPUBLIC OF TANZANIA



No. 12 OF 1985

I ASSENT.

Julius K. Nyerere

President

21ST October, 1985

An Act to provide for the imposition of pay roll levy, to repeal the Workers' and Farmers' Housing Development Fund (Financing and Management) Act, 1974 and to provide for matters incidental to those purposes

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY

- 1. This Act may be cited as the Pay Roll Levy Act, 1985, and shall come into operation on the first day of July, 1985. Short title and commencement
- 2.—(1) In this Act, unless the context requires otherwise— Interpretation
 - “Commissioner” means the Commissioner of Income Tax appointed under the Income Tax Act, 1973. Acts, 1973 No. 33
 - “employment” means employment under a contract of service and “employee” and “employer” shall be construed accordingly;
 - “housing society” means a co-operative society registered under the Co-operative Societies Act, 1982 one of principal objects of which is to make loans to its members for the construction or purchase of houses for their occupation and includes a savings and credit society within the meaning of that expression in the Co-operative Societies Act, 1982; Acts, 1978 No. 14
 - “levy” means the pay roll levy imposed by this Act; Acts, 1982 No. 14
 - “Minister” means the Minister for the time being responsible for finance;

“specified employer” in relation to any calendar month:—

- (a) any employer who employs four or more employees during the whole or any part of that calendar month;
- (b) any employer, or an employer of any category, declared by the Minister by an order in the *Gazette*, to be a specified employer.

(2) Where a body corporate (hereinafter referred to as “the parent company”) owns more than fifty per centum of the issued share capital of any other body corporate (herein after referred to as “a subsidiary”) or of two or more subsidiaries, and not less than three-fourths of the total employees are employees either of the parent company or a subsidiary or of its two or more subsidiaries, the society shall, for the purposes of this Act, be deemed to be an employment based society, and the obligations imposed by this Act on an employer in relation to an employment based housing society shall be required to be discharged by such of the employees as the Commissioner may designate in that behalf or, where no such designation has been made, by the parent company.

PART II

PAY ROLL LEVY

Imposition
of levy

3.—(1) Subject to the provisions of this Act, there shall be charged, levied and paid in every calendar month by every specified employer a pay roll levy of four per centum of the gross emoluments paid in that month by such employer to all the employees employed by him during that month.

(2) For the purposes of this section “gross emoluments” in relation to any employee includes wages, salary, leave pay, sick pay, payment in lieu of leave, fee, commission, bonus, gratuity and any subsistence, travelling, entertainment or other allowance paid to him by the employer in respect of his employment or services, and any amount so paid in respect of employment or services rendered by the employee in any month other than the month in which it is paid shall be deemed to be emoluments in respect of the calendar month in which it is paid.

(3) Where the Commissioner is satisfied that any such subsistence, travelling, entertainment or other allowance represents solely the reimbursement to the employee of an amount expended by him wholly and exclusively in the production of his income from the employment, the Commissioner may, in assessing the gross emoluments of the employee for the purposes of this Act, exclude such allowance or expenditure.

(4) Where an employer provided housing for any employee, the value of the housing, as ascertained for the payment of the Income Tax Act, 1973 in accordance with the provisions of subsection (3) of section 5 of that Act, shall be deemed to be part of the emoluments paid to the employee.

(5) The Minister may, by order in the *Gazette*, provide, either generally or in relation to any specified employer or category of any of the employees employed by the employer to whom the order applies, that such portion of the gross emoluments as may be specified on the order shall be excluded.

4.—(1) No specified employer shall, directly or indirectly deduct from the emoluments of an employee the whole or any part of the levy. **Employer not to deduct levy from employee's emoluments**

(2) Any specified employer who contravenes the provisions of this section shall be guilty of an offence.

5. Every specified employer shall on or before the seventh day of every month pay to the Commissioner the levy due from such employer in respect of the preceding month. **Payment of levy**

6.—(1) Where any specified employer fails to pay the whole or any part of the levy due from him in respect of any month on or before the seventh day of the following month— **Penalties**

- (a) an additional levy equal to twenty-five per centum of the unpaid amount of the levy shall thereupon become and be payable by way of penalty by such employer;
- (b) if such amount remains unpaid by the employer for more than thirty days after the date upon which it is required to be paid, the rate of the additional levy prescribed by paragraph (a) shall be increased by ten per centum of the amount of the levy including penalty, if any, remaining unpaid in respect of each period, if any, remaining unpaid in respect of each period of thirty days or part thereof after such date during which such amount remains unpaid,

and such additional levy by way of penalty shall become and be payable by such employer accordingly.

(2) Any sum payable by way of penalty under this section shall, for the purposes of this Act, be deemed to be levy and shall be collected and recoverable accordingly.

(3) The Minister may remit in whole or in part any penalty payable under this section.

7.—(1) Any levy or penalty payable by any employer under the provisions of this Act shall be a debt due to the Government and may be recovered from such employer as a civil debt by a suit at the instance of the Commissioner or any person authorized by the Commissioner in that behalf. **Recovery of levy and penalty**

(2) Without prejudice to the method of recovery of levy and penalties prescribed by subsection (1) where any amount of levy or penalty is due from any specified employer, the Commissioner may file in a court of a resident magistrate having jurisdiction over the area in which the employer resides or carries on business, a certificate stating—

- (a) the name and address of the person from whom such amount is due, and
- (b) the amount due,

Acts, 1966
No. 49

and upon such certificate being lodged in such court such certificate shall be deemed to be a plaint duly lodged under Order XXXV of the Civil Procedure Code, 1966, and the court shall proceed in the manner in accordance with provisions of that order, and in the event of a decree for payment by the defendant to the Government of the amount found due together with interest thereon at five per centum per month from the date on which the date on which the certificate was filed until payment.

(3) The provisions of subsection (2) shall apply notwithstanding that the amount involved exceeds the pecuniary jurisdiction of a court of a resident magistrate.

(4) Every certificate filed in a court of a resident magistrate pursuant to the provisions of subsection (2) shall be *prima facie* evidence of the truth of the statements contained in such certificate.

Exemption

8. The Minister may by order in the *Gazette* exempt any specified employer or any category of specified employers from all or any of the provisions of this part.

Offences

9. Any specified employer who—

- (a) fails to pay the levy due under this Act within twenty-one days from the date by which it is required to be paid;
- (b) with intent to evade payment of any levy or penalty due under this Act—
 - (i) makes any false statement to the Commissioner or any other public officer connected with the administration of of this Act; or
 - (ii) fails or omits to give any information or submit any return required to be given or submitted by this Act or gives any such information or submits any such return which is false in any material particular; or
 - (iii) does or omits to do any act or thing which he is required to do under the provisions of this Act,

shall be guilty of an offence.

Regulations
relating to
levy

10. The Minister may, either of his own motion or upon advice by the commissioner, make regulations for the better carrying out of the purposes and provisions of this Part of the Act and may, without prejudice to the generality of the foregoing make regulations—

- (a) for the submission of returns and particulars by employers;
- (b) for the refund of any levy paid or collected in error.

PART III

MISCELLANEOUS PROVISIONS

Penalty

11. Any person convicted of an offence under this Act shall be liable to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.

12. Where any offence under this Act or under any regulations made under this Act is committed by a body of persons then, as well as such body of persons, any person who, at the time of the commission of the offence was concerned, as a director, a partner or an officer, with the management of the affairs of such body of persons, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly, unless he proves to the satisfaction of the court that he had no knowledge and could not by the exercise of reasonable diligence have had knowledge of the commission of the offence.

Where
offence is
committed
by body
of persons

13.—(1) The Commissioner may, where he is satisfied that any person has committed an offence under this Act by order, compound such offence by requiring such person to make payment of a sum of money:—

The Com-
missioner
may
compound
offence

Provided that—

- (a) such sum of money shall not be less than one hundred shillings or more than the aggregate of one-fourth of the maximum fine provided for such offence and the whole of the amount of any levy or penalty due from such person;
- (b) the power conferred by this section shall only be exercised where the person admits in writing that he has committed the offence;
- (c) the Commissioner shall give to the person from whom he received such sum of money, a receipt therefor.

(2) Where an offence is compounded in accordance with the provisions of subsection (1) and any proceedings are brought against the offender for the same offence, it shall be a good defence for such offender if he proves to the satisfaction of the court that the offence with which he is charged has been compounded under subsection (1).

(3) Where any person is aggrieved by any order made under subsection (1), he may, within thirty days of such order being made appeal there against to the High Court and the provisions of Part X of the Criminal Procedure Code shall apply *mutatis mutandis* to every such appeal as if it were an appeal against sentence passed by a district court in the exercise of its original jurisdiction.

PART IV

REPEAL AND SAVING

24. The Workers' and Farmers' Housing Development Fund (Financing and Management) Act, 1974 (hereinafter referred to as the repealed Act) is hereby repealed.

Acts. 1974
No. 20
repealed

25.—(1) Notwithstanding the repeal of the repealed Act—

Saving

- (a) Such monies or assets as have accrued into the Workers' and Farmers' Housing Development Fund established by section 12 of that Act shall continue to be administered as a special fund by the Tanzania Housing Bank in terms of section 9 of the Tanzania Housing Bank Act, 1972.

(b) Section 12 of the repealed Act shall continue to operate in respect of the administration of the Fund as if that section had not been repealed.

(c) All loans and guarantees issued or granted under the repealed Act in respect of any person in relation to the Fund shall continue to be enforceable.

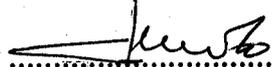
(2) Notwithstanding the provisions of section 24, whereupon the coming into operation of this Act any person is liable to pay any levy or is liable for any penalty that person shall continue to be liable to pay the levy or to suffer the penalty imposed under the Act as if that levy or penalty was imposed under this Act.

"The
Workers'
and
Farmers'
Housing
Develop-
ment Fund

26.—(1) The Fund, to be operated in accordance with section 25, shall continue with purposes and functions specified in section 14 of the repealed Act as if that Act had not been repealed.

(2) The Minister may make regulations under this section providing for the better continuance of the purposes and functions of the specified fund, and generally for the better management of the resources in the fund and the operation of its affairs and business.

Passed in the National Assembly on the twenty-sixth day of July, 1985.


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Clerk of the National Assembly