

Income Tax (Amendment) Act 1994

[Date of Assent: 25 May, 1994]

ACT NO. 2 OF 1994

An Act to amend the Income Tax Order, 1993.
Enacted by the Parliament of Lesotho.

Short title

1. This Act may be cited as the Income Tax (Amendment) Act, 1994.

Commencement

2. (1) Subject to subsection (2), this Act shall come into operation on the date of its publication in the Gazette.

- (2) Sections 5A, 7, 11, 12, 13, 15, 16 and 17 are deemed to have come into operation on 1 April 1993.

Title of Principal Law

3. (1) The title of the Principal Law is amended by omitting "Order" and substituting "Act".

- (2) The Principal Law is amended by omitting "this Order" wherever occurring and substituting "this Act".

4. Section 12 of the Principal Law is repealed and the following section is substituted —

Rate of Income Tax for Non-Residents

12. (1) Subject to subsection (2), a non-resident taxpayer is subject to tax at the standard rate of tax.

- (2) A non-resident individual taxpayer who lives permanently outside Lesotho but who is employed full-time in Lesotho or who is engaged full-time in a business or trade in Lesotho, is subject to tax in respect of his or her chargeable employment income and chargeable business income at the rate prescribed in the Second Schedule.

- (3) In this section —

"chargeable employment income" means employment income included in gross income reduced by the deductions allowed under Division IV of Part IV which relate to the production of that income.

"chargeable business income" means business income included in gross income reduced by the deductions allowed under Division IV of Part IV which relate to the production of that income."

5. Section 32 of the Principal Law is repealed and the following section is substituted —

Severance Payments

“32. The first M1,000 of a severance payment made under section 79 of the Labour Code Order 1992 is exempt from income tax.”

5A. Section 62 of the Principal Law is amended in subsection (3) by omitting the word “investment”.

Abatements

6. Section 73 of the Principal Law is amended by inserting after subsection (4) the following subsection —

“(5) This section applies to an individual to whom section 12(2) applies.”

Lump Sum Payments Made by a Superannuation Fund

7. Section 99 of the Principal Law is amended —

(a) in subsection (1), by adding the words “unless the recipient elects for the payment to be included in gross income” after the words “standard rate of tax”; and

(b) by omitting subsection (2) and substituting the following subsection —

“(2) The whole or any part of a lump sum payment from a complying superannuation fund which —

(a) in the case of an expatriate taxpayer, is rolled over into another superannuation fund or used to purchase an annuity within 90 days of the date of the payment ; or

(b) in any other case, is rolled over into another complying superannuation fund or used to purchase an annuity from a resident person within 90 days of the date of the payment,

is exempt from income tax.”

Source of income

8. Section 103 is amended in subsection (1) by inserting after paragraph (m) the following word and paragraph —

“or (n) taxable in Lesotho under an international agreement.”

Withholding Tax on International Transactions

9. Section 107 of the Principal Law is amended by omitting subsection (3) and substituting the following subsection —

“(3) The rate of withholding tax payable on —

(a) a Lesotho-source interest payment made in respect of a loan funds used solely in the production of manufacturing income subject to a concessional rate of tax under section 10(2); or

(b) a Lesotho-source royalty payment made in respect of technology used solely in the production of manufacturing income subject to

- a confessional rate of tax under section 10(2); or
- (c) a Lesotho-source management charge made in respect of a management or administrative service used solely in the production of manufacturing income subject to a confessional rate of tax under section 10(2),
- is 15% of the gross amount of the interest, royalty, or management charge.”.

10. After section 112 of the Principal Law the following section is inserted —

Reciprocal assistance in the collection of tax

“112A. (1) Where an international agreement provides for reciprocal assistance in the collection of taxes and the Commissioner has received a request from a country pursuant to that agreement for the the collection from any person in Lesotho of an amount due by that person under the income tax laws of that country, the Commissioner may by notice in writing require the person to pay the amount on a date specified in the notice to the Commissioner for transmission to the proper authority in that other country.

(2) If a person fails to comply with a notice under subsection (1), the amount in question may be recovered for transmission to the proper authority in that other country as if it were a tax payable by that person under this Act.”.

Loan Fringe Benefit

11. Section 125 of the Principal Law is amended —

- (a) in subsection (1), by adding the words “two-thirds of” after the word “below”; and
- (b) in subsection (2), by adding the words “an interest rate equal to two-thirds of” after the words “made at”.

Payments by a Superannuation Fund

12. Section 159 of the Principal Law is amended in subsection (2), by adding the words “and the recipient has not made an election under section 99(1)” after the words “complying superannuation fund”.

Tax withholding Certificates

13. Section 163 of the Principal Law is amended in subsection (2) (a), by adding the words “or recipient of a superannuation pension or annuity” after the word “employee” first occurring.

14. Section 184 of the Principal Law is repealed and the following section substituted:

Offences Related to Tax Clearance Certificates

“184. A person other than the Commissioner who fails to comply with a requirement relating to tax clearance certificates imposed by the regulations is guilty of an offence and liable on conviction to a fine

not exceeding M10,000 or to imprisonment for a term not exceeding two years, or both.”.

Secrecy

15. Section 202 of the Principal Law is amended in subsection (3) by omitting paragraph (a) and substituting the following paragraph:

“(a) the Minister or any other person where the disclosure is necessary for the purpose of this Act or any other fiscal law; or”.

Regulations and Amendment of Schedules

16. Section 212 of the Principal Law is amended —

(a) in subsection (1), by omitting from paragraph (b) the words “Sixth and Seventh Schedules and substituting the words “and Sixth Schedule”; and

(b) by inserting after subsection (2) the following subsection —

“(2A) The regulations may prescribe specific offences for breach of the regulations.”.

17. Section 214 of the Principal Law is amended in subsection (9) by adding “, and 33” after “(d)”.

NOTE

The explanatory memorandum to the Income Tax (Amendment) Bill 1994 that was introduced into the National Assembly on 10th March 1994 is published as Government Notice No. 35 of 1994.