NOT FOR PUBLICATION

INSTITUTE OF CURRENT WORLD AFFAIRS

JBG-65
East Africa High Commission:
(20) Interterritorial Agencies
for Collection of Revenue

Washington, D.C.
November 26, 1954

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Dear Mr. Rogers:

There are two revenue collecting departments of the East Africa High Commission: the East African Customs and Excise Department and the East African Income Tax Department. Under the East Africa (High Commission) Order in Council, 1947, the High Commission and the Central Legislative Assembly are responsible for the administration of the assessment and collection of income tax and customs and excise duties on a uniform basis throughout East Africa, but determination of personal allowances and rates of income tax or customs and excise duties remains a territorial matter. Sir Philip Mitchell, speaking in Central Legislative Assembly in January 1952 with reference to the East African Income Tax Management Bill, the East African Excise Management Bill, and the East African Customs Management Bill, clearly recognized this important limitation. These bills did "of course, not include the power of taxation, since public opinion is not ready for that and is unlikely to be for some years to come."[1]

The two departments together in 1951 were providing more than half of the annual recurrent revenues of the East African Governments. In 1952 the collections were expected to approach £23 million out of a total governmental revenue of £42 million.

There is an East African Revenue Advisory Board to advise the two revenue collecting departments and discuss taxation questions from the point of view of East Africa as a whole. This Board, established in 1949, consists of a Chairman and twelve members, including two High Commission officials (the Finance Member who is Chairman of the Board, and the Economic Secretary who is Vice-Chairman), one official member from each of the mainland territories nominated by the Governor of the territory (the Financial Secretary or his representative of Tanganyika and Uganda, and the Secretary to the Treasury in Kenya), the Financial Secretary of Zanzibar nominated by the British Resident, Zanzibar, and seven unofficial members, including one nominated by the High Commission and two from each of the three mainland territories nominated by the Governor or Governor-in-Council of the territory concerned. Seven of the members serving in early 1952 were also members of the Central Legislative Assembly and four were members of territorial Legislative Councils.

"The Board is advisory, but under its terms of reference may be consulted on a wide range of subjects affecting the administration of income tax and customs and excise duty; new legislation; questions of policy and any other matters which may be referred to it by the High Commission. It has already given advice on such questions as the treatment of interterritorial traffic for customs purposes; double taxation agreements between East Africa and the United Kingdom; departmental accounting systems and proposed High Commission legislation on the administration income tax, customs and excise duty, upon which interterritorial agreement has been achieved more speedily than would otherwise have been possible. The services which the Board has already rendered have clearly established that even in the field of finance, difficult though it may be, agreement can be reached on problems of far reaching importance to East Africa."[2]

There has been favorable comment by High Commission officials and members of Central Legislative Assembly on the long and detailed work carried out by the Board in connection with the drawing up of the Income Tax, Customs and Excise ordinances. The Finance Member has referred to the "invaluable services" rendered by the Board in connection with the preparation of the East African Income Tax (Management) Act, 1952, citing the long hours of work, the thoughtful consideration given to different viewpoints and resultant development into a sound advisory authority on matters of revenue.[3] Sir Alfred Vincent, an unofficial member of Central Legislative Assembly, has also praised the Board, and in particular its impartiality in considering factional representations.

While commending the work of the Board, members of the Central Legislative Assembly, during the discussion of the East African Income Tax Management Act, were definitive in asserting that the Central Legislative Assembly remained the final authority and that the Board was not preempting any powers or authorities of the Assembly. Sir Alfred Vincent emphasized that the report of the Board would be fully reviewed by the Assembly, and denied that the Board was taking over any final authority in the matter from the Assembly or from the concerned Select Committee. The undesirability of establishing a precedent for any infringement upon the prerogatives of the Central Assembly by the Revenue Advisory Board or other bodies was emphatically stated by Mr. Maini, and the Finance Member of the High Commission agreed, describing the work of the Revenue Advisory Board as "preparatory" in character.[4]

Though taxpayer-resentment has mainly been focused on the collection agencies and the governments, there has been at least some adverse criticism - voiced outside the Assembly - of the Revenue Advisory Board. One instance was recounted in one of the Board's own reports, which listed one protest that "notice of the proposed new law had not been received in time" and alleged that the Board "had no contact with the public in Tanganyika and was not representative."

The East African Income Tax Department

This Department has the primary responsibility of administering the assessment and collection of income taxes throughout the three mainland territories, Zanzibar and Aden. Since its establishment on an interterritorial basis in 1940 it has been faced with a severe shortage of qualified officers in the face of an ever increasing volume of assessments and collections.

Until 1940 only Kenya among the East African territories had an income tax, instituted under the 1937 Ordinance. In 1940 separate Income Tax Ordinances, which were for all practical purposes identical, were enacted in each of the four East African territories. With the introduction of income tax in all the territories, the Kenya Department was expanded and reorganized on an East African basis to collect income tax for the four territorial governments. The original Kenya staff was distributed between the three mainland territories, and the staff establishment was increased. The Department came under the administrative direction of the East Africa High Commission on inception of that body, the duties of the Department still remaining the collection of tax for the territorial governments. The High Commission was given authority by the Order in Council to enact legislation dealing with the general administrative provisions of income tax. The powers to provide for the rates of tax and the amounts of personal allowances were specifically left to the territories and their legislative councils, recognizing that control of revenue was a territorial prerogative. The East African Income Tax (Management) Act, 1952, consequently confined to administrative and general provisions and excluding rates of tax and personal allowances, was, after long and detailed consideration by the Revenue Advisory Board, passed by the Central Legislative Assembly, becoming law in 1952. The Act was inoperative until the territorial legislatures enacted new ordinances providing for rates and personal allowances in June and July 1952. These ordinances provided for almost exactly the same rates and allowances previously in force. All the territorial ordinances and the High Commission Act and Rules came into operation on the same date.

The Department is headed by the Commissioner of Income Tax who is responsible to the Finance Member, one of the four principal executive officers of the High Commission. The Department has offices in Dar es Salaam, Kampala, Mombasa, Nairobi, Eldoret and Moshi with plans for the establishment of branch offices at Nakuru and Tanga in 1953. The Department also has an office in Aden with an Assistant Commissioner assisted by a limited staff.

There are a number of statutory boards and committees connected with the Department. The East African Revenue Advisory Board, as stated above, considers and advises the Department on questions of policy. There are several local committees, consisting entirely of prominent citizens of East Africa and businessmen, which serve as tribunals before which taxpayers who do not agree with the Department can place their views without the cost attendant on court procedure. In 42 of 49 cases taken before local committees by the end of 1950 the Department's action was confirmed. The local committees, under the 1952 ordinance, also decide, after hearing the case of the Commissioner, whether the Commissioner should be allowed to ask for information from persons confidentially employed in the affairs of a taxpayer.

The approved staff establishment in the years 1948 through 1950 included 1 Commissioner, 1 Deputy Commissioner, 1 Investigating Accountant, and 4 Regional Commissioners. The authorized Assistant Commissioners and Assessors were increased from 38 in 1948 to 40 in 1949 and 1950, and the number of Tax Officers authorized was increased from 5 in 1948 and 1949 to 18 in 1950. In 1950 there were 1 Statistical Officer (none during previous years) and 47 clerks. The total authorized staff thus increased from 85 in 1948 to 103 in 1949 and 113 in 1950. In 1952 separate establishments were created for 14 Assistant Commissioners and 27 Assessors. This has greatly improved prospects for technical men and has had the effect of attracting recruits suitable for appointment as assessors.

The Tax Officer establishment for 1952 was increased from 30 to 36 and the salary scale was later increased to £1,050. The total authorized staff for 1953, excluding Office Messengers, was 167.

Since its inception the Department has never had a full complement of staff (though the establishment has been increased) and has complained of a constant shortage of qualified officers. In 1950 only 25 posts of an authorized qualified assessing staff of 40 were filled by permanent staff, and in 1951 of the sanctioned European establishment of 144 only 84 posts were filled by permanent staff. In 1952 there was some improvement in the general staff position although six senior posts were not filled. Recruitment has been difficult because world demand exceeds the supply of qualified accountants and the demands of the UK Inland Revenue Department had not been met. Sir Phillip Mitchell gave the following explanation:

> "Because income tax directly affects the individual, the officer who administers it requires a high degree of skill, training and, indeed, judgment of men to enable him to instil confidence into the public that the tax is being collected efficiently and with scrupulous impartiality and justice. The number of men who are attracted to this type of work is limited, with the result that the Department has been unable to fill its establishment of officers ..."[5]

Recruitment has been almost matched by the high rate of resignation of trained men, mainly because of unattractive salary scales. As a consequence, a large portion of the staff has had little experience and training. Some posts have been filled by retired inspectors of taxes from the UK Inland Revenue Department on temporary agreements. Sir Phillip Mitchell viewed this action optimistically: "The Central Assembly quickly recognised the need to take vigorous action, and during the past four years substantial progress has been made, particularly with the assistance of retired income tax officials from other parts of the Commonwealth."[6] But the 1951 annual report of the Department stated that the failure to recruit young men and the resultant uneven age distribution of the establishment was a serious matter. One member of Central Legislative Assembly, Sir Alfred Vincent, urged special rates of pay for staff of the Income Tax Department to solve the problem of staff shortages.

A token amount of staff training at the professional level has been arranged in UK, utilizing the facilities of the UK Inland Revenue Department. The first East African trainee completed a three year course and returned as an Assessor in November 1950. Two other junior officers were to begin the three year course in 1952 and in September 1952 another officer was selected for the three year training program in the UK.

The office accommodation in Kenya and Tanganyika which seemed ample in 1950 became cramped by 1953. In Nairobi the accommodation position was improved by 1950, the Head Office and Kenya Sections having moved temporarily in December 1949 from crowded quarters in the Law Courts building to a new building and then in November 1950 into Gill House, Nairobi. These quarters were adequate for current needs and permitted the Investigation Branch and the Kenya Inland Revenue Department to be housed in the same building. By the end of 1952, with continued expansion of the volume of work, the Nairobi offices ran out of space for increased staff and records. The opening of the Eldoret Branch Office in January 1953 and the planned Nakuru office, which it was hoped would be established later in the year, were said to provide no long term answer, and it was complained that existing accommodation could not meet demands of the immediate future.

In May 1950 the Tanganyika Branch moved from Lushoto, its rather isolated location since 1942, to Dar es Salaam. The new offices were well situated but unfortunately the assessment and collection sections were housed in separate buildings, and the Department moved again into central offices in another building. This new accommodation would suffice only after a Tanga branch office should be established, a development delayed by unavailability of staff houses in Tanga. The Uganda branch office moved in May 1952 to new accommodation in the Treasury Building. By the end of the year this was reported barely adequate and the Uganda Government agreed to erect a block of six offices to safeguard the future position of the Department. In 1950 and 1951 throughout East Africa there was a shortage of staff houses, with many officers - 16 at the end of 1951 - housed in hostels or hotels. This shortage retarded recruitment and interfered with the posting of officers to different centers.

The expenditures of the East African Income Tax Department in the years 1948-1950 were as follows (in £):

	1948	1949	1950
Recurrent			
Personal Emoluments	46,810	92,576	86,986
Other	15,397	29,616	58,290
Total	62,207	122,192	145,276
Extraordinary		7,743	
TOTAL	62,207	129,935	145,276

There was a supplementary appropriation of £12,000 to augment staff in the first half of 1954. Funds for the Department in 1948-1950 were contributed by Kenya, Tanganyika, Uganda and Zanzibar. Of the total contributions each year (£69,580, £104,622 and £156,268 in 1948, 1949 and 1950 respectively) Kenya contributed about 47 percent, Tanganyika between 28 and 32 percent, and Uganda 21 to 23 percent, while Zanzibar contributed a much smaller portion - .7 percent in 1949 and 1950 and 1.2 percent in 1948. Revenue - not tax revenue collected by the Department but recoveries from staff for housing, etc., which are deductions from expenditure - totalled £3,185 in 1949 and £3,588 in 1950.

The administration and collection of the income tax in the three East African mainland territories and in Zanzibar for the governments of those territories has remained the main task of the Department.

The rates of taxes and allowances, under the High Commission Order-in-Council, remain strictly a matter for territorial legislative councils, and are set in the separate territorial ordinances of 1952. Rates of tax and personal allowances have been identical throughout East Africa since 1940 with two exceptions. The surtax in Tanganyika has not risen beyond Sh. 9 in the £ whereas the maximum rate elsewhere has been Sh. 11 in the £. The initial rate of income tax has been Sh. 1.50 in the £ for residents and Sh. 2 in the £ for non-residents rising to a maximum of Sh. 5 in the £. Surtax, which is charged on total incomes exceeding £2,000 rises from an initial rate of 25 cents in the £ to Sh. 11 in the £ in

Kenya, Uganda, and Zanzibar, but only to Sh. 9 in the £ in Tanganyika, making the maximum tax and surtax Sh. 16 and Sh. 14 respectively. Secondly, from 1951 on the rate of tax on trusts and limited companies has varied between the territories. Through 1950 the company rate was Sh. 4 in the £ in all four territories. In May 1951 the Kenya Government passed the Income Tax Amendment Ordinance 1951 which increased the rate of tax payable by persons other than individuals from Sh. 4 to Sh. 5 in the £, and Tanganyika and Zanzibar followed this lead, passing legislation in 1951 to increase the rate on companies and trusts to Sh. 5 in the £ for the year of assessment, 1952, so that only Uganda retained the old rate of Sh. 4 in the £. The same rates were reenacted in the new territorial legislation of 1952. Other main points of difference between income tax of the East African territories are: that Africans in Uganda liable to pay poll tax are, unlike Africans in other territories, exempted from income tax; that houses occupied solely for agricultural or mining purposes are exempt from tax in Kenya and Tanganyika but are liable to tax in Uganda; that income from agriculture is liable in all East African territories with the exception of Zanzibar.

The Department now operates under the East African Income Tax Management Act, 1952, passed by the Central Legislative Assembly, which covers administrative and general provisions. This Act consolidated existing East African legislation from which it did not differ greatly in principle, so as to provide for uniform procedure. New clauses were added to prevent avoidance and evasion of payment, which had developed rapidly in recent years and meant the loss to the governments of large sums of revenue.

Under the 1952 law, as well as the 1940 ordinances, a taxpayer is required to make only one return of income for income from all of the East African territories. The total income is assessed and paid under a joint assessment system of the Department and the proceeds are divided between the territories in which the income arose, by reference to the sums they would receive if there were separate income tax departments. This arrangement is convenient for taxpayers and avoids any double taxation within the territories.

In addition to collecting income tax - which by the end of 1952 amounted to approximately ten and a half million pounds annually, including that in Aden and East African tax assessed in London - the Department has been responsible for such other matters as Excess Profits Tax, the assessment of European Hospital Contribution and Gold Royalty in Kenya, Education Tax in Zanzibar, and ex gratia payments to ex-servicemen.

With the continued expansion of trade and services in East Africa, and the sharp increase in the number of persons liable to tax the work of the Income Tax Department has continued to increase rapidly. "In Kenya there were but 6,530 persons liable to the tax in 1948, compared with 22,117 in 1951; in Tanganyika the numbers have increased from 3,387 to 9,155; and in Uganda from 1,543 to 4,046."7 The Department in addition was faced with arrears of work which accumulated over the war years.

The number of income tax assessment notices issued in the four East African territories in the years since 1940 and the amounts involved each year were as follows:

Year	Number	£
1940	4,648	357,452
1941	10,438	793,262
1942	11,771	1,489,881
1943	10,694	1,477,294
1944	12,551	1,703,001
1945	12,639	1,741,277
1946	11,386	1,658,503
1947	13,085	1,780,615
1948	11,688	2,194,240
1949	24,229	3,514,480
1950	32,430	5,982,388
1951	35,990	6,707,581
1952	45,192	10,462,000
1953 (estimate)	53,150	13,870,000

The number of returns examined annually has increased as follows:

Year	Number of Returns
1937-1939	Probably not more than 6,000 cases annually
1940	11,230
1943	13,830
1946	19,053
1949	33,080
1950	37,858
1951	46,413
1952	55,665

Thus in 1952 the number of returns examined was over nine times the number examined in an immediate pre-war year. The number of cases settled for the current year was 25,569 in 1951 and 30,112 in 1952, a new record.

Despite the increasing number of assessment notices being issued yearly, the Department, through increasing the yearly number of examinations of returns, succeeded in the years 1949 through 1951 in making progress in overtaking arrears of work. "Returns of income awaiting examination and assessment, which in 1948 exceeded 25,000, had been reduced to just over 8,000 by the end of 1951."[8] The progress made in 1951 was not maintained in 1952, the number of unexamined returns on hand having increased in both Tanganyika and Kenya. This setback was attributed directly to inability to recruit Tax Officers. The number of unexamined returns for earlier years, however, was greatly reduced. The number of current returns not received by the end of the year continued to decline despite the much larger number issued.

Unexamined Returns on Hand	
31 December 1949	23,934
31 December 1950	12,719
31 December 1951	8,196
31 December 1952	15,442

Current Returns not Received	
31 December 1950	14,649
31 December 1951	13,814
31 December 1952	11,878

The revenue from income tax in the various calendar years is shown below. The figure for each year is the cash collections in that year irrespective of the year of assessment involved and cannot be considered the theoretical tax yield for that year.

Year	Income Tax Collections (£)
1940	233,847
1941	592,758
1942	1,273,128
1943	1,610,424
1944	1,884,257
1945	1,960,343
1946	1,913,235
1947	1,836,509
1948	2,311,982
1949	3,498,225
1950	5,621,431
1951	6,693,475
1952	9,787,000 (est.)
1953	11,895,000 (est.)

Sir Phillip Mitchell has cited the figures from 1948 through 1951 as an index of East African development, a testament to the importance of the services rendered and the amount of work done by the Department.

The estimated cost of the Department and cost of collection in the years 1950 through 1952 are given below.

Year	Cost of Department	Cost of Collection	
1941			(5.48%)
1947			(3.10%)
1949			(2.9%)
1950	£154,608	42 E.A. cents on £	(2.10%)
1951	£180,000 (est.)	55 E.A. cents on £	(2.75%)
1952	£247,000 (est.)	50 E.A. cents on £	(2.5%)

The Colonial Income Tax Office (responsible for a large number of colonial territories) in London, with a representative of the East African Income Tax Department, facilitates the collection from UK residents liable to East African taxation and, with the United Kingdom authorities, determines individual entitlement to relief from double taxation. The Office was responsible for the following assessments and collections.

Year	Number of Assessments	Amount of Assessments (£)	Tax Collections
1950	1,452	681,532	601,947
1951	2,245	1,043,917	974,834
1952	1,462	981,509	1,119,437

The Department from January 1, 1952 has also supervised and organized the assessment and collection of income tax in Aden, which represents over half of the total revenue of the Colony. The work of the last nine months of 1952 as compared with the same period during 1951 amounted to the following:

	1951	1952
Tax Assessed	£820,511	£614,696
Tax Collected	479,018	662,615
Tax Outstanding	433,897	273,403

The work of the Investigation Branch of the Department, which was set up in 1945 under an Investigating Accountant, has also been handicapped by difficulties of recruitment. The Department may charge additional tax for default in notifying liability, or for the omission of income from a return, but the Department's policy through 1950 had been to utilize these powers only when a taxpayer has disregarded reminders and warnings that he has failed to render a return of income, or where he had no reasonable excuse for having submitted an incorrect return. Investigations by the branch resulted in the recovery of the following sums during the years 1945-1952.

Year	Amount Recovered (£)
1945	1,440
1946	29,303
1947	73,420
1948	11,161
1949	50,703
1950	5,215
1951	41,540
1952	60,810

During the first year (ending June 30, 1953) of a strong campaign against non-payment, £569,545 was recovered as the result of settlement of 34 cases. This followed the successful conclusion of the first criminal procedure for income tax frauds ever undertaken in the territories.

The Statistical Branch of the Department, resuscitated in 1946 and equipped with machines in 1950, has prepared analyses of taxpayers by race, residence, by main divisions of industry or source of income, and status (individual or limited company etc.).

The Department administered the collection of the wartime Excess Profits Tax (introduced in 1942) covering all trading, professional and agricultural profits from July 1, 1940 to December 31, 1945, completing the operation during the period 1946 through 1952. The winding-up ordinances provided that revenue on capital expenditure that had had to be deferred as a result of wartime conditions and had been incurred, with the asset in use, by December 31, 1950 should be taken into account in determining final liability. These laws were calculated to encourage development and reconstruction. The final balances in the territorial Excess Profits Tax Funds were as follows in 1952.

	£
Kenya	3,299,623
Tanganyika	600,792
Uganda	415,861
Zanzibar	37,199

Because of its importance to the overall problems of regional cooperation in East Africa the reluctance of the territories to surrender powers regarding income taxation to the High Commission deserves discussion at some length. This resistance, voiced mainly during consideration of the interterritorial ordinance, by different factions in East Africa, varied considerably in intensity. In Tanganyika one faction seemed opposed to any interterritorial set-up whatsoever and felt the territory would be better off with a strictly territorial rather than interterritorial arrangement. "The sisal growers intimated that they would prefer to deal entirely with Tanganyika and be independent from the other territories in East Africa."[9]

In Uganda some groups, while not opposing any interterritorial arrangement whatsoever as the sisal growers of Tanganyika had, questioned the necessity of interterritorial legislation or wanted it to contain only general principles. A fear that one territory might be rigidly shackled to the economy of the others was expressed. A further view was that any promulgation of common tax legislation should be preceded by federation. A common legislation covering income taxes, it was protested, could not suit Uganda's requirements, and the other territories were also alleged to have their individual and perhaps irreconcilable requirements. Different territorial financial policies - the emphasis on export taxes in the economy of Uganda for instance - were held to further the arguments against uniformity in income tax codes. There was considerable fear that the two separate systems which had been working in the past, with policy left to regional discretion, were about to be replaced with an interterritorial system which inevitably would blunder. The Revenue Advisory Board, in considering these representations noted that "the question whether or not central legislation should be enacted had already been decided by the adoption of Colonial Paper 210 by all Legislative Councils."[10] The Board also stated - in reply to certain demands in Uganda that the central act should lay down only broad principles - that in practice no such separation of principles and the details of administration could be effected.

These opponents in Tanganyika and Uganda were in a minority. The majority of opinion in East Africa was reported in favor of one Income Tax Bill for East Africa. The Finance Member cited in the Central Legislative Assembly that the wholehearted assent of the commercial community, with their holdings so often spanning territorial boundaries, was assured for a single Income Tax Bill. But in all three territories, even among those who apparently accepted the principle of interterritorial legislation, there was considerable opposition to the scope of the Act when passed. The Kenya Government and unofficials in Kenya and Tanganyika opposed the inclusion in the Act of provisions for deductions to be made in calculating income for tax purposes, which they claimed came within the purview of the territorial legislatures rather than the High Commission. They insisted that "allowances", which the territorial Governments had the power to determine under the East Africa (High Commission) Order in Council, 1947, included all items which affected the amount of tax payable either directly or indirectly, encompassing not only personal allowances but also deductions. "Allowances by way of deduction as well as personal allowances should be the subject of territorial legislation."[11] At the meeting of the Board on September 11, 1951 the following was recorded:

> "It was stated on behalf of the Government of Kenya that that Government was not yet satisfied whether under the terms of the East Africa High Commission Order-in-Council, 1947, the Central Legislative Assembly had power to enact legislation to determine the deductions which could be made in computing total income for tax purposes, and, further, if it should be decided that this power did exist whether the Government should take such steps as might be available with the object of amending the Order-in-Council so as to exclude this power. It was enquired whether the Board would wish to express its views on the question."[12]

A number of Unofficial Members of the Central Legislative Assembly and of the Kenya Legislative Council, having met privately, passed the following resolution:

> "It was agreed unanimously that it would be put to the East African Revenue Advisory Board that any matters regarding deductions should be left to the

> territorial Legislatures in the same way as personal rates and allowances are left to territorial Legislatures, and that the present Bill should be amended to give effect to this. If the High Commission finds this procedure to be impracticable then the present Bill should be withdrawn from the Central Legislative Assembly and separate Bills introduced into the three individual territorial Legislatures giving effect to additional provisions and proposed amendments."[13]

Sir Alfred Vincent, a Kenya member of Central Legislative Assembly, stated at the meeting on April 23, 1952 that the understanding of Paper 210 in Kenya Legislative Council of which he had been a member when Paper 210 was discussed was that "anything which had an effect on the amount of taxation to be collected from anybody in the territory should be within the jurisdiction of the territorial legislature itself."[14] In the Council a few months later Mr. Havelock declared: "... We on our side of the Council, every one of the European Members, are quite certain that when Paper 210 was brought in it was quite clear to our representatives at that time that allowances did include deductions ..."[15] During the same debate another unofficial complained that he "did not realize at the time when 210 was passed ... that we were sort of throwing nearly all our powers to the Central Assembly."[16] Mr. Maini of Uganda felt that "when the original Order-in-Council was drafted, people in the East African Territories did not really give great consideration to the actual wording that was put into the Order-in-Council."[17] In Uganda there was similar resistance to "certain clauses in the Bill which would affect the incidence of the tax, and which were felt to be matters for territorial decision."[18]

There was also considerable opposition to Clauses 5 and 14 under which rules could be made by the Member for the better carrying out of the law (as under the existing legislation). Representations were made to the Revenue Advisory Board that all Rules should be made by the territorial Governments or, if this were not possible, with the agreement of the territorial Governments.

Mr. Maini explained that the concern over the scope of the powers to be exercised by the High Commission in taxation matters arose from an increasing realization that the three territorial governments were not following the same economic policies and that the tax structure therefore could not remain identical.

> "There have been developments since the promulgation of the Order-in-Council which have given a lot of food for thought as to the scope of the Territorial Legislatures and the Central Assembly. It is in the background of these that people have almost tried to reorientate their views on this very important matter. It has begun to be realised that the development in the three East African territories is not proceeding on exactly similar lines. For example, the role of the State in economic matters is varying in the three Territories and that is bound to have an effect upon the economic picture that will develop in the three Territories. I am not trying, Sir, to raise any issues as to the scope of these para-statal bodies, but it is a fact that at least in one of the three East African Territories, the state is actively entering into economic development. From that it follows that the tax structure for each of the three Territories cannot for a very long time, if these developments continue, keep on identical lines. I think that fact was brought home to us in the discussions we had recently on another tax measure in the three Territories Legislatures."[19]

The Revenue Advisory Board noted that "the advice tendered by the Legal Departments of the Governments and the Legal Secretary of the High Commission was that the word "allowances" referred to personal allowances only."[20] "Rates of tax and allowances" had an established and well recognised meaning - the rates of tax levied upon the income once it had been determined, and the rates of allowances granted to the taxpayer by reference to his personal circumstances only. There was a sharp distinction between personal allowances and deductions made in calculating the income, which depended almost entirely on the expenses a taxpayer incurred in earning his income. The Central Legislative Assembly had the power to enact legislation to determine deductions. "This had been the intention when the Order-in-Council was drafted and no doubts had been raised when Colonial Paper 210 was debated in the Legislative Councils."[21] "If the power to determine income were excluded, there would be little object in enacting East African legislation."[22]

As the Finance Member stated later, there had been, irrespective of the legal position, "a misunderstanding of the intention when the Order-in-Council was finally enacted" and a solution had to be found which would meet both points of view. This solution was suggested by the Revenue Advisory Board. The Board, while denying the contention that the determination of deductions was reserved to the territorial legislatures, "concluded that it was essential for provision to be made under which the East African Governments retained full power to determine the application of the law within their territories, and to adapt or modify it in whatever manner might be determined by resolution of the Legislative Councils."[23] The Board's proposal, accepted by the Governments and the High Commission, was that all the provisions relating to the calculation of the income should be included in the Act. But Clause 11 as amended provided that the East African Governments could exempt any person or class of persons from any or all of the provisions of the law, and a new clause 97 provided that the Territorial Governments, by a resolution of the Legislative Councils, could amend any of the provisions of the Act in its application to that particular territory. The effect, according to the Finance Member was "that while there can be one Income Tax Law for East Africa, the rights of the Territorial Governments are completely preserved in that they can either exempt any of their people from the provisions of the Bill, or they can amend the Bill in any way that they think fit in its application to that particular territory."[24] The Finance Member thought it "quite right that that should be done," recalling that for the last 12 years the East African Governments had had complete freedom to enact what legislation they liked on income tax matters.

The power of the territories to amend the Act included the power to amend rules made under Section 5, since the Interpretation Act of the High Commission sets out that subsidiary legislation is included within the word "Act". A further concession to territorial demands was the changing of the Act to provide that Rules made after January 1, 1953 would be laid on the Table of the Central Legislative Assembly and would not have effect for thirty days thereafter, during which period the Assembly could by resolution declare that such rules should not have effect or should have effect with certain amendment.

The High Commission had, in effect, delegated powers granted to it by the Order-in-Council to the territorial legislatures. Mr. Maini, although approving the amendments, raised the question of their legality. He said "it would seem, on the face of it, that the Order-in-Council definitely demarcated a separation of powers between the Central Assembly and the Territorial Legislatures, and whilst it is possible for the Territorial Legislatures, by resolution, to extend the scope of authority of the Central Assembly, it does not seem to be very clear in the Order-in-Council whether it is possible for the Central Assembly to delegate its powers and say that on these matters it is possible for the territorial Legislatures to pass amending legislation. As the Order-in-Council is worded, the Central Assembly has been given the power to legislate on income tax, except rates of tax and allowances. On the face of that ... it would seem that the functions of the Central Legislative Assembly in relation to administrative and other provisions, cannot be delegated to Territorial legislatures."[25] He requested a statement from the Legal Secretary, to be put on record in the proceedings of the Assembly, that he was "satisfied in his own mind as to the legality of these two provisions." The Legal Secretary gave an assurance that the two clauses were "constitutional, in the sense that they come within the provisions of the Order-in-Council setting up the High Commission and this Assembly." He explained that the only sub-section of the Order-in-Council on the position of High Commission legislation in relation to territorial legislation (Section 28 (3)) meant that within the powers of the High Commission and of the Central Legislative Assembly any High Commission legislation passed subsequent to the Order-in-Council prevails and territorial legislation passed after January 1, 1948 which is in conflict with the High Commission legislation is to the extent of that conflict null and void. The legal position goes no further than that.

> "It is perfectly within the power of this Assembly to enact legislation which confers powers upon any person or any body to amend that legislation. It is not an infrequent position to find in a Bill, a section to the effect that a certain person or a certain authority is given power to amend the provisions of the Bill or the provisions of certain schedules, or the provisions of certain sections. And that is exactly what we are doing in this case. We are giving to the Governor, acting with the approval of the Legislative Council of each territory, the power to amend, in the application to that territory of the provisions of this Bill, those provisions which the Territorial Legislature may think fit and proper. There is nothing whatsoever unconstitutional about that ..."[26]

This compromise (which from one point of view could be regarded as a capitulation to the Territorial Governments) apparently satisfied most of those who had opposed the scope of the legislation. The Board claimed that its recommendation "met the representations in this respect fully."[27] Sir Alfred Vincent felt that the amendments had "completely covered the undertakings and the understandings which were the result of the passing of Colonial Paper 210..."[28] Mr. Maini stated the amendments were "very salutary provisions and represent the spirit of the understanding of the position by the various communities in the three territories."[29] Mr. Phillips, a Tanganyika Member, stated that he was satisfied that by the amendment to Clause 11 and by Clause 97 "the rights of the three Legislatures have been amply provided for. If I did not think so I would not find myself in a position of being able to support this Bill."[30]

Kenya unofficials, however, still disliked the Act. They asked for an assurance that by passing the Rates and Allowance Act, 1952 they were not indicating that they accepted entirely the Management Act of the High Commission. Mr. Blundell with the full support of unofficial members moved that Government appoint a Commission with the following terms of reference:

> "(a) To investigate whether Income Tax is an equitable and suitable form of taxation for the Colony and Protectorate, having regard to the revenue needs of the Colony and possible alternative methods of raising money;
>
> (b) to study the "Act of the High Commission to provide for the management and collection of Income Tax by the East African Income Tax Department"

and to make recommendations for amendments which should be made to this Act under Clause 97 which should be to the general benefit of the Colony."[31]

The motion was amended to delete paragraph (a) and was passed, as amended, on July 11, 1952. The appointment by the Governor of a select committee with the terms of reference stated in (b) was announced in Kenya Legislative Council on November 26, 1952.

The High Commission was apparently satisfied with the amendments to the Act. The Finance Member stated that one of the general principles of the Act was "that adequate steps should be taken to ensure that the rights of the Territorial Governments are fully protected ..."[32] The Finance Member, however, urged uniformity of rates:

> "It is, of course, true that the economy of the three territories may not always be in line so as to enable income tax rates, allowances and even the law to be kept on a common basis. That, of course, we have always recognised. But the point I do want to make is that if it is at all possible, as has already been the case, it is obviously the wish, particularly of the commercial and industrial people in this country, that that should be done if it is at all possible. And I do sincerely hope ... there will not be any desire to have slightly different rates or slightly different allowances just for the sake of being different ..."[33]

An optimistic view was put forward by the Acting Financial Secretary, Uganda, in Uganda Legislative Council that "The value of uniformity is so obvious that only in most exceptional circumstances is any legislature likely to introduce an amendment which the other territories are unable to accept with a view to it being incorporated in the Act."[34] Mr. Maini, however, stated "On the general question of uniformity of income tax legislation in the three territories, although ... we started on that assumption the development that have taken place since would seem to indicate that opinion in the three territories is beginning to veer away from that particular proposition."[35] Mr. Maini, to indicate some of the differences between Uganda and the other territories affecting income tax reiterated an earlier argument, "... the place of income tax in our general revenue structure is completely different in Uganda than it is probably in Kenya." The Acting Financial Secretary replied that, to the contrary, future changes might lead to a greater uniformity: "... income tax is one of our more important sources of revenue ... With the prospect of diminishing returns from export taxes income tax is likely to play an even more important part in our financial structure." Mr. Maini persisted: "There is also the question to be considered that we are committed to active participation by the State in industrial activity through the medium of parastatal bodies. That does definitely make a very large difference to the picture of economic activity in the country as compared to countries where the State does not participate."[36]

From these views it was clear by the end of 1952 that considerable opposition prevailed among unofficial representatives against uniform treatment of income tax matters. Kenya unofficials had shown a desire to exercise the Colony's right to vary its own rates, and Uganda unofficials had pointed out the difficulties involved - because of a divergent economic policy in Uganda - in maintaining uniformity. It appeared that a demand for escape from uniformity might come from the unofficials in both territories, a likelihood which could be increased by the state of emergency subsequently declared in Kenya. The increased strain which such a contingency might imrose on the structure of uniformity (and on interterritorial relations in general) was revealed by a statement in Tanganyika Legislative Council in late 1953. Mr. E.C. Phillips suggested that the expenses of the Kenya Emergency might force Kenya to raise additional taxation and that any alteration there in certain forms of taxation such as Customs and Excise or Income Tax would have serious repercussions in Tanganyika. He said the Unofficial Members of Tanganyika Legislative Council would not accept any increase in tax to help the finances of Kenya unless some sort of interterritorial advisory committee were set up.[37]

Income tax legislation has been criticized as following too closely that of the United Kingdom, without proper regard for the need for developmental stimulus in the East African territories. Extracts from the statements of Mr. Maini during 1952 indicate the gist of this criticism:

"... it is being said ... that the present legislation has taken into account the collector's point of view, and has not given enough consideration to all the representations ... Generally, one would say that the place of Income Tax in the tax structure of a new and undeveloped country is different from that of the United Kingdom ... In some of the territories, the complete exemption of Africans from Income Tax is a complicating factor and the emergence of African enterprise in the economic field, as it must come in the future, is going to raise a very difficult and complicated issue as to the balance of taxation generally."

"It has also been said that the development of the Income Tax in the United Kingdom has taken place over a reriod of more than one hundred years, and the recent very complicated provisions have been introduced under the stress of a war economy and the pressure of a welfare state ... the conception of a welfare state is one very far from East African conditions and in that respect one must always make allowances for the need for differences in legislative provisions that are introduced in the Finance Acts in the United Kingdom and legislation in East Africa."[38]

"... in young countries there is a case for allowing the accumulation of capital in periods of prosperity with the idea of it being ploughed back into development of the country."[39]

Along the same lines there has been more specific criticism of the Income Tax (Management) Act, 1952. It was framed, according to a number of commercial and commercial-legislative personages and bodies, with too much emphasis on short-term revenue and too little recognition of the importance of encouraging long-term development of private enterprise. In early 1952 several Tanganyika unofficials went so far as to advise that the Act not even be considered in the Central Assembly. Their views that the Ordinance, copied from tax laws of the United Kingdom, did "not take into consideration the reculiar conditions prevailing in this country, which requires fresh capital," and that the enactment provided no encouragement for such capital were expressed in their support of a motion put by Mr. R.W.R. Miller to postpone consideration of the measure in Central Legislative Assembly. The Nairobi Chamber of Commerce in a report unanimously adopted in April 1953 proposed income tax remissions in respect of certain types of development. If exercised judiciously, the report stated, such remissions would be a powerful factor in stimulating new enterprise. Activities eligible for the remission should be listed on a schedule, with the Member for Commerce and Industry, Kenya, empowered to determine whether a certain undertaking was eligible under the schedule and to decide the period over which the tax would be remitted. A further suggestion was that the incidence of surtax be revised in order to attract men of the high calibre essential to sound development of the area. The plea that taxation be altered to permit retention of profits in private hands for capital development was repeated.[40]

Section 22 of the Act was the portion specifically opposed, both before and after its enactment, as unduly penalizing private limited companies by preventing them from plowing back more than a small percentage of profits into the business. Public companies* and private companies must pay tax at Sh. 5 in the £ on net profits. The public company's liability ceases there, but the private company, under Section 22, may be deemed to have distributed in dividends 60 percent, or in some cases 100 percent, of its total profit. Section 22 provides that when the amounts distributed as dividends are less than 60 percent of the total income of the company, the Commissioner, unless he decides that the payment of a dividend or a larger dividend than declared would be unreasonable, may by notice in writing order that the undistributed portion of the sixty percent shall be deemed to have been distributed as dividends among the shareholders and these dividends are then included in the income of the shareholders for income tax purposes, even though they might prefer to have them plowed back into the business. One hundred percent rather than 60 percent of total income would be considered distributed "when the reserves representing accumulations of past profits ... exceed the paid-up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company, whichever of these is greater ..."[41] The object of the section was "solely to prevent the private limited company from gaining an unfair advantage over the private firm or individual" - "to provide rough equity as between the special kind of taxpayer, the private limited company and other taxpayers particularly private individuals"[42] who must pay surtax on the whole of their incomes. If the company had ample funds it was not to be treated differently from a private individual, but relief down to 60 percent was granted to companies which, having accumulated reserves or funds, were "prepared to increase their share capital, or to expend money on development, and increase their assets."[43]

Opponents of the section have claimed that it is most undesirable and destructive in the not fully developed area of East Africa. By requiring the dispersal of profits by declaration of dividends, it deprives limited companies of the capital necessary for development and expansion, "with the result that further development involves borrowing or increase of capital leading eventually to overcapitalization and probable collapse in a period of recession."[44] In an area like East Africa every possible encouragement should be given to continued development by leaving surpluses for expansion. This would eventually lead to greater governmental revenue in import duties and direct taxation. The Commissioner, instead of ordering the dissipation of reserves should be required to allow for reserves necessary for approved development and/or renewal of machinery and plant. In Uganda the view was put forward that provision should be made "allowing companies to plough back some of their resources into development when that development is being enforced by statute."[45] This need was particularly emphasized in respect of the cotton and coffee industries in Uganda which must spend compulsorily very large sums for rehabilitation.[46] Moreover, the opponents of the section claimed it was contrary to policy in the UK where every encouragement was given to plough back profits for development purposes, "where anti-inflationary policy is so positively expressed as to impose dividend limitations."[47] The section also, it was claimed, encourages large companies at the expense of the small, which would eventually be swallowed up by purchase and merger. A Tanganyika businessman claimed several private companies had been forced to

* A Public Company is one in which the public at large are substantially interested, that is, hold not less than 25 percent of the shares, which are transferable.

become public concerns to protect themselves against the application of Section 22.[48] The Dar es Salaam Chamber of Commerce brought these views on the unpopular section to the notice of the Royal Commission on East Africa.

After hearing and recording these heavy objections to Section 22, tendered predominantly if not entirely by commercially interested Europeans and Asians, the Revenue Advisory Board declined to recommend any changes, stating there could be "no reason whatever why the Section should be amended to provide private companies alone with relief in respect of the ploughing back of profits or development expenditure. Relief in this respect was available to all taxpayers under Section 14 and the Second Schedule to the Act."[49]

In addition to the pronounced reluctance of the territories to surrender powers related to taxation and accusations that the Act would prevent proper capital utilization and hamper development, a third line of complaint can be perceived in the recorded body of criticism. This appears to be a more general allegation that the Ordinance was designed by bureaucrats that the taxpayers might be more completely at their mercy. One memorandum to the Revenue Advisory Board described the Ordinance as "anti-social" and "inspired by the mentality of the octopus" and goes on to condemn the measure as the instrument of an insensitive and arrogant bureaucracy.

> "... the drafting of the Ordinance is so involved and many of the sections are so ambiguous that it might reasonably be suspected that it is intended to confuse and submit the ordinary taxpayers to the mercy of an omnipotent bureaucracy. Certainly quite humble persons are forced to invoke professional assistance, and the total cost of preparing returns and protecting the payor's proper rights must run into many tens of thousands of pounds, over and above the rapidly mounting cost to them (as taxpayers) of the bureaucratic machinery of collection. When the inevitable recession gathers momentum and the public realises the full significance of the purpose of the anti-social sections and the autocratic powers entrusted to the Commissioner and his staff there must be a general uproar on the part of the public many of whom are already finding it impossible to meet their assessments, which have accumulated as the result of the machine's inability to cope with its duties of assessment, and some of whom will find that the proper measures they have taken for providing against a recession or for protecting their dependants can be arbitrarily neutralised by an irresponsible despot under cover of ambiguous law with inadequate rights of appeal."[50]

The author appears to assume, in this memorandum, that the red tape and delays are the responsibility of the Department itself, and that they would not be so aggravating if there were separate territorial departments. He also seems to imply that a regional rather than a central assessor would be more humane in fixing assessments.

The East African Customs and Excise Department

The collection of customs and excise revenue for Kenya and Uganda has been jointly accomplished since 1909, when a Customs Agreement was made providing for collection by a combined department, with the collections made being divided according to an agreement between the two governments. The agreement on the allocation of collections between the two territories was embodied in ordinances enacted in the two countries. These ordinances "provided for the net customs and excise revenue - that is to say - the gross amount collected, less refunds and drawbacks, any reimbursements of expenditure and the cost of running the Department to leave a net amount of customs and excise revenue, to be divided up in proportion to the duty on the goods retained in each territory."[51] Estimates of customs and excise revenue and of the expenditure of the Department were submitted to the Legislative Councils concerned. In 1947 Tanganyika entered into a similar agreement with Uganda and Kenya "under which the principle of free trade throughout East Africa was established and the Customs and Excise duties collected throughout East Africa were divided according to the ultimate destination of the goods concerned ..."[52] Tanganyika, however, maintained a separate Customs and Excise Department.

Colonial Paper 210 proposed amalgamation of the Kenya and Uganda Customs and Excise Department and the Tanganyika Customs and Excise Department, provided that prior approval of each of the three territorial Legislative Councils, of the East Africa High Commission and of the Secretary of State for the Colonies should be given to such scheme of amalgamation. While awaiting such approval the Customs and Excise services would not come within the executive jurisdiction of the High Commission or within the purview of the Central Legislative Assembly, but would do so after the amalgamation scheme was approved. The Department was listed in the Second Schedule of the East Africa (High Commission) Order-in-Council, 1947 as one of the services which should on formation be administered by the High Commission. The East African Legislative Councils each passed resolutions approving the formation of the Department. On January 1, 1949, a year after the inauguration of the High Commission, the Kenya and Uganda Customs and Excise Department and the Tanganyika Customs and Excise Department were amalgamated into the East African Customs and Excise Department which became a scheduled service of the High Commission. While acknowledging that on the surface there had been little change, the Chairman of the High Commission reported in his Despatch in 1952 that "the centralization of administration through the High Commission executive responsible to the Central Assembly provided the means whereby the rapidly expanding activities of both Departments could be better co-ordinated and directed."[53] Colonial Paper 210 stated that amalgamation would involve the enactment of a law, effective in Tanganyika, on similar lines to the ordinances earlier enacted providing for the allocation of customs and excise collections between Kenya and Uganda. That principle was also approved in the resolutions which were passed by the East African Legislative Councils approving the formation of the East African Customs and Excise Department. This act, the East African Customs and Excise Revenue Allocation Act, was passed by the Central Legislative Assembly on September 30, 1949.

From January 1, 1949, when the East African Customs and Excise Department was established, until 1953 it ~~had~~ operated under three territorial customs ordinances, whose different provisions led to some lack of uniformity in procedure in the three territories, and under territorial Excise Duties Ordinances and Beer Ordinances. In September, 1952 the East African Customs Management Act, 1952 and the East African Excise Management Act, 1952 dealing with the everyday management of customs and excise passed their third reading. These Acts were to replace the territorial ordinances, and, while not representing a radical departure from the procedure specified in those ordinances, were intended to make uniform the procedure in the East African territories, remove a number of defects, and introduce the most modern practices. The East African Customs Regulations, 1953, the East African Excise Regulations, 1953, and the East African Transfer Traffic Regulations 1953 under these Acts were introduced in Central Legislative Assembly in April 1953. These motions were rejected by the Assembly in September 1953 on purely formal grounds and new Regulations, virtually identical with the previous Regulations, were considered by the Central Legislative Assembly in January 1954. To distinguish them from the previous Regulations they are titled 1954 Regulations. The new Acts and the Regulations made under them were to come into effect when each territorial Legislative Council enacted new Customs Tariffs Ordinances and Excise Duties Ordinances, setting out the rates for its territory. These territorial Ordinances were not enacted by December, 1953 and the new Acts and Regulations were not in effect by that date.

The Customs and Excise Department is administered by a Commissioner and a Deputy Commissioner with headquarters in Mombasa. There are Regional Commissioners for each of the three territories, stationed in Mombasa, Dar es Salaam and Kampala.

In the years 1949 through 1951 the total authorized establishment of the Department included:

	1949	1950	1951
Europeans	76	76	87
Asians	389	384	452
Africans	545	544	546
Total	1,010	1,004	1,085

In 1951, with the additional officers approved by the Standing Committee on Finance in January 1951, the staff was able "to deal expeditiously with a very heavy volume of work during the year."[54]

Among the customs stations at which services of Customs Officers have been available are Nakuru, Eldoret and Kitale in Kenya, at which there are parcel depots only, and Kisumu in Kenya and Arusha, Kigoma, Lindi, Moshi and Mwanza in Tanganyika, which have other functions in addition to postal duties.

Expenditures of the East African Customs and Excise Department in 1949, 1950 and 1951 were as follows(£):

	1949	1950	1951
Recurrent			
Personal Emoluments	£189,877	£ 213,487	£ 264,881
Other	78,638	102,577	132,714
Total	268,515	316,064	397,595
Extraordinary	5,002	3,021	6,348
TOTAL	£ 273,517	£ 319,085	£ 403,943

The cost of running the Department is not deducted from the net customs and excise revenue before it is distributed to the territories. It is met by separate contributions from the three East African territories. The following figures for 1949, 1950 and 1951 suggest that Kenya provided about half, Tanganyika about 30 percent and Uganda about 20 percent of total contributions in those years.

Sources of Funds

	1949		1950		1951	
	Amount	Percentage of Total	Amount	Percentage of Total	Amount	Percentage of Total
Kenya	Ł 125,760	50.2	Ł 149,349	49.1	187,451	48.3
Tanganyika	70,440	28.3	93,884	30.8	127,735	32.9
Uganda	54,529	21.5	60,838	20.1	72,622	18.7
Total	Ł 250,729		Ł 304,071		Ł 387,808	

The revenue of the Department - not customs and excise revenue or excluded revenue - is derived from reimbursements, refunds or recoveries of amounts already charged against the expenditure of the Department. This revenue is "merely credit which ought to go against the cost of running the Department." By law it is "paid into the Fund established by the High Commission under Section 42 of the Order in Council and applied towards the purposes of the Department."[55] As the Finance Member explained during the second reading of the Customs and Excise Revenue Allocation Bill in the Central Legislative Assembly, the Governments should get the benefit of any such refunds and these contributions towards the cost of running the Department are divided in exactly the same way as revenue is divided.

Revenue in 1949, 1950 and 1951 was as follows in Ł:

	1949	1950	1951
Rents	4,801	4,353	5,103
Miscellaneous		3	392
G.S.F.F. Surrenders		204	
From Local Sales - Commissioner EAC&ED	6,502	37,174	36,659
Total	Ł 11,303	Ł 41,734	Ł 42,154

Colonial Paper 210 provided that when the Department should become a scheduled service, "estimates of the customs and excise revenue for the ensuing year under the East African tariff would be placed before the Central Assembly for information, together with an estimate of the apportionment of such revenue between the territories concerned."[56]

The Customs and Excise Department is responsible for the collection of (1) customs duties levied under the Customs Tariff Ordinances of Kenya, Tanganyika and Uganda, which are not uniform, differing in respect of nine items; (2) the excise duties levied under the Excise Duties Ordinances and Beer Ordinances of the three territories, which levy identical duties on beer, sugar, tobacco, cigars, cigarettes, and matches; (3) other duties, cesses, levies, impositions or taxes imposed under other territorial ordinances; and (4) other revenue, in accordance with any arrangements made between the Department and any territorial government or any other service of the High Commission.

The amounts collected by the Department are designated as "customs and excise revenue," and "excluded revenue." Customs and excise revenue includes "(a) net duties [i.e. the amount collected in respect of customs and excise duties on any goods less the amount of all refunds of such duties in respect of those goods]; (b) all fees, commissions, rents, or other amounts, received by the Department in connexion with any service performed or facility provided by the Department; (c) the net proceeds of the sale by the Department of confiscated or unclaimed goods; (d) Seventy-five percent of all fines or penalties imposed, whether by any court or by the Commissioner, under any Act or Ordinance relating to customs or excise." Any reimbursement, refund, or recovery of any amount which has been charged against the expenditure of the Department is not included in customs and excise revenue, and is applied toward future expenditures of the Department. (See page 20) "Excluded revenue" includes (3) and (4) above.

The Department will operate under the East African Customs Management Act, 1952 and the East African Excise Management Act, 1952 which deal with the everyday management of customs and excise, and do not in any way interfere with the rights of the territorial legislatures to vary the rates, and the regulations ~~xmxhm~~ made under these Acts, the East African Customs Regulations, 1954 the East African Excise Regulations, 1954, and the East African Transfer Traffic Regulations, 1954.

Customs and excise revenue and excluded revenue are distributed among the territorial governments in accordance with the Customs and Excise Revenue Allocation Act. Customs and excise revenue must, as soon as it is collected or received, "be paid over to the appropriate accounting officers of the Territories in such manner and in such proportion as may be agreed to by the Governments of such Territories."[57] The amounts thus paid over are adjusted, when the total customs and excise revenue in respect of each financial year has been ascertained so "that the amount received by the Government of each Territory in respect of each such year is a sum which bears the same proportion to the total customs and excise revenue as the net duties collected on goods retained in that Territory bears to the total net duties for that year."[58] In order that the territory to which the goods are removed for consumption is credited with any duty already levied (including excise duty) and the transfer is correctly reflected in the trade statistics, transfer forms must be filled in by consignors for all imported and locally produced goods. In the case of imported goods which are subject to different rates of duty in the Territories, the amount of such difference is collected or refunded when the goods are transferred from one territory to another.

Excluded revenue, as soon as it is collected or received, must be "paid over to the appropriate accounting officer of the Government or of the service of the High Commission on whose behalf such sum was so collected or received."[59]

The total net amount of customs import duty, inclusive of duty on postal parcels, collected by the East African Customs and Excise Department, with the approximate allocation between the territories after transfer adjustments, was as follows in £:

	1948	1949	1950	1951
Kenya		4,886,832	4,193,000	5,768,000
Tanganyika		3,182,044	2,927,000	3,485,000
Uganda		1,711,349	1,962,000	2,875,000
Total	8,518,000	9,780,225	9,082,000	12,128,000

The total net amounts of excise revenue collected by the Department, with the approximate allocation between the three territories, after transfer adjustments, were as follows in £:

	1948	1949	1950	1951
Kenya		799,128	1,087,500	1,148,000
Tanganyika		554,253	676,500	756,000
Uganda		659,362	649,000	971,000
Total	1,759,000	2,012,743	2,413,000	2,875,000

The total amounts collected by the Department were as follows in £:

	1949	1950	1951
Import duty	9,780,225	9,082,000	12,128,000
Excise duty	2,012,000	2,413,000	2,875,000
Export duties			
Tanganyika	93,582	691,000	1,436,000
levies, cesses, taxes & royalties:			
Kenya		111,000	301,000
Tanganyika		137,000	193,000
Uganda		22,000	122,000
Other Collections		196,000	50,000
Deposits to secure duty		552,000	635,000
TOTAL		£13,204,000	£17,740,000

The 1950 High Commission annual report stated: "Approximately 40,000 (transfer) forms, involving the classification of, and the punching of cards for, approximately 80,000 items are received and collated each month, each form representing an inter-territorial transfer of goods for which a revenue and statistical adjustment is made."[60]

With the amalgamation an immediate economy in costs of administration was claimed, but interterritorial differences remained, and there have been allegations that paperwork and red tape (such as the 40,000 transfer forms mentioned above) has seriously increased both for the Department and for the residents of the territories.

Interterritorial differences have thwarted to some degree the High Commission desire for greater uniformity or central control. With power to determine customs and excise duties retained by the territorial legislatures, there have been "recurring crises" when differences in the matter of certain customs and excise duties were expressed in the territorial legislative Councils. "In every case it has been possible to resolve them by the recognition, from which there is no escape, that the only alternative to agreement is fiscal separation and the protection by each country of its own revenue by those measures common at the international frontiers of the world."[61]The three territorial legislatures have not yet agreed on a fully uniform customs tariff. This has complicated collection and accounting procedures and, at least from the point of view of the High Commission, it has emphasized the necessity of a uniform tariff. Sir Philip Mitchell insisted that "a common Customs policy and tariff for three separate Governments and a joint Customs Department can only be operated if there is, in fact, virtual identity of tariffs in all three territories."[62] The Commissioner of Customs has also urged a uniform customs tariff for the three territories. When moving the second reading of the East African Customs Management Bill he said:

> "I should like to stress the fact that while it is considered necessary that provision should be included in the Bill to enable differences in customs import duty to be collected or refunded, the implementation of these provisions is not made any easier thereby and freedom of inter-territorial trade and differing territorial customs tariffs do not, so far as territorial customs revenue is concerned, go hand in hand."[63]

He reemphasized this in the Central Legislative Assembly in April, 1953.[64]

Sir Philip Mitchell continued:

> "If the power to decide what the tariffs should be is retained in three separate Legislative Councils, sacrifices in one country or another must be made from time to time in support of the general principle of unanimity and common Customs administration and taxation. That means long, and often difficult, negotiation, and since Customs and Excise tariff negotiations must necessarily be conducted in secrecy there is always the possibility of public disapproval of the result, when it has been achieved."
>
> ...
>
> "A customs Agreement or an agreement, if you like it, to maintain identical Customs tariffs and administrations between three parties, each of which has an independent legislature, may prove unable to endure, and I believe that in the course of years there will be agreement to transfer these matters to the Central Assembly, so that if, when the appropriate Orders are published, there is disagreement, it may, after public debate, be resolved by the votes of the Members of the Assembly, for the votes in three separate Legislative Councils are not, in themselves able to resolve a disagreement of this nature."[65]

He was of the opinion that friction in the past was "largely due to misunderstanding and to the imperfections of our present constitutions rather than to any other cause"[66] - an opinion more optimistic than that of many East African residents, who feel that the differences between the territories, now expressed in the territorial Legislative Councils, would also prevent agreement on a uniform tariff within the Central Legislative Assembly.

Sincerely,

John B. George

John B. George

P.S.

Footnotes
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