

ACT NO. 11 OF 2000

INCOME TAX (AMENDMENT ACT) 2000

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, 2000.

Commencement

2. This Act shall be deemed to have come into operation on 1st April, 1999.
3. The Principal Law is amended by inserting the following section after section 112 —

“Protocol V

112A. (1) The provisions of Protocol V to the Treaty on the Lesotho Highlands Water Project entered into by the Kingdom of Lesotho and the Republic of South Africa on 4th June, 1999, as set out in the Eighth Schedule, shall apply to this Act.

(2) To the extent that the Eighth Schedule is inconsistent with this Act, the Eighth Schedule shall prevail.”.

4. The Principal Law is amended by inserting the following Schedule after the Seventh Schedule:

**“Eighth Schedule
(Section 112A)**

**Protocol V to the Treaty on
The Lesotho Highlands Water Project
Between
Lesotho and South Africa**

This Schedule is derived from, and contains the relevant parts, of Protocol V to the Treaty on the Lesotho Highlands Water Project (the Treaty) signed between the Governments of the Kingdom of Lesotho and the Republic of South Africa on 24th October 1986, as amended. Where further clarification is required the provisions of Protocol V should be referred to.

Reference to “this Protocol” in this Schedule should be read as “this Schedule”.

ARTICLE 1 — DEFINITIONS

1. The definitions prescribed in the Income Tax Act 1993 as published in the Lesotho Government Gazette Vol. XXXVIII, No. 33 of 11 March 1993, or, as the case may be, the definitions contained in the Treaty shall apply unless

otherwise defined in this Protocol.

2. In this Protocol, unless inconsistent with the context —

“Annual Cost Allocation Report” means, for the purposes of this Protocol, the Annual Cost Allocation Report provided for in Article 1 of Protocol IV to the Treaty and a corresponding report in respect of Phase IB of the project.

“Contract” means a contract entered into with the LHDA, the TCTA or the JPTC, as the case may be, in connection with the LHWP.

“Contracting Party” means a person who or which has entered into a contract or a Sub-contract, as the case may be.

“Cost” means a cost as contemplated by Article 10(3) of the Treaty to be paid by way of cost related payments by South Africa as provided by Article 10(1) of the Treaty.

“Dues and Charges” means the dues and charges provided for in Annex A to this Protocol.

“Expatriate” means a resident individual, other than a citizen of Lesotho, who, in relation to services provided in the Kingdom of Lesotho, is solely employed or engaged on the LHWP.

“JPTC” means the Joint Permanent Technical Commission.

“Laws of the Kingdom of Lesotho” means all laws of the Kingdom of Lesotho pertaining to the levying of Lesotho income tax and includes the provisions of any double taxation agreement to which the Kingdom of Lesotho or its Government, is a party.

“LHDA” means the Lesotho Highlands Development Authority.

“LHWP” means the Lesotho Highland Water Project.

“Principal Contracting Party” means a person who or which has entered into a Contract.

“Sub-contract” means —

- (a) in relation to a Contract providing for the construction of physical works as defined therein, a contract entered into with the Principal Contracting Party to perform the construction of any part of such works; or
- (b) in relation to a Contract providing for the provision of consulting services as defined therein, a contract entered into with the Principal Contracting Party to perform any part of such services.

“TCTA” means the Trans-Caledon Tunnel Authority.

3. The Annexes to this Protocol shall be read with and shall form integral parts hereof.

ARTICLE 2 — STATUS AND EFFECT OF THIS PROTOCOL

- 1 Notwithstanding the provisions of the second proviso to Article 10(3) of the

Treaty and unless the context indicates otherwise, the provisions of this Protocol take precedence over the Treaty and the other Protocol thereto.

- 2 The provisions of this Protocol apply solely in respect of the implementation of Phases IA and IB of the Project as it relates to water transfer and for which South Africa is liable for cost related payments in terms of the Treaty.

ARTICLE 3 — PAST TAXES PAYABLE

Not applicable to this Schedule

ARTICLE 4 — DUES AND CHARGES

Not applicable to this Schedule

ARTICLE 5 — OBLIGATIONS OF LESOTHO

- 1 Lesotho shall levy taxes and shall grant tax exemptions in respect of Contracting Parties in conformity with the provisions of this Protocol.
- 2 Lesotho shall timeously take all the necessary legislative, administrative and other measures, including the appointment of sufficient and adequately qualified personnel in the office of the Commissioner, to give effect to the provisions of this Protocol.
- 3 The provisions of this Protocol shall not be used to increase the liability of a Contracting Party for Lesotho tax, including a liability to withhold tax, over that which would otherwise be payable under the Laws of the Kingdom of Lesotho were it not for this Protocol.

ARTICLE 6 — TAXATION OF CONTRACTING PARTIES

- 1 Subject to Article 5(3), a Contracting Party or an Expatriate employee of such a Contracting Party, shall be made liable for Lesotho tax in accordance with the laws of the Kingdom of Lesotho, as modified and supplemented by the applicable provisions of Annex B hereto, in respect of —
 - (a) any contract entered into with the LHDA and any Sub-contract to such a Contract provided that such a Contract or Sub-contract has been concluded on the basis that the relevant Contracting Party will be taxed in conformity with Annex B hereto;
 - (b) any Contract entered into with the JPTC or the TCTA, as a result of which the Contracting Party is subject to Lesotho tax and provided that such a Contract has been concluded on the basis that the relevant Contracting Party will be taxed in conformity with Annex B hereto;
 - (c) any Contract entered into with the LHDA, other than a contract referred to in paragraphs 1(a), 2(a) and 3(a) of this Article, and any Sub-contract to such a Contract, provided that within twelve months of the date of signing of this Protocol, by way of a written variation agreement, the

provisions of such a Contract or Sub-contract are amended to the satisfaction of the LHDA as approved by the JPTC, to effect a reduction in the price of the Contract or Sub-contract;

- (d) any Contract entered into with the JPTC or the TCTA as approved by the JPTC where applicable, as a result of which the Contracting Party is subject to Lesotho tax, other than a Contract referred to in paragraph (b) above, provided that within twelve months of the date of signing of this Protocol, by way of a written variation agreement the provisions of such a Contract are amended to the satisfaction of the TCTA or of the JPTC, as the case may be, to effect a reduction in the price of the Contract;
 - (e) The LHDA, TCTA or the JPTC, as the case may be, shall notify the Commissioner in writing of any Contract or Sub-contract to which the provisions of paragraphs (a) or (b) above applies and of the conclusion of any variation agreement referred to in paragraphs (c) or (d) above apply;
 - (f) The provisions of paragraphs (a) and (b) above shall become applicable from the tax year commencing on 1 April 1993; and shall be applied in respect of Contracts or Sub-contracts subject to paragraphs (c) or (d) above, from the beginning of the tax year during which the variation agreement is concluded;
 - (g) A Contract to which the provisions of this paragraph apply shall be designated for purposes of this Protocol and Annex B hereto, as an "Annex B Contract".
2. (a) A Contracting Party or an Expatriate employee of such a Contracting Party, in respect of Contracts listed in Annex C hereto and any Sub-contracts to such Contracts, shall be made liable for Lesotho tax in accordance with the Laws of the Kingdom of Lesotho, as modified and supplemented by the provisions of Annex D hereto.
- (b) The provisions of paragraph 2(a) of this Article shall become applicable as from the tax year commencing on 1 April 1999.
- (c) A Contract to which the provisions of sub-article 2 of this article apply, shall be designated for purposes of this Protocol and Annex D hereto, as an "Annex D Contract".
3. (a) A Contracting Party or an Expatriate employee of such a Contracting Party, shall be made liable for Lesotho tax in accordance with the Laws of the Kingdom of Lesotho, as modified and supplemented by the provisions of Annex F hereto, in respect of —
- (i) any Contract listed in Annex E hereto and any Sub-contract to such a Contract;
 - (ii) any other Contract entered into with the LHDA and any Sub-contract to such a Contract, which is not subject to or until it becomes subject to paragraphs 1(c) or 1(d) of this Article.

- (b) The LHDA shall immediately after signature of this Protocol provide the Commissioner with a list of Contracts and Sub-contracts to which the provisions of paragraph 3(a) of this Article apply.
 - (c) The provisions of Annex F hereto shall become applicable as provided for in Clause 2 of that Annex.
 - (d) A Contract to which the provisions of this sub-article apply, shall be designated for purposes of this Protocol and Annex F hereto, as an "Annex F Contract".
4. In the event of the tax liability of a contracting Party being increased by reason of a change in the Laws of the Kingdom of Lesotho beyond that provided for in this Protocol, such increase shall not constitute a cost for South Africa as contemplated in Articles 10(3) or 9(26) of the Treaty, as the case may be. In such circumstances the Parties shall expeditiously enter into negotiations with a view to rectifying the matter by way of recompensatory arrangements.

ARTICLE 7 — RECOMPENSATORY ARRANGEMENTS

Not applicable to this Schedule

ARTICLE 8 — OBLIGATIONS OF SOUTH AFRICA

Not applicable to this Schedule

ARTICLE 9 — GENERAL OBLIGATIONS

Not applicable to this Schedule

ARTICLE 10 — JPTC INTERVENTION TO ENSURE COMPLIANCE

Not applicable to this Schedule

ARTICLE 11 — PROCEDURES FOR ADDITIONAL TAX ARRANGEMENTS

Not applicable to this Schedule

ARTICLE 12 — ENTRY INTO FORCE

Not applicable to this Schedule

ANNEX A and Table A1

Not applicable to this Schedule

TAXATION OF CONTRACTS

DESIGNATED IN ARTICLE 6(1) OF PROTOCOL V TO THE TREATY AS
“ANNEX B CONTRACTS”

1 DEFINITIONS

1.1 The definitions prescribed in the Income Tax Act 1993 as published in the Lesotho Government Gazette Vol. XXXVIII, No. 33 of 11 March 1993, shall apply unless otherwise defined in this Annex.

1.2 In this Annex, unless inconsistent with the context —
“Annex B Contract” means —

- (a) any Contract entered into with the LHDA and any Sub-contract to such a Contract provided that such a Contract or Sub-contract has been concluded on the basis that the relevant Contracting Party will be taxed in conformity with the provisions of this Annex;
- (b) any Contract entered into with the JPTC or the TCTA, as a result of which the Contracting Party is subject to Lesotho tax and provided that such a Contract has been concluded on the basis that the relevant Contracting Party will be taxed in conformity with the provisions of this Annex;
- (c) any Contract entered into with the LHDA, other than a Contract referred to in paragraphs 1(a), 2(a) and 3(a) of Article 6 of Protocol V to the Treaty, and any Sub-contract to such a Contract, provided that within twelve months of the date of signing of such Protocol, by way of a written variation agreement, the provisions of such a Contract or Sub-contract are amended to the satisfaction of the LHDA as approved by the JPTC, to effect a reduction in the price of the Contract or Sub-contract;
- (d) any Contract entered into with the JPTC or the TCTA, as a result of which the Contracting Party is subject to Lesotho tax, other than a Contract referred to in paragraph 1(b) of Article 6 of Protocol V to the Treaty, provided that within twelve months of the date of signing of such Protocol, by way of a written variation agreement the provisions of such a Contract are amended to the satisfaction of the TCTA or of the JPTC, as the case may be, to effect a reduction in the price of the Contract.

“Chargeable Business Income” means the business income, including interest and other investment income arising from the investment of payments, received by a Contracting Party as reduced by any deductions allowed under the ITA which relate to the production of that income.

“Contract” means a contract entered into with the LHDA, the TCTA or the JPTC, as the case may be, in connection with the LHWP.

“Contracting Party” means a person who or which has entered into a Contract or a Sub-contract, as the case may be.

“Construction Site” means all places where LHWP construction activities are carried out or any other place specifically designated in Contracts or any Sub-contracts to such contracts, as forming part of such sites and includes any camp specifically constructed or designated for the purpose of providing housing for individuals engaged on the LHWP regardless of where the construction activities are carried out, provided that Maseru may not be so designated.

“Expatriate” means a resident individual, other than a citizen of Lesotho, who, in relation to services provided in the Kingdom of Lesotho, is solely employed or engaged on the LHWP.

“ITA” means the Income Tax Act 1993 as published in the Lesotho Government Gazette, Vol. XXXVIII, No. 33 of 11 March 1993.

“JPTC” means the Joint Permanent Technical Commission.

“Laws of the Kingdom of Lesotho” means all laws of the Kingdom of Lesotho pertaining to the levying of Lesotho income tax and includes the provisions of any double taxation agreement to which the Kingdom of Lesotho or its Government is a party.

“LHDA” means the Lesotho Highlands Development Authority.

“LHWP” means the Lesotho Highlands Water Project.

“Local Staff” means citizens of Lesotho employed or engaged on the LHWP who are required to work and live at a Construction Site.

“Principal Contracting Party” means a person who or which has entered into a Contract.

“Sub-contract” means —

- (a) in relation to a Contract providing for the construction of physical works as defined therein, a contract entered into with the Principal Contracting Party to perform the construction of any part of such works; or
- (b) in relation to a Contract providing for the provision of consulting services as defined therein, a contract entered into with the Principal Contracting Party to perform any part of such services.

“TCTA” means the Trans-Caledon Tunnel Authority.

- 1.3 A Contracting Party or the Lesotho branch of a Contracting Party, shall be deemed to be wholly or mainly engaged on the LHWP where at least eighty five percent (85%) of the Chargeable Business Income of such a Party or branch for a year of assessment, comprises Chargeable Business Income arising in connection with Contracts or any Sub-contracts to such Contracts.

2 CORPORATE TAXES

2.1 Rate of taxation

- 2.1.1 Chargeable Business Income for a year of assessment of a resident company which as a Contracting Party is wholly or mainly engaged on the LHWP, shall be taxed either at a rate applicable to Other Income as prescribed by the Third Schedule to the ITA as amended or thirty five percent (35%), whichever is the lower.

3 WITHHOLDING TAXES

3.1 Payments to resident contractors

- 3.1.1 The LHDA shall be exempt from the obligation to withhold tax on —
 - (a) the first advance payment made to a resident contractor under an Annex B Contract; and
 - (b) any other payment made to a resident contractor under an Annex B Contract, provided such contractor holds an Exemption Certificate issued by the Commissioner.

- 3.1.2 The Commissioner shall issue an Exemption Certificate in such form as the Commissioner may determine, to a resident contractor engaged on an Annex B Contract within 30 days of such contractor applying to the Commissioner for such Certificate. Such Certificate shall remain valid unless the Commissioner notifies the LHDA and the contractor in writing of the decision to withdraw such Certificate. The decision to withdraw an Exemption Certificate shall only be made following a proper inquiry into the matter and finding by the Commissioner of non-compliance by the contractor of the relevant obligations incumbent on such contractor under the ITA.

3.2 Payments of interest to non-residents

- 3.2.1 Interest payments to a non-resident by a Contracting Party wholly or mainly engaged on the LHWP, shall be subject to withholding tax at a rate not exceeding ten percent (10%) on the gross amount of the interest.
- 3.2.2 A non-resident lender shall be exempt from Lesotho tax in respect of interest income paid or payable by the LHDA on loan funds used by the LHDA on the LHWP.

4 PERSONAL INCOME TAX

4.1 Tax rate with regard to Expatriates

The tax rate on that portion of the chargeable income of an Expatriate which represents compensation for services rendered in respect of a Contract or any Sub-contract to such a Contract, shall be limited to twenty five percent (25%).

4.2 Superannuation deductions with regard to Expatriates

4.2.1 In determining the amount of chargeable income of an Expatriate in respect of an Annex B Contract or any Sub-contract to such a Contract, the Expatriate shall be deemed to have made a superannuation contribution equal to the maximum amount of such contributions deductible under sections 95 to 97 of the ITA regardless of the actual contributions made by the Expatriate.

4.2.2 An employer of an Expatriate to whom paragraph 4.2.1 applies, is not entitled to any deduction under sections 95 or 97 of the ITA for contributions made by the employer in respect of the expatriate and the exemptions provided for in paragraph 7.2 of this Annex shall not apply to such employer in respect of such contributions.

5 FRINGE BENEFITS TAX

5.1 A Contracting Party shall be exempt from fringe benefits tax in respect of fringe benefits provided to Expatriates and Local Staff.

5.2 Expatriates and Local Staff shall be exempt from Lesotho tax in respect of fringe benefits, which are exempt from fringe benefits tax under paragraph 5.1.

6 TAXATION OF PAYMENTS AND BENEFITS TO EXPATRIATES

The following reliefs and exemptions shall apply in the determination of the taxable value of payments and benefits, including the payment of allowances, to Expatriates.

6.1 Housing and utilities

The first M4200 per month of an allowance payable or paid in respect of housing and utilities shall be exempt from Lesotho tax. The exempt amount of M4200 shall be subject to annual review by the LHDA and, with the concurrence of the JPTC, shall be submitted for recommendation to the Minister for incorporation into the relevant regulations.

6.2 School fees

The discharge or reimbursement of school fees payable or paid in respect

of a recognised educational establishment for the education of children aged 18 years or younger of an Expatriate, shall be exempt from Lesotho tax to the extent that the amount of such discharge or reimbursement does not exceed in respect of each child an amount equal to the fees that would be payable in respect of a child of an Expatriate attending Machabeng High School.

6.3 Home leave travel

The discharge or reimbursement of the cost of travel and transport of an Expatriate, the spouse of an Expatriate and the children aged 21 years or younger of the Expatriate, in respect of one home leave visit or one visit to Lesotho within each year of employment or assignment within Lesotho, shall be exempt from Lesotho tax. The period of employment or assignment of such Expatriate shall be deemed to commence upon the date the Expatriate first reports for duty in Lesotho in terms of his contract of employment or assignment.

7 RELIEFS AND EXEMPTIONS WITH REGARD TO INCREASED TAXATION

7.1 Exemption from the provisions of the Laws of the Kingdom of Lesotho

A Contracting Party, in respect of an Annex B Contract, shall be exempt from a provision of the Laws of the Kingdom of Lesotho to the extent that such provision serves to increase the tax liability in Lesotho of such Contracting Party over that which would be payable pursuant to the terms and provisions of this Annex.

7.2 Exemption from the provisions of this Annex

A Contracting Party shall, in respect of an Annex B Contract, be exempt from a provision of this Annex to the extent that such provision would serve to increase the tax liability of such Contracting Party over the amount of the liability to pay Lesotho tax under the Laws of the Kingdom of Lesotho in force in the tax year applicable to the relevant transaction or transactions.

8 APPLICATION OF THE PROVISIONS OF PROTOCOL V TO THE TREATY AS WELL AS THE PROVISIONS OF THIS ANNEX

8.1 The provisions of Protocol V to the Treaty as well as of this Annex shall apply to Contracts as defined in paragraph 1.2 (a) and (b) of Clause 1 of this Annex from the tax year commencing on 1 April 1993.

8.2 The provisions of Protocol V to the Treaty as well as of this Annex shall apply to Contracts as defined in paragraph 1.2(c) and (d) of Clause 1 of this Annex from the beginning of the year during which the variation agreement is concluded.

CONTRACTS DESIGNATED BY ARTICLE 6 (2) OF
 PROTOCOL V TO THE TREATY AS "ANNEX D CONTRACTS"

Contract No.	Contracting Party	Purpose of Contract	Cost-Million	Award Date	Anticipated Completion Date
45	Lesotho Highlands Consultants	Construction Supervision Katse Dam & Transfer Tunnel	M 350	Feb 1991	Dec. 1999
46	Lesotho Highlands Tunnel Partnership	Construction Supervision for Delivery Tunnel South	M 83	Feb 1991	Dec. 1999
65	Acres International	Technical Assistance Engineering for LHDA	M 89	Feb 1991	July 1999

“Local Staff” means citizens of Lesotho employed or engaged on the LHWP who are required to work and live at a Construction Site.

“Principal Contracting Party” means a person who or which has entered into a Contract.

“Sub-contract” means —

- (a) in relation to a Contract providing for the construction of physical works as defined therein, a contract entered into with the Principal Contracting Party to perform the construction of any part of such works; or
- (b) in relation to a Contract providing for the provision of consulting services as defined therein, a contract entered into with the Principal Contracting Party to perform any part of such services.

“TCTA” means the Trans-Caledon Tunnel Authority.

- 1.3 A Contracting Party or the Lesotho branch of a Contracting Party, shall be deemed to be wholly or mainly engaged on the LHWP where at least eighty five percent (85%) of the Chargeable Business Income of such a Party or branch for a year of assessment, comprises Chargeable Business Income arising in connection with Contracts or any Sub-Contracts to such Contracts.
- 2 Any amount paid to a Contracting Party for purposes of reimbursing such Party for Lesotho Tax paid or due or, as the case may be, any amount paid to the Commissioner for the purpose of settling the liability of such Party for Lesotho tax, shall be exempt from taxation in Kingdom of Lesotho.

3 CORPORATE TAXES

3.1 Rate of taxation

- 3.1.1 A tax rate of fifteen percent (15%) shall apply to chargeable income arising under an Annex D Contract.
- 3.1.2 Branch profit repatriations of a Lesotho branch of a non-resident company, which branch is wholly or mainly engaged on the LHWP, from income derived from the LHWP in respect of Annex D Contracts and subject to Lesotho tax, shall be exempt from the tax imposed under Section 111 of the ITA. Branch profit repatriations shall be deemed to be made from income derived from sources other than the LHWP in priority to income derived from the LHWP.

4 WITHHOLDING TAXES

4.1 General payments to non-residents

- 4.1.1 Dividends paid by a resident company wholly or mainly engaged on the LHWP to a non-resident out of income derived from the LHWP in

respect of Annex D Contracts and subject to Lesotho tax, shall be exempt from withholding tax.

Dividends shall be deemed to be paid from income derived from sources other than the LHWP in priority to income derived from the LHWP.

4.1.2 A management charge paid by a person solely engaged on the LHWP in respect of Annex D Contracts, to a non-resident shall be liable to withholding tax at a rate not exceeding fifteen percent (15%) on the gross amount of the charge.

4.2 Payments of interest to non-residents

4.2.1 Interest payments to a non-resident by a Contracting Party wholly or mainly engaged on the LHWP in respect of an Annex D Contract, shall be subject to withholding tax at a rate not exceeding ten percent (10%) on the gross amount of the interest.

4.2.2 A non-resident lender shall be exempt from Lesotho tax in respect of interest income paid or payable by the LHDA on loan funds used by the LHDA on the LHWP.

5 PERSONAL INCOME TAX

5.1 Tax rate with regard to Expatriates

The tax rate on that portion of the chargeable income of an Expatriate in respect of an Annex D Contract which represents compensation for services rendered in respect of a Contract or any Sub-contract to such a Contract, shall be limited to twenty five percent (25%).

5.2 Superannuation deductions with regard to Expatriates

5.2.1 In determining the amount of chargeable income of an Expatriate in respect of an Annex D Contract or any Sub-contract to such Contract, the Expatriate shall be deemed to have made a superannuation contribution equal to the maximum amount of such deductible under sections 95 to 97 of the ITA regardless of the actual contributions made by the Expatriate.

5.2.2 An employer of an Expatriate to whom paragraph 5.2.1 applies, is not entitled to any deduction under sections 95 or 97 of the ITA for contributions made by the employer in respect of the Expatriate and exemptions provided for in paragraph 8.2 of this Annex shall not apply to such employer in respect of such contributions.

5.3 Tax rate with regard to non-resident persons

The gross remuneration paid to a non-resident person employed or engaged in terms of an ANNEX D Contract or any Sub-contract to such a Contract,

by a resident Contracting Party for the provision of services on the LHWP, shall be exempt from Lesotho tax, provided the non-resident person is present in Lesotho for a period of less than 183 days in any period of 12 months.

6 FRINGE BENEFITS TAX

- 6.1 A Contracting party shall be exempt from fringe benefits tax in respect of fringe benefits provided to Expatriates and Local Staff.
- 6.2 Expatriates and Local Staff shall be exempt from Lesotho tax in respect of fringe benefits which are exempt from fringe benefits tax under paragraph 6.1.

7 TAXATION OF PAYMENTS AND BENEFITS TO EXPATRIATES

The following reliefs and exemptions shall apply in the determination of the taxable value of payments and benefits, including the payment of allowances, to Expatriates.

7.1 Housing and utilities

The first M4200 per month of an allowance payable or paid in respect of housing and utilities shall be exempt from Lesotho tax. The exempt amount of M4200 shall be subject to annual review by the LHDA and, with the concurrence of the JPTC, shall be submitted to the Minister for incorporation into the relevant regulations.

7.2 School fees

The discharge or reimbursement of school fees shall be exempt from Lesotho tax.

7.3 Home leave travel

The discharge or reimbursement of the cost of travel and transport of an Expatriate as well as the spouse of the Expatriate and the children aged 21 years or younger of the Expatriate, shall be exempt from Lesotho tax.

8 RELIEFS AND EXEMPTIONS WITH REGARD TO INCREASED TAXATION

- 8.1 Exemption from the provisions of the Laws of the Kingdom of Lesotho
A Contracting Party shall, in respect of an Annex D Contract, be exempt from a provision of the Laws of the Kingdom of Lesotho to the extent that such provision serves to increase the tax liability in Lesotho of such Contracting Party over that which would be payable pursuant to the terms and provisions of this Annex.
- 8.2 Exemption from the provision of this Annex

A Contracting Party shall, in respect of an Annex D Contract, be exempt from a provision of this Annex to the extent that such provision would serve to increase the tax liability of such Contracting Party over the amount of the liability to pay Lesotho tax under the Laws of the Kingdom of Lesotho in force in the tax year applicable to the relevant transaction or transactions.

9. APPLICATION OF THE PROVISIONS OF PROTOCOL V TO THE TREATY AS WELL AS THE PROVISIONS OF THIS ANNEX

- 9.1 The provisions of Protocol V to the Treaty as well as of this Annex shall apply to Contracts as defined in paragraph 1.2 of Clause 1 of this Annex from the tax year commencing on 1 April 1999.

CONTRACT DESIGNATED BY ARTICLE 6(3) OF PROTOCOL V
TO THE TREATY AS "ANNEX F CONTRACTS"

Contract No.	Contracting Party	Purpose of Contract	Cost - Million	Award Date	Anticipated Completion Date
123	Highlands Water Venture	Construction of Katse Dam & Appurtenances	M 1,490	Feb 1991	Dec 1999
124/5	Lesotho Highlands Project Contractors	Construction of Transfer Tunnel	M 1,556	Feb 1991	Dec 1999
126	Lesotho Highlands Project Contractors	Construction of Delivery Tunnel South	M 349	Feb 1991	Dec 1999

TAXATION OF CONTRACTS

DESIGNATED BY ARTICLE 6(3) OF PROTOCOL V TO THE TREATY AS
“ANNEX F CONTRACTS”

1 DEFINITIONS

1.1 The definitions prescribed in the Income Tax Act 1993 as published in the Lesotho Government Gazette Vol. XXXVIII, No. 33 of 11 March 1993, shall apply unless otherwise defined in this Annex.

1.2 In this Annex, unless inconsistent with the context —

“Annex F Contract” means —

- a) a Contract listed in Annex E to Protocol V to the Treaty and any Sub-contract to such a Contract; and
- b) any other Contract entered into with the LHDA and any Sub-contract to such a Contract, which is not subject to or until it becomes subject to Article 6(1) of Protocol V to this Treaty.

“Chargeable Business Income” means the business income, including interest and other investment income arising from the investment of payments, received by a Contracting Party as reduced by any deductions allowed under the ITA which relate to the production of that income.

“Contract” means a contract entered into with the LHDA, the TCTA or the JPTC, as the case may be, in connection with the LHWP.

“Contracting Party” means a person who or which has entered into a Contract or a Sub-contract, as the case may be.

“Construction site” means all places where LHWP construction activities are carried out or any other place specifically designated in Contracts or any Sub-contracts to such Contracts, as forming part of such Sites and includes any camp specifically constructed or designated for the purpose of providing housing for individuals engaged on the LHWP regardless of where the construction activity is carried out, provided that Maseru may not be so designated.

“Expatriate” means a resident individual other than a citizen of Lesotho, who, in relation to services provided in the Kingdom of Lesotho, is solely employed or engaged on the LHWP.

“ITA” means the Lesotho Tax Act 1993 as published in the Lesotho Government Gazette, Vol. XXXVIII, No. 33 of 11 March 1993.

“JPTC” means the Joint Permanent Technical Commission.

“Laws of the Kingdom of Lesotho” means all laws of the Kingdom of Lesotho pertaining to the levying of Lesotho income tax and includes the provisions of any double taxation agreement to which the Kingdom of Lesotho or its Government, is a party.

“LHDA” means the Lesotho Highlands Development Authority.

“LHWP” means the Lesotho Highlands Water Project.

“Local Staff” means citizens of Lesotho employed or engaged on the LHWP who are required to work and live at a Construction Site.

“Principal Contracting Party” means a person who or which has entered into a Contract.

“Sub-contract” means —

- a) in relation to a Contract providing for the construction of physical works as defined therein, a contract entered into with the Principal Contracting Party to perform the construction of any part of such works; or
- b) in relation to a Contract providing for the provision of consulting services as defined therein, a contract entered into with the Principal Contracting Party to perform any part of such services.

“TCTA” means the Trans-Caledon Tunnel Authority.

- 1.3 A Contracting Party or the Lesotho Branch of a Contracting Party shall be deemed to be wholly or mainly engaged on the LHWP where at least eighty five percent (85%) of the Chargeable Business Income of such a Party or branch for a year of assessment, comprises Chargeable Business Income arising in connection with Contracts or any Sub-contracts to such Contracts.

2 APPLICATION OF THE PROVISIONS OF THIS ANNEX

- 2.1 The provisions of paragraphs 3.1, 4.1.1, 4.1.2, 4.2.1, 4.3.1, 4.3.2, 5.1, 5.2 and 7 shall apply as from the tax year commencing on 1 April 1993.
- 2.2 The provisions of paragraph 6 shall apply as from the tax year commencing on the 1 April 1999.
- 2.3 The provisions of paragraphs 3.1 and 4.2.1 of this Annex shall apply only to Contracts listed in Annex E to Protocol V to the Treaty.

3 CORPORATE TAXES

3.1 Exemption from taxation on branch profit repatriation

- 3.1.1 Branch profit repatriations of a Lesotho branch of a non-resident company, which branch is wholly or mainly engaged on the LHWP, from income derived from the contracts listed in Annex E, shall be exempt from the

tax imposed under section 111 of the ITA. Branch profit repatriations shall be deemed to be made from income from sources other than the contracts listed in Annex E in priority to income derived from these contracts.

4. WITHHOLDING TAXES

4.1 Payments to resident contractors

- 4.1.1 The LHDA shall be exempt from the obligation to withhold tax on —
- (a) the first advance payment made to a resident contractor under an Annex F Contract; and
 - (b) any other payment made to a resident contractor under an Annex F Contract, provided such contractor holds an Exemption Certificate issued by the Commissioner.
- 4.1.2 The Commissioner shall issue an Exemption Certificate in such form as the Commissioner may determine, to a resident contractor engaged on an Annex F Contract within 30 days of such contractor applying to the Commissioner for such Certificate. Such Certificate shall remain valid unless the Commissioner notifies the LHDA and the contractor in writing of the decision to withdraw such Certificate. The decision to withdraw an Exemption Certificate shall only be made following a proper inquiry into the matter and a finding by the Commissioner of non-compliance by the contractor of the relevant obligations incumbent on such contractor under the ITA.

4.2 General payments to non-residents

- 4.2.1 Dividends paid by a resident company wholly or mainly engaged on the LHWP to a non-resident out of income derived from the contracts listed in Annex E, shall be exempt from withholding tax. Dividends shall be deemed to be made from income from sources other than the contracts listed in Annex E in priority to income derived from these contracts.

4.3 Payment of interest to non-residents

- 4.3.1 Interest payments to a non-resident by a Contracting Party wholly or mainly engaged on the LHWP shall be subject to withholding tax at a rate not exceeding ten percent (10%) on the gross amount of the interest.
- 4.3.2 A non-resident lender shall be exempt from Lesotho tax in respect of interest income paid or payable by the LHDA on loan funds used by the LHDA on the LHWP.

5 FRINGE BENEFITS TAX

- 5.1 A Contracting Party shall be exempt from fringe benefits tax in respect of fringe benefits provided to Expatriates and Local Staff.

- 5.2 Expatriates and Local Staff shall be exempt from Lesotho tax in respect of fringe benefits which are exempt from fringe benefits tax under paragraph 5.1.

6 TAXATION OF PAYMENTS AND BENEFITS TO EXPATRIATES

The following reliefs and exemptions shall apply in the determination of the taxable value of payments and benefits, including payment of allowances, to Expatriates.

6.1 Housing and utilities

The first M4200 per month of an allowance payable or paid in respect of housing and utilities shall be exempt from Lesotho tax. The exempt amount of M4200 shall be subject to annual review by the LHDA and, with the concurrence of the JPTC, shall be submitted for recommendation to the Minister for incorporation into the relevant regulations.

6.2 School fees

The discharge or reimbursement of school fees payable or paid in respect of a recognised educational establishment for the education of children aged 18 years or younger of an Expatriate, shall be exempt from Lesotho tax to the extent that the amount of such discharge or reimbursement does not exceed in respect of each child an amount equal to the fees that would be payable in respect of a child of an Expatriate attending Machabeng High School.

6.3 Home leave travel

The discharge or reimbursement of the cost of travel and transport of an Expatriate as well as the spouse of the Expatriate and the children aged 21 years and younger of the Expatriate, in respect of one home leave visit or one visit to Lesotho within each year of employment or assignment within Lesotho, shall be exempt from Lesotho tax. The period of employment or assignment of such Expatriate shall be deemed to commence upon the date the Expatriate first reports for duty in Lesotho in terms of his contract of employment or assignment.

7 RELIEFS AND EXEMPTIONS WITH REGARD TO INCREASED TAXATION

7.1. Exemption from the provisions of the Laws of the Kingdom of Lesotho

A Contracting Party shall, in respect of an Annex F Contract, be exempt from a provision of the Laws of the Kingdom of Lesotho to the extent that such provision serves to increase the tax liability in Lesotho of such Contracting Party over that which would be payable pursuant to the terms and provisions of this Annex.

7.2 Exemption from the provisions of this Annex

A Contracting Party shall, in respect of an Annex F Contract, be exempt from a provision of this Annex to the extent that such provision would serve to increase the tax liability of such Contracting Party over the amount of the liability to pay Lesotho tax under the Laws of Lesotho in force in the tax year applicable to the relevant transaction or transactions.

ANNEX G

Not applicable to this Schedule

TABLE G1

Not applicable to this Schedule

TABLE G2

Not applicable to this Schedule