

Legal Notice No. _____

THE INCOME TAX ACT
(CAP. 470)

IN EXERCISE of the powers conferred by Section 130 of the Income Tax Act,
the Cabinet Secretary for the National Treasury and Planning makes the
following Rules –

THE INCOME TAX (LEASING) RULES, 2024

Citation	1. These Rules may be referred to as the Income Tax (Leasing) Rules, 2024.
Interpretation	2. In these Rules, unless the context otherwise requires – “ <i>asset</i> ” includes equipment, but excludes land and buildings; “ <i>Commissioner</i> ” includes an officer authorized by the Commissioner in writing to <i>exercise</i> the powers or to perform functions conferred upon the Commissioner under these Rules; “ <i>cross-border lease</i> ” means a leasing contract entered into between a person resident in Kenya and another person resident in a different tax jurisdiction; “ <i>finance lease</i> ” means a contract which the lessor agrees to lease assets to the lessee for a specified period of time where the risks and rewards associated with ownership of the assets are substantially transferred from the lessor to the lessee, but with the title to the assets always remaining with the lessor; “ <i>hire purchase</i> ” means a contract under which the lessor agrees to lease the assets to the lessee for a specified period of time, with the intention of transferring ownership on the expiry of the lease; “ <i>lease</i> ” means a contract by which a person owning or having right to an asset grants to a lessee the right to possess, use and enjoy such asset for a specified period of time in exchange for periodic payments; “ <i>lessee</i> ” means a person who leases from the owner or lessor of the assets and in return for use of such assets pays periodic payments to the lessor; “ <i>lessor</i> ” means a person who leases an asset to a lessee;

	<p><i>“operating lease”</i> means a contract under which the lessor agrees to lease the assets to the lessee for specified periodical payments where the title to the assets and the risks and rewards associated with ownership substantially remain with the lessor.</p>
Income chargeable to tax	<p>3. (1) All income accruing to a lessor from payments made in respect of an operating or finance lease shall be chargeable to tax in accordance with the provisions of the Act.</p> <p>(2) All income accruing under sub rule (1) shall be subject to withholding tax at the rates applicable to resident or non-resident persons under the Act.</p>
Deduction	<p>4. Notwithstanding Rule 3 -</p> <p>(a) a lessor shall be entitled to claim a deduction –</p> <p>(i) for the capital expenditure incurred in respect of an asset which the lessor leases to a lessee in accordance with paragraph 1 of the Second Schedule to the Act; and</p> <p>(ii) in respect of all other expenditure incurred wholly and exclusively in the production of the income in accordance with section 15 of the Act.</p> <p>(b) a lessee shall take as a deduction the full amount of the payments made to the lessor, where the Commissioner is satisfied that –</p> <p>(i) the expenditure in respect of which the deduction is sought is incurred by the lessee wholly and exclusively in the production of income chargeable to tax; and</p> <p>(ii) the sole consideration for the payment in respect of which the deduction is sought is the use of, or the right to use, an asset.</p>
Capitalization of assets	<p>5. (1) For the purposes of these Rules, Assets to which these Rules relate shall be capitalized in the books of the lessor, and where the same are sold off upon the expiration of the lease, the difference between the sale price and the book value shall be deemed to be a gain or loss to the lessor, as the case may be, for purposes of assessment.</p> <p>(2) Assets leased under these Rules shall not be capitalized in the books of the lessee.</p>

Register	<p>6. The lessor shall maintain a separate register containing particulars of all assets that the lessor has leased out.</p>
Where lease is terminated	<p>7. (1) Where, upon termination of a lease in respect of which the lessee is entitled to any tax deduction, and with the express or implied consent or acquiescence of the lessor the lessee is allowed to use, enjoy or deal with the asset as the lessee may deem fit –</p> <p>(a) without the payment of any consideration; or</p> <p>(b) subject to the payment of any consideration which is nominal in relation to the fair market value of the asset; or</p> <p>(c) if the asset is transferred to the lessee passes for an amount less than the market value,</p> <p>the lessee shall be deemed to have acquired the asset and the Commissioner shall recover the deductions previously enjoyed by the lessee in respect of such assets with effect from the date of the commencement of the lease and appropriate adjustments made for each year of income when the lease payments were claimed.</p> <p>(2) Where an acquisition is deemed under sub rule (1) the lessee shall be allowed to depreciate the amount recovered based on the investment allowance deduction applicable to the asset which shall be computed on the total lease payments recovered under sub rule (1), with effect from the year of income in which the lease commenced.</p> <p>(3) Where a lessee is allowed investment allowance as computed under sub rule (2), similar adjustments shall be made in the tax computation of the lessor to bring to charge the investment allowances previously claimed by the lessor.</p>
Cross-border lease	<p>8. (1) Where a lessor in Kenya enters a cross-border lease, the gross lease payments made to the lessor shall be deemed to be income chargeable to tax.</p> <p>(2) Where a lessee in Kenya enters a cross-border lease, the gross lease payments made by such lessee shall be deemed to be income derived from Kenya and shall be subject to withholding tax in accordance with the Act.</p>
Revocation L. No. 52/2002	<p>9. The Income Tax (Leasing) Rules, 2002 are revoked</p>

Made on ____ 2024

JOHN MBADI NG'ONGO,
*Cabinet Secretary for the
National Treasury and Economic Planning.*

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