7. <u>The principle of elasticity</u>

It must be possible to increase / decrease taxes according to the economic situation in the country. It requires that the government should be able to raise the tax rates when it needs more revenue. Elasticity only deals with tax rates e.g. duty can be raised on the number of commodities and the rate varies based on the governments revenue needs. However, care must be taken to ensure that tax rates are not raised unduly high as this will have adverse effects on the productive capacity of the economy.

8. <u>The principle simplicity</u>

A tax system should be simple and plain to the tax payer i.e. the system should not be complicated. It should be simple to understand as to how it is calculated, the method used in its payment and when is to be paid. This minimizes the chances of corruption on oppression of taxpayers by the tax authority.

9. <u>The principle of diversity</u>

Every tax system should be diverse since a single or a few taxes will neither meet the revenue requirement of the state nor will they be equitable. A society should have a variety of taxes so that all the citizens can contribute towards the state revenue according to their respective abilities to pay.

Assignment:

How does the Kenya tax system score against the principles of a good tax system? (20 marks).

<u>CLASSIFICATION OF TAXES</u>

Taxes may be classified according to;

Advantages

- Are not easy to evade since the taxes are included in prices of commodities / services.
- They have a wide coverage since they reach a wider community through the products and services that they purchase.
- They satisfy the principle of convenience since they are paid by the people who have the means to buy only.
- They satisfy the principal of diversity because they are levied on a wide variety of commodities.
- They are less burdensome since they are not felt directly.
- They are flexible since the rates can be applied selectively.
- They help in checking consumption of harmful goods.

Disadvantages

- They are not equitable because they negate the principle of equity (ability to pay) and therefore they are unjust to the poor.
- They go against the principle of least aggregate sacrifice. This ill effect of indirect taxes can be corrected by heavily taxing luxurious goods. However, such a correction can only be partial and as such cannot provide adequate revenue to the economy.
- These taxes feed inflation. The imposition of heavy indirect taxes tends to raise the prices of commodities which may lead to inflation.
- The lack of civil awareness / consciousness. A person who buys a product on which indirect taxes have been imposed may not know that he is paying taxes to the government.

2. **Bases of Tax**

Is the legal description of the object for taxation e.g. the base of excise duty is usually on the production and packaging of a specified goods. The base of income tax is the income of the assesses. The base of each tax has to be defined legally and it is to be quantified for the purpose of determining the tax liability of an individual. A tax base may also have a time dimension e.g. income tax is usually on annual basis of accrual / receipts. The authorities while determining the tax base are expected to give due consideration to various cases like those of:

a. Cost of collection
b. Administration
c. Effects of the tax etc

With the passage of time, a tax base may grow or shrink.

3. **Rates of Tax**

Under this classification, taxes can be;

a). Progressive tax c). Digressive tax

Sweepstake winnings	5,000	
Profit on sale of old furniture	1,200	
Cash gifts while in hospital	1,600	
Horse race winnings	4,000	55,000
Net Taxable profit		42,000

Example 4

Mr. Juma presented the following for the year ended 31st December 2019.

	Kshs."000"		Kshs."000"
Sales			13,000
Less: Cost of Sales: Opening stock	2,200		
Purchases	4,000		
Closing Stock	(800)		(5,400)
Gross Profit			7,600
Other operating incomes			400
Total Income			8,000
Less: Expenses			
Salary and Wages	2,500		
Rent	40		
Advertisement	120		
Transport	60		
Depreciation	75		
Interest on loans	450		
Commissions paid	90		
Printing & Stationery	144		
Repairs & Maintenance	380		
Postage & Telephone	17		
Legal fees	23		
Insurance	110		
Gifts	4	4,013	
Net Profit		3,987	

Additional Information

1. Opening and closing stock each been understated by 10%
2. Other operating incomes included Kshs.50,000 relating to gains on sale of furniture.
3. Salaries and wages include salaries to Mr. Juma of Kshs.300,000 for the year ended 31st December 2009.
4. Transport cost includes Kshs.18,000 paid to the owner on account of a private trip.
5. Gifts were given to the staff of the firm during the year and party.
6. Capital allowances due to the firm for the year ended 31st December 2009 agreed at Kshs.120,000

Example 2

Unga safi and Ngano are partners trading under the name Unga Safi wa Ngano enterprises, sharing profit and losses in the ratio 4:3:3. The final accounts as at 31st December 2019 was as follows:

Profit & Loss Account

	Shs.		Shs.
Rent, rates and taxes	150,000	Gross Profit	2,300,000
Salaries and Wages	427,000	Miscellaneous receipt	150,000
Office expenses	204,000	Discounts	80,000
Printing and stationery	64,000	Rent from property	132,000
Installment tax paid	45,000	Profit on sale of shares	100,000
Advertising	73,000	Interest on deposits	120,000
Interest on capital – Unga	60,000		
- Safi	70,000		
- Ngano	80,000		
Legal Charges	70,000		
Commission to partners – Unga	45,000		
- Safi	50,000		
- Ngano	92,000		
Depreciation	68,000		
Bad debts	99,000		
General expenses	100,000		
Donation to famine relief	120,000		
General reserve	12,000		
Local taxes on property	46,000		
Electricity	17,000		
Showroom expenses	1,040,000		
Net Profit	2,882,000		2,882,000

The partners have provided the following information in support of the accounts:-

i. It has been the practice to value the stocks at cost price. However, the closing stock at 31st December 2008 of Kshs.180,000 had been valued at market price which was less by 10% of its cost price.
ii. Salaries and wages include salaries amounting to Kshs.40,000 paid to Safi.
iii. Advertising include Kshs.20,000 spent on special advertising campaign to introduce a new product in the market.
iv. Legal charges include a sum of Kshs.12,000 paid as fine and penalty.
v. Capital allowances have been agreed with the CIT at Kshs.90,000.
vi. Mr. Unga's other incomes include Kshs.120,0000 from rent. He was brought forward business loss of Kshs.135,000 from the assessment of the year of income 2016 of the partnership.
vii. Mr. Safi has got no other income.

viii. Mr. Ngano has income of Kshs.2,000,000 from horse bet winnings. He also brought forward a business loss of Kshs.135,000 from the assessment of the year of income 2016 of the partnership.

Required:

a. Compute the total taxable income from the partnership – business.
b. Prepare the partnership distribution schedule.
c. Calculate the income tax due to each partner for the year of income 2019.

Unga, Safi Wa Ngano Enterprises

Calculation of adjusted taxable partnership profit

	Kshs.'000'	Kshs.'000'
Net Profit as per the accounts		1,040
Add back: Disallowable expenses/Income omitted		
Salaries & wages		40
Advertising		20
Legal charges		12
Installment tax paid		45
Interest on capital- Unga		70
- Safi		80
Commission to partners- Unga		45
- Safi		50
Depreciation		92
Donation to famine relief		100
General reserves		120
Local taxes on property		12
		1,786
Less: Allowable expenses omitted/non-business income:		
Capital Allowance	90	
Rent from property	132	
Profit on sale of shares	120	
Understated stock	20	342
Adjusted taxable partnership profit		1,444

Unga, Safi Wa Ngano Enterprises

Distribution Schedule

	Unga '000'	Safi '000'	Ngano '000'	Total '000'
Salaries & Wages	-	40	-	40
Interest on capital	60	70	80	210
Commissions	40	50	-	95
Share of capital	329	329	329	987
	544.6	489.7	409.7	1,444
Other Sources				
Rent from property	52.8	39.6	39.6	132

Question:

Chumex Ltd prepares its account to 31st December each year and as proposed. Its profit and loss account for the year 2019 as shown below:-

Expenses	Notes	Kshs.
General administration		40,000
Repairs and renewals	(i)	12,000
Depreciation		10,000
Subscriptions and donations	(ii)	2,000
Bad debts	(iii)	8,000
Directors fees and expenses		5,000
Patents w/o		2,500
Preliminary expenses	(iv)	3,000
Retirement benefits	(v)	50,000
Rent, rates & insurance		30,000
Legal and accountancy fees	(vi)	41,500
Interest in lieu of dividends		5,000
Interest on overdue tax		2,500
Net Profit		30,500
		242,000

Incomes	Notes	Kshs.
Gross Profit b/d		200,000
Bad debts previously w/o		1,000
Dividends (gross)	(vii)	5,000
Gain on sale of plant & machinery		10,000
Tax refund		20,000
Post bank interest		6,000
		242,000

Notes: Kshs.

i. Repairs and renewals

	Kshs.
Redecoration of an existing building	3,000
Renovation to new building	5,000
Partitioning and carpeting of office	4,000
	12,000

ii. Subscriptions and donations

	Kshs.
National chamber of commerce & industry	1,000
Northeastern refugee fund	1,000
	2,000

iii. Bad debts

This was an account of previous company employee who cannot be traced.

iv. Preliminary expenses

	Kshs.
Legal fees on issue of shares at stock exchange	2,000
Payment of stationery before commencement of business	1,000
	3,000

v. Retirement benefits

○ NSSF contribution	5,000
○ Registered pension scheme for senior mngmt.	40,000
○ Gifts to retiring staff	5,000
	50,000

vi. Legal and accountancy fees

○ Staff service agreement	2,000
○ Audit fees	30,000
○ Legal fees for lease (non-renewable)	4,000
○ Legal fees for plot acquisition	5,500
	41,500

vii. Dividends (gross), these were from a subsidiary company where Chumex Ltd holds 60% of the shares.

viii. Capital allowances for the year have been agreed by Kshs.30,000.

Required: Compute the tax liability for Chumex Ltd for the year 2019.

CHUMEX LTD

COMPUTATION OF ADJUSTED PROFIT/LOSS FOR THE YEAR 2019

	Kshs.	Kshs.
Net Profit as per the accounts		30,500
Add back: Disallowable expenses		
Renovation to new building		5,000
Partitioning and carpeting of office		4,000
Subscriptions and donations: NE refugee fund		1,000
Bad debts		8,000
Legal fees on issue of shares at the stock exchange		2,000
Payment of stationery before commencement of business		1,000
Legal fees for lease (non-renewable)		4,000
Legal fees for plot acquisition		5,500
Depreciation		10,000
Interest on overdue tax		2,500
Patents w/o		2,500
		76,000
Less: Disallowable income included/allowable expenses omitted		
Dividends (gross)	5,000	
Capital allowances	30,000	
Gain on sale of plant & machinery	10,000	
Post bank interest	6,000	
Tax refund	20,000	(71,000)
Adjusted Net Profit		5,000

Assumptions

i. NSSF contributions were the contributions paid by the employer on behalf of the employees.
ii. Staff service agreements were entered after starting the business hence allowable.
iii. The lease was capable of going / exceeding 99 years hence disallowed.

Calculation of corporation tax
= 5,000 x 30/100
= Kshs.1,500

Question:

Millers Ltd is a manufacturing company located at Nairobi's Industrial area. Its profit and loss account prepared from the books of accounts for the year ended 31st December 2009 was as follows:

Expenses	Notes	Kshs.
Gross profit		1,864,000
Investment income	(i)	284,636
Profit on sale of shares		216,324
		2,364,960
Directors remunerations	(ii)	1,020,000
Interest expenses	(iii)	273,600
Audit fees and expenses	(iv)	216,000
Dad debts	(v)	158,400
Depreciation		844,760
Miscellaneous expenses	(vi)	133,600
Net Profit		218,600
		2,364,960

Notes:

		Kshs.
i.	Investment income	
	○ Dividend from KCB (net)	72,000
	○ Interest from fixed deposit account (KCB)	58,760
	○ Interest on treasury bills	98,876
	○ Dividends from subsidiary company	60,000
		284,636
ii.	Directors remuneration	
	○ Directors fees	240,000
	○ Travelling expenses for directors	400,000
	○ Payment to pension scheme	160,000
	○ Directors pay for wrongful termination of cont.	220,000
		1,020,000

Kshs.

a). In respect of what can a claim be made

A claim may be made in respect of expenditure incurred in any year of income e.g. Capital expenditure incurred in Kenya by any person carrying on mining operations, expenditure on development, administration and management before production / during a period of non-production.

Qualifying mining expenditures therefore include:

1. Cost of prospecting and exploring the mine.
2. Cost of acquiring rights over the mines and the minerals. This does not include the cost of land.
3. The cost of development, administration and management during prospecting, explorations and during the period prior to the commencement of mining operations and also during periods of temporary stop pages of the miner.
4. The cost of the buildings, machineries and other assets that would have little or no value if the mine ceased to operate.
5. Any other intangible drilling costs.

The deductions are not calculated on time basis.

b). Who is entitled to claim?

Paragraph 17(1) provides that a deduction may be claimed by a person carrying on business of mining and who incurs expenditure.

Sub-paragraph (i) provides that where expenditure is incurred by a person about to carry on a business of mining, it shall be treated as having been incurred by him on the first day on which he does carry it on.

c). What is entitled to claim?

A person entitle to claim may deduct in computing his gains or profits for any year of income in which he incurs qualifying expenditure, an amount equal to two-fifth of such expenditure, and in each of the following six years an amount equal to one-tenth of the expenditure. Normally the whole of the expenditure is written off over seven years.

d). Miscellaneous Provisions

i. Paragraph 18 provides for the position where assets representing qualifying expenditure change hands during the period when deductions are being giving and empowers the commissioner to make such apportionments but vendor and purchaser as he considers just and reasonable.

ii. Paragraph 19 provides that separate and distinct mining operations carried on by the same person in mines that are not contagious shall be treated as separate trades.

iii. Paragraph 21 provides / imposes a liability to tax upon the vendor of assets representing expenditure where under paragraph 20 (2) the purchaser is deemed to have incurred expenditure equal to the price paid by him for such assets.

INDUSTRIAL BUILDING DEDUCTION (IBD)

Is a special deduction that is granted in respect of capital expenditure on industrial buildings as per the second schedule of the ITA which states "Where a person incurs capital expenditure on the construction of an industrial building and the industrial building is used for business carried on by the person / the lessee, a deduction called IBD shall be made in computing the persons gains / profits from the business".

Rates of IBD

- The standard rate of 2½% of the qualifying cost per year on the straight line basis (the life of an industrial building is usually estimated at 40 years)
- Where a tax payer considers that the life of an industrial building is less that 40 years, he can apply to the CIT for an accelerated rate, i.e. a rate higher than 2½% if the CIT agrees, this shall be the rate of IBD for that person.
  The life of an industrial building may be less than 40years due to the type of construction / the use to which the building is put.
- In case of hotel buildings certified by the CIT to be industrial buildings under the act and gazette in the official Kenya Gazette, the rate of IBD is 4% of the qualifying cost of 25 years on the straight line basis.

***Note*: Effective 1st January 2010, the rate shall be 10% for 10 years on a straight line basis.**

Industrial Building

Is a building in use on;

a. For the purpose of business carried on in; milling factory / any other purpose e.g. soap making, juice, biscuits, detergents manufacturing, beer making, posho mills etc.
b. For the purpose of transport e.g. docks, tunnels, electricity and hydro-powers undertakings.
c. For the purpose of business which consist of manufacture of goods / materials or subjection of goods to any process.
d. For the purpose of business which consists of the storage of goods / materials;
   - Which are to be used in the manufacture of other goods / materials.
   - Which are to be subjected in the course of any business to any process.
   - Which having been manufactured / subjected in the course of business to any process have not been delivered to the purchaser.
   - On arrival by sea / air in to any port of Kenya e.g. container depots at Embakasi, Kisumu, Mombasa and Eldoret, go-downs, warehouse and stalls owned by clearing and forwarding agencies.
   - For the purpose of a business consisting of; ploughing / cultivating agricultural land but not by the farmer. These are buildings that are used by agricultural contractors.
   - For the purpose of a business which may be declared by the minister for finance in the Kenya Gazette as an industrial building.

Qualifying Cost for IBD – Refer ID (they are the same)

Additional Notes

a) Where an industrial building is used for part of an accounting year, the annual IDB will be used / reduced proportionally to the period it was used. Similarly, where a building is used for more than 12 months, the IBD will be extended proportionally to the period it was used. However, where a fraction of a month is involved, the whole month's IBD shall be granted.

b) Where a building in use is sold and continues to be used as an industrial building by the purchaser or its lessee, the new owner will inherit the residue of expenditure not yet claimed by the former owner, thus the price paid for such a building (purchase price) shall be irrelevant for the purposes of IBD to the purchaser.

c) Where a building is sold before use:
- ❖ By the person other than the builder (contractor), the qualifying cost of the buyer shall be the lower of the price pain and construction cost.
- ❖ By the builder, the qualifying cost shall be the price paid.
- ❖ To more than one person, the last price shall be the qualifying cost of IBD.
- ❖ Where a building has been put to use and subsequently dis-used and then used again for the purposes of determining the residue of expenditure and national IBD is computed in respect of the dis-used period.

As from 1^{st} January 1987, IBD is computed on the residue after ID.

Example1

Mr. Samuel Tumbo is the owner of a company manufacturing nails in Kisumu. He started his business on 1^{st} January 2004 when the qualifying ID was 60%. In the course of operating his business, he incurred the following expenditure:-

	Kshs.
Purchase of land from Kisumu City Council (2004)	4,000,000
Buildings (including an office of Ksh.850,000)- 2004	8,000,000
Purchase of motor vehicles (2007)	6,000,000
New Machinery (2008)	4,000,000
Tractor and Trailer (2006)	800,000
Security wall (2004)	6,000,000

Required:
Calculate ID and IBD for the year 2008 only.

The second schedule paragraph 7 states "Where during the year of income, machinery held by a person if used by the person for the purpose of his business, there shall be made in computing the persons gains / profits and deduction referred to as wear and tear deduction.

Note: 1. Wear and tear deduction is granted in respect of machinery.
2. The person must own such machinery.
3. The machinery must be used by the person for business.
4. The machinery must be used anytime in the year of income.

Machinery

For the purpose of wear and tear deductions, the term machinery though not defined by the Act has been given a very wide meaning. It will include and other forced asset other than land, buildings and loose tools, e.g. Computers, printers, motor vehicles, tractor, combined harvester, bicycles etc. For the purpose of wear and tear deduction machinery are classified into four classes or pools (with effect from1st January 2010). The aggregation of machinery for the purpose of wear and tear deductions is referred to as pooling of machinery. Each class will be granted wear and tear deduction on a give percentage and this is granted on the reducing balance basis.

Class / Pool for wear and tear deduction

Class I- 37½%: This is the class of heavy class machinery and moving harvesters, cranes, trailers, lorries (Zor=3 tonnes), forklifts, trains, breakdowns, buses.

Class II- 30%: This class was introduced in respect in respect of the office machinery and equipment brought owned and after 1st term 1992 the machinery include; computer hardware, photocopier, fax machines, telephone duplicating machines, calculator, typewriters, raters etc.

Class III- 25%: This was introduced with effect from 1st January 2010. This only covers aircrafts.

Class IV- 25%: Class of all other self propelling machinery e.g. lorries (less than 3 tonnes) saloon cars/ motor vehicles (if not commercial a limited notional cost of Kshs.2m as a maximum).

Class V- 20%: Introduced with effect from 1st January 2010 and will cover telecommunication equipments for telecommunication operators.

Class VI- 12½%: Introduced with effect from 1st January 2010 and will cover ships.

Class VII- 12½%: Class for all other machinery that do not qualify for any other class above e.g. wheelbarrows, cuts, bicycles, trolleys, plant and machinery (residue) office partitions, carpets, neon lights, billboards, shock corners e.t.c

Class VIII- 5%: Was introduced with effect from 1st January 2010 and include company software.

Example 2:

Given below are assets available for Onyango Productions Ltd. on 1st January 2019.

	Kshs.		Kshs
Goodwill	200,000	Mercedes Benz	1,320,000
Land	8,000,000	Security Wall	400,000
Buildings	17,000,000	Workers' Quarters	6,000,000
Tractors	1,650,000	Boilers	2,000,000
Lorries (>3 tonn)	1,970,000	Sorter and conveyer	2,400,000
Furniture	1,200,000	Office Equipment	1,150,000
Milling Machines	12,500,000		

During the year, the following assets were sold:

	Kshs.		Kshs
1 tractor	600,000	1 lorry	300,000
Furniture	250,000	Milling machine	1,000,000
Office equipment	350,000		

The following items were acquired during the year;

	Kshs.		Kshs
Peugeot 504 saloon	875,000	Tractor	1,770,000
Delivery van	766,000	An executive desk	95,000
Office equipment	415,000		

Required:

Compute the W & TD for Onyango Productions Ltd for the year ended 31st December 2019 , showing the WDV as at that date and assuming that the opening balances have been agreed by the CIT.

ONYANGO PRODUCTIONS LTD

Computation of Wear and Tear Deductions for the year upto 31.12.2019

	Class i 37.5% (shs.)	Class ii 30% (shs.)	Class iii 25% (shs.)	Class iv 12.5% (shs.)
Tractors	1,650,000	-	-	-
Lorry (> 3 tons)	1,970,000	-	-	-
Mercedes Benz	-	-	1,320,000	-
Boilers	-	-	-	2,000,000
Sorter & Conveyor	-	-	-	2,400,000
Furniture, f&fs	-	-	-	1,200,000
Office Equip.	-	1,150,000	-	-
Milling machine	-	-	-	12,500,000
	3,620,000	1,150,000	1,320,000	18,100,000

7. Bad debts w/o of the Kshs.68,600, Kshs.20,000 was included in respect of surplus machinery paid after payment of a deposit of Kshs.10,000 and the purchaser disappeared.
8. Capital allowances were agreed with the principle accessor of income tax of Kshs.277,000.
9. Assume that dividends of Kshs.600,000 had been declared and paid in cash in March 2009. Also assume that the society is to be taxed under section 19A (3) of the income tax act.

Required:
Determine the total taxable income of the society and the tax payable there on.

Fanya Kazi Farmers Co-operative Society Ltd.
Determination of Total Taxable Income for the Year

	Shs.	Shs.
Net operating profit as per the accounts		895,480
Entertainment	600	
Donation: To local church	8,000	
Salaries & wages: Payee	16,000	
○ Retirement funds contribution	8,400	
Legal expenses; fee for advocates	26,000	
Repairs and renewals	6,000	
General expenses- cost of installing heater	20,000	
Bad debts	20,000	
Depreciation on motor vehicles	120,000	
Ushirika day celebrations	3,600	
Depreciation of buildings	90,000	318,600
		1,214,080
Less: Allowable expenses omitted /disallowable incomes		
Capital allowances	277,000	
Dividend income	11,000	(288,000)
		926,080
Less: Dividends to members		
Lower of 600,00 or (80% x 926,080)		600,000
Net taxable income		326,080

Tax due = 326,080 x 30%
= Kshs.978,240

<u>Objections, Appeals and Reliefs in Respect of Errors, Offences and Penalties.</u>

<u>Introduction</u>

Taxpayers are required to pay tax on their income on the basis of the assessment made on the income. However, if they feel that they have been unfairly assessed, they have the right to object to the assessment made in the prescribed manner to the commissioner of income tax.

<u>Objections by Taxpayers</u>

The taxpayer is required to pay taxes on the income as per assessment either self assessment or originating from the commissioner. However, where one taxpayer feels that the income as per assessment arising from the commissioner is too high he has the right under one, ITA to object such an assessment and an appeal shall be registered for hearing (Note) that a taxpayer will not be allowed to appeal against his / her own self assessment in errors so as to be a relief of error or mistake.

An objection raised by a taxpayer is referred to as a note of objection for such a note to be treated as a valid note of objection it must be;

- In writing i.e. a taxpayer cannot object orally.
- It must state the grounds of objection i.e. the reason why one objection is lodged.
- Within 60 days from the date of service of notice of assessment plus 10 days to give 70 days.
- The 10 days of service are taken to be one maximum time that mail would have been delivered to any address of Kenya or abroad.

<u>Dispute of Notice of Assessment</u>

A taxpayer can dispute a notice of assessment due to mistakes / errors arising to;

- The amount of income or loss assessed.
- The amount of tax payable
- Allowances or deductions made or omitted to have been made when computing income / loss
- Imposition of penalties under Section 72 of ITA.
- Reliefs granted or omitted to have been gained,
- The date of tax due
- An assessment is time borrowed (income after 7 years) provided the grounds of objections are clearly stated. The CIT is obligated to register one objection. However, where one grounds of objection are unfolded or not material or not fundamental due to taxpayer lack of knowledge or more arithmetic errors, such matters can be cleared through correspondence between the taxpayer and the commissioner and an agreement shall be struck between objection and the commissioner withdrawing one assessment through an amended assessment.

  There are certain instances when one taxpayer will not be able to meet the 60 days deadline in which a notice of objection should be made provided there are good grounds, Section 54 of ITA provides that taxpayers can lodge a late notice of objection. The act will only admit a late objection provided the taxpayer can demonstrate that.

  a) He / she was prevented from objection in time by reason of sickness.
  b) Absence from Kenya.

The local committee consists of 9 members appointed by the Minister for Finance and will consist of;

- A chairman
- Not more than 8 other members

The period of office for the local committee is usually 2 years unless;

- A member tenders a resignation
- A minister revokes a member's appointment for reasons of;
    - Fail to attend 3 consecutive meetings (LC) or
    - A member being unfit to perform duties of his office due to reasons mental or physical disabilities.

Local Committee Rules

The procedure governing the conduct of the local committee are referred to as the Income Tax (LC) rues and they shall be followed in relation to;

1. The manner in which an appeal will be made to a local committee
2. The procedure of hearing an appeal and the records to be kept by the LC
3. The manner in which they convene meetings, the venue, and time to hold a local committee meetings
4. The scale of costs that may be awarded by a local committee.
5. The general matters of carrying out an LC appeal.

A taxpayer has a right to appeal to LC against the CIT decision against him, mainly the CIT refusal to amend an assessment after the taxpayer has lodged a valid notice of objection. The taxpayer will have;

a) A right to appeal against such a confirming notice
b) The CIT may have issued a non-agreed amended assessment
c) The CIT may refuse to accept a late notice of objection
d) The CIT may issue a notice to taxpayer requiring him to maintain his books of accounts in a specific language
e) The CIT may refuse to make a refund of taxes.

In the above cases, an appeal may be lodged by a taxpayer to the local committee.

Procedure of Appeal (LC)

1. The taxpayer must notify the CIT of his intention to appeal to the LC giving a notice within 30 days after receiving the notice within 30 days after receiving the notice from the CIT or after receiving the commissioner's decision.
2. A notice of intention of appeal must be copied to the clerk of the LC.
3. Copies of Memorandum of Appeal and a state of facts must be sent t to the CIT. the taxpayer should submit the following documents to the clerk of the LC.
    - Memorandum of Appeal. It will state the grounds of appeal and shall be submitted in original plus 9 copies.
    - Statement of Facts. Will give the sequence of events which took place regarding the assessment, objection and eventually the appeal. It will give the information of the date of assessment being objected to the date it was confirmed **OR** when a non-agreed amended assessment was issued. Similarly, the statement shall be the original plus 9 copies.
    - A copy of the letter. The notice of the intention to appeal to the LC, which was sent to CIT.

- A copy of the CIT's decision. Against which the appeal is being lodged e.g a copy of a non-agreed amended assessment or a copy of confirming notice. When all the appeal documents have been filed in time to the clerk of the LC, the clerk will register the Appeal for hearing.
  The clerk will not register an appeal for hearing unless the taxpayer is prevented from lodging an appeal in time to the LC for reasons such as Absence from Kenya and sickness or any other reasonable cause.

In this case, the LC can give a taxpayer an extension of time within which to lodge an appeal stating why the appeal was not lodged in the specified time.

THE TRIBUNAL

This is an appeal body established by Minister for Finance by a notice in Kenya Gazette. It consists of;

- Chairman
- Not less than 2 and more than 4 other members i.e. min 3 and a max of 5.

The quorum for the Tribunal is the chairman and 2 other members. The tribunal is governed by IC (tribunal) rules.

A tribunal will hear appeals on assessment that are based on the CIT direction under Section 23 and 24 of ICTA.

The commissioner is empowered to reject certain business transaction, where he is for the opinion that they avoid / reduce taxes. He can direct for the necessary adjustment on taxable income and issue an assessment accordingly. If the taxpayer objects and the subsequent assessment, he has the right to appeal to a tribunal e.g. of such taxes which the taxpayer may object and which the commissioner may fill are suspect are;

- A child being paid very high salaries for performance of minor duties.
- A director of a company buying a car from the company at a throw away price as a trading in.

The commissioner is empowered to reject each transactions and raise an assessment accordingly.

Under Section 24, the CIT is empowered to direct that a company makes a further distribution of dividends. i.e. where the CIT is satisfied that there has been a short fall and where the CIT directs for the distribution the taxpayer can appeal against such kind of direction.

Matters relating to an appeal to a tribunal are normal handed in the head office and once the case has been registered in the respective tax district, the tax payable will be stood over i.e suspended for being paid 1st and the relevant offices are informed. The file will be sent to the Head office for further instructions.

Where the taxpayer is not satisfied with the decision of the tribunal, he can make an appeal to the high court by giving a notice within 15 days after he has been served with the decision.