

ACT NO. 10 OF 1996**INCOME TAX (AMENDMENT) ACT, 1996.**

[Date of Assent: 20.09.96]

[Date of commencement: See section 2]

An Act to amend the Income Tax Act, 1993¹.**Enacted by the Parliament of Lesotho****Short Title**

1. This Act may be cited as the Income Tax (Amendment) Act, 1996.

Commencement

2. (1) Subject to subsections (2) and (3) this Act comes into operation on the date it is published in the Gazette.

(2) Sections 10, 16, 17, 18, 19 and 30 are deemed to have come into operation on 1 April 1993.

(3) Sections 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 21, 24, 31 and 32 are deemed to have come into operation on 1 April 1996.

Principal Law

3. In this Act, "Principal Law" means the Income Tax Act, 1993.

Interpretation

4. Section 3 of the Principal Law is amended in subsection (1) by adding, after the definition of "person", the following definition -

"personal credit" means the credit allowed under section 73."

Rate of Income Tax for Resident Individuals

5. Section 9 of the Principal Law is amended by omitting subsections (3), (4) and (5).

Chargeable Property Income of Minors

6. Section 14 of the Principal Law is amended by omitting the words "and reduced by a personal deduction of M1,000".

Farming

7. Section 29 of the Principal Law is amended -

- (a) by adding the word "Subsistence" before the word "Farming" in the heading; and
- (b) in subsection (1), by adding the word "subsistence" before the word "farming"; and
- (c) in subsection (2) -
 - (i) by adding the word "subsistence" before the word "farming"; and
 - (ii) by adding the words " , where the output of the operations is principally used for own consumption" after the word "agricultural".

Apportionment of Deductions

8. Section 46 of the Principal Law is amended by repealing subsection (2).

Losses Carried Forward

9. Section 47 of the Principal Law is amended by adding the following subsections after subsection (5) -

- "(6) Where farming income of an individual taxpayer is exceeded by the deductions relating to that income, the loss (being the amount of the excess) -

- (a) may not be deducted against other income of the taxpayer but shall be carried forward; and
 - (b) may be deducted in determining the chargeable farming income in subsequent years of assessment.
- (7) In this section -

“chargeable farming income” means the chargeable income arising from farming; and

“farming” means primary farming operations, whether pastoral or agricultural.”

Long-Term Contracts

10. Section 55 of the Principal Law is amended -

- (a) in subsection (2), by adding the words “as determined at the time of commencement of the contract” after the words “estimated total contract costs”; and
- (b) in subsection (3), by substituting the words “a final year loss” for the words “overall loss”; and
- (c) in subsection (4), by substituting the words “a final year loss” for the words “an overall loss”, and
- (d) in subsection (5) -
 - (i) by adding the following definition before the definition of “long-term contract” -

“final year loss”, in relation to a long-term contract, occurs where both the following conditions are satisfied -

- (a) may not be deducted against other income of the taxpayer but shall be carried forward; and
 - (b) may be deducted in determining the chargeable farming income in subsequent years of assessment.
- (7) In this section -

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- (b) in subsection (3), by substituting the words “a final year loss” for the words “overall loss”, and
- (c) in subsection (4), by substituting the words “a final year loss” for the words “an overall loss”; and
- (d) in subsection (5) -
 - (i) by adding the following definition before the definition of “long-term contract” -

“final year loss’, in relation to a long-term contract, occurs where both the following conditions are satisfied -

(a) the profit estimated to be made under the contract for the purposes of subsection (1) exceeds the actual profit (including a loss) made under the contract; and

(b) the difference between the estimated profit and the actual profit exceeds the income included in gross income under subsection (1) for the year of assessment in which the contract is completed,

and the amount of the excess referred to in paragraph (b) is the amount of the final year loss; and”;

(ii) by omitting the definition of “overall loss”.

Trading Stock

11. Section 56 of the Principal law is amended by adding the following subsection after subsection (5) -

“(6) The Minister may make regulations for the valuation of trading stock in relation to farming.”

12. Section 73 of the Principal Law is repealed and the following section substituted -

“Personal Credit

73. (1) A resident individual (other than a resident minor) is allowed a non-refundable personal credit of M2,640 against the individual’s liability for income tax.

(2) A resident minor is allowed a non-refundable personal credit -

- (a) in relation to the minor’s liability for income tax on chargeable property income, in the amount of such liability, up to M400; and
- (b) in relation to the minor’s liability for income tax on chargeable income other than chargeable property income, of M2,640 less the amount of any credit allowed under paragraph (a).

(3) Where an individual qualifies for a personal credit under this section for a period which is less than twelve months, the personal credit is allowed in the proportion which that period bears to twelve months.

(4) This section applies to an individual to whom subsection 12(2) applies.”

Calculation of Partnership Income or Loss

13. Section 76 of the Principal Law is amended in subsection (1) by omitting “, 73,”.

Principles of Taxation for Trusts

14. Section 81 of the Principal Law is amended in subsection (3) by omitting “, 73,”.

Taxation of Estates of Deceased Persons

15. Section 84 of the Principal Law is amended by omitting subsection (2) and substituting the following subsection -

“(2) The personal credit is to be taken into account in calculating the income tax payable by an executor or administrator under subsection (1).”

Interpretation

16. Section 85 of the Principal Law is amended by adding the words “less the income tax payable on such income” after the words “section 10(2)”.

Incorporation and Liquidation Roll-Overs

17. Section 91 of the Principal Law is amended -

- (a) in subsection (1) by -
 - (i) adding the word “resident” before the word “person” wherever it appears in the subsection; and
 - (ii) adding the word “resident” before the word “company” wherever it appears in the subsection; and
- (b) in subsection (4) by -
 - (i) adding the word “resident” before the word “company” in paragraph (a); and
 - (ii) adding the word “resident” before the word “company” in paragraph (b); and
 - (iii) adding the word “resident” before the word “company” in paragraph (c).

Reconstruction Roll-Over

18. Section 92 of the Principal Law is amended by adding the word “resident” before the words “company” and “companies” wherever those words appear in the section.

Lump Sum Payments Made by a Superannuation Fund

19. Section 99 of the Principal Law is amended -

- (a) in subsection (1), by adding the words “to a member of the fund or a dependant of a member of the fund where the member has died” after the words “complying superannuation fund”;
- (b) by adding the following subsection after subsection (3) -
 - “(4) In this section, “dependant” in relation to a member of a superannuation fund, means the spouse of the member or any child of the member who is under the age of 18 years.”

20. Section 102 of the Principal Law is repealed.

Foreign Tax Credit

21. Section 105 of the Principal Law is amended in subsection (6) in the definition of “average rate of Lesotho income tax” by omitting the comma after the words “the Lesotho income tax” and adding the words “calculated after allowance of the personal credit but” after the words “Lesotho income tax”.

22. Section 112 of the Principal Law is repealed and the following section substituted -

“Double Taxation Agreements

112. (1) The Minister may, on behalf of the Government of Lesotho, enter into, amend, or terminate a double taxation agreement with the Government of another country.

(2) Where a double taxation agreement provides for reciprocal assistance in the collection of taxes and the Commissioner has received a request from the competent authority in a country pursuant to that agreement for 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 to the Commissioner on a date specified in the notice the amount owing for transmission

by the Commissioner to the competent authority in that other country.

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

(4) In this section, "double tax agreement" includes an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities."

23. Section 112A of the Principal Law is repealed.

Cases Where Return Not Required

24. Section 129 of the Principal Law is amended by omitting paragraph (a) and substituting the following paragraph -

“(a) where the income tax payable on chargeable income by the individual for the year of assessment is less than the amount of the personal credit allowed to the individual; or”.

Instalments of Income Tax

25. Section 150 of the Principal Law is amended by omitting subsection (6) and substituting the following subsection -

“(6) Where the instalments credited under subsection (5) exceed the income tax liability assessed to the taxpayer, the Commissioner shall -

- (a) apply the excess in reduction of any other tax due from the taxpayer; and
- (b) apply the balance of the excess (if any) in reduction of any outstanding liability

of the taxpayer under the Sales Tax Act, 1995², and

- (c) refund the remainder (if any) to the taxpayer.”

Repayment of Overpaid Tax

26. Section 151 of the Principal Law is amended in subsection (1) by omitting the words “the person is entitled to a repayment of the amount so paid in excess” and substituting the following words -

“the Commissioner shall -

- (a) apply the excess in reduction of any other tax due from the taxpayer; and
- (b) apply the balance of the excess (if any) in reduction of any outstanding liability of the taxpayer under the Sales Tax Act, 1995; and
- (c) refund the remainder (if any) to the taxpayer.”

Payments to Resident Contractors

27. Section 157 of the Principal Law is amended by adding the following subsections after subsection (3) -

- “(4) Subsection (1) does not apply to payments made to a complying contractor.
- (5) A complying contractor is a resident contractor who has been issued with a certificate of exemption from withholding tax by the Commissioner which certificate is still valid at the date of payment.
- (6) A resident contractor may apply in writing to the Commissioner for a certificate of exemption from withholding tax.

- (7) The Commissioner shall issue a certificate of exemption from withholding tax to a resident contractor where the Commissioner is satisfied that the contractor -
- (a) has a fixed place of business; and
 - (b) has kept proper accounting records relating to any business activity carried on by the contractor; and
 - (c) has made all payments of tax required under this Act; and
 - (d) has submitted regular and reliable income tax returns as required under this Act or, where the contractor has not previously been required to submit income tax returns, the Commissioner is satisfied that the contractor will submit regular and reliable income tax returns as required under this Act; and
 - (e) has conducted all business transactions through a bank account which is separate from the contractor's personal bank account; and
 - (f) will continue to comply with the matters listed in paragraphs (a) to (e).
- (8) Subject to subsection (10), a certificate of exemption issued under subsection (7) shall remain in force for two years from the date of issue.
- (9) The Commissioner shall give notice in writing to a resident contractor of a

decision to refuse to issue the contractor with a certificate of exemption from withholding tax.

- (10) The Commissioner may withdraw a certificate of exemption from withholding tax issued to a resident contractor if the Commissioner is no longer satisfied of the matters in subsection (7).
- (11) The Commissioner shall give notice in writing to a resident contractor of a decision to withdraw a certificate of exemption from withholding tax issued to the contractor.
- (12) A person dissatisfied with a decision of the Commissioner to refuse to issue or to withdraw a certificate of exemption from withholding tax may only challenge the decision under Part III of Chapter IV on the basis that the decision is an assessment ”

Adjustment on Assessment

28. Section 168 of the Principal Law is amended by omitting subsection (3) and substituting the following subsection -

“(3) Where tax withheld under this Part exceeds the income tax liability under an assessment of the taxpayer to whom the payment is made, the Commissioner shall -

- (a) apply the excess in reduction of any other tax due from the taxpayer; and
- (b) apply the balance of the excess (if any) in reduction of any outstanding liability of the taxpayer under the Sales Tax Act, 1995; and
- (c) refund the remainder (if any) to the taxpayer.”

Appointment of Commissioner and Deputy Commissioner of Income Tax

29. Section 200 of the Principal Law is amended by omitting subsection (1) and substituting the following subsection -

“(1) The offices of Commissioner of Income Tax and Deputy Commissioner of Income Tax shall be offices in the public service and their appointments shall be in accordance with the provisions of the Public Service Act 1995³.”

Amendment of Transitional Provisions in Principal Law

30. Section 214 of the Principal Law is amended by adding the following subsections after subsection (12) -

“(13) A lump sum payment from a superannuation fund to a member of the fund made on or after 1 April 1993 is exempt to the extent that the payment represents the capital value of the member's interest in the superannuation fund as at 31 March 1993.

(14) For the purposes of subsection (13), the capital value of a member's interest in a superannuation fund as at 31 March 1993 is calculated according to the following formula-

$$A + B$$

where,

A is the total contributions made in respect of the member as at 31 March 1993; and

B is the income accrued on **A** as at 31 March 1993.”

Notes

1. Act No. 9 of 1993 as amended by Act No. 2 of 1994.
2. Act No. 14 of 1995.
3. Act No. 13 of 1995.