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LEGAL NOTICE NO. 7 OF 2018

**Income Tax (Remission of Additional Tax and Penalties)
(Voluntary Disclosure) Regulations, 2018**

Pursuant to section 212(1) of the Income Tax Act, 1993¹, 1,

MOEKETSI MAJORO

Minister responsible for finance, make the following Regulations -

Citation and commencement

1. These Regulations may be cited as the Income Tax (Remission of Additional Tax and Penalties) (Voluntary Disclosure) Regulations, 2018, and shall come into operation on the date of publication in the Gazette.

Interpretation

2. For the purposes of these Regulations, unless context otherwise requires -

“Commissioner General” means the Commissioner General of the Lesotho Revenue Authority;

“tax irregularity” means -

- (a) the submission of inaccurate or incomplete information to the Lesotho Revenue Authority, or the failure to submit information or the adoption of a position in self-assessment or in making a tax return or in a tax audit or investigation, where such submission, non-submission, or adoption resulted in an understatement of tax due; or
- (b) failure to comply with the registration, filing, payment or record keeping requirements as spelt in the Acts.

“Valid voluntary disclosure” means a disclosure that -

- (a) is voluntary;

- (b) is full and complete in all material respects;
- (c) is not information already discovered by the Lesotho Revenue Authority in a tax audit or investigation;
- (d) does not result in a refund due by the Lesotho Revenue Authority;
- (e) is made in a prescribed form and manner; and
- (f) is not on a tax irregularity committed or otherwise arising within 5 years after the taxpayer was granted a relief under this Regulations for a tax irregularity of the same nature.

Voluntary disclosure relief

3. (1) A taxpayer who -

- (i) has committed a tax irregularity to the Lesotho Revenue Authority may apply to the Commissioner General for a voluntary disclosure relief;
- (ii) voluntarily discloses the submission of tax irregularities, shall be entitled to voluntary disclosure relief from the Commissioner General.

(2) Where the Commissioner General is satisfied that the taxpayer has submitted a voluntary disclosure -

- (a) before the taxpayer becomes aware of a pending tax audit or investigation (referred to in this Regulations as pre-notification disclosure); or
- (b) after the taxpayer becomes aware of a pending tax audit or investigation, but before the Lesotho Revenue Authority starts the audit or investigation (referred to in this Regulations as post-notification disclosure); or

- (c) after completion of the tax audit or investigation but before full payment of resulting tax liability;

the Commissioner General shall, if the voluntary disclosure is submitted before the 31st March, 2018, grant a full voluntary disclosure relief to the taxpayer.

(3) Where the Commissioner General is satisfied that the taxpayer has submitted a voluntary disclosure -

- (a) by way of a pre-notification disclosure, where the taxpayer shall be entitled to 100% remission of additional taxes; or
- (b) by way of post-notification disclosure, where the taxpayer shall be entitled to 80% remission of additional taxes; or
- (c) after the start of a tax audit but in relation to matters falling within the scope of that tax audit, where the taxpayer shall be entitled to 80% remission of additional taxes; or
- (d) after the start of a tax audit but in that instance only in relation to matters falling outside of the scope of that tax audit, where the taxpayer shall be entitled to 60% remission of additional taxes,

the Commissioner General shall, if the voluntary disclosure is submitted after the 31st March, 2018, grant a voluntary disclosure relief to the taxpayer as he may determine.

(4) The Commissioner General shall, where he has granted the voluntary disclosure relief -

- (a) remit, additional taxes payable under the Acts; and
- (b) not initiate criminal prosecution for a tax offence arising from a tax irregularity.

Apportionment of principal debt and additional taxes

4. Where part payment has been made, the remaining debt will be apportioned between the remaining principal debt and additional taxes and only the additional taxes remaining will be waived.

Disclosure in respect of investigations

5. With regard to the period after the 31st March, 2018 in respect of investigations, the taxpayer shall be entitled to a relief under section 3 only if voluntary disclosure is made by way of pre-notification.

Awareness of pending audit or investigation by taxpayer

6. A taxpayer is deemed to have been aware of a pending tax audit or investigation, or that the tax audit or investigation has started, if -

- (a) the taxpayer; or
- (b) an officer, shareholder or member of the taxpayer, if the taxpayer is a company;
- (c) a partner in partnership with the taxpayer;
- (d) a trustee or beneficiary of the person, if the person is a trust; or
- (e) a person acting for or on behalf of or as a fiduciary of the taxpayer,

has become aware of the pending tax audit or investigation, or that the tax audit or investigation has started.

Time for the start of an audit

7. An audit starts at the earlier of -

- (a) the end of the first interview an officer of the Lesotho Revenue Authority has with the taxpayer or the taxpayer's representative after the taxpayer receives notifi-

cation referred to in section 8 ; or

- (b) the time when -
 - (i) an officer of the Lesotho Revenue Authority inspects information (including books or records) of the taxpayer after the taxpayer receives the notification referred to in section 8; or
 - (ii) the taxpayer is notified of the inspection.

Time for the start of an investigation

8. For purposes of investigations, a taxpayer is deemed to have been aware of investigations at the earlier of either -

- (a) when the taxpayer is notified of the investigations by the Lesotho Revenue Authority; or
- (b) when the taxpayer otherwise becomes aware of investigations through a third party.

Withdrawal of voluntary disclosure relief

9. (1) Where, subsequent to being granted the voluntary disclosure relief pursuant to these Regulations, it is established that the applicant failed to disclose a matter that was material for purposes of making a valid voluntary disclosure under these Regulations, or the applicant fails to comply with the terms and conditions of the payment agreement reached subsequent to being granted the voluntary disclosure relief under these Regulations, the Lesotho Revenue Authority shall -

- (a) withdraw such relief;
- (b) reinstate applicable additional tax under the relevant Act in respect of the tax irregularity;
- (c) regard an amount paid in terms of the voluntary disclosure to constitute part payment of any further outstanding tax debt in respect of the relevant tax irregularity;

- (d) initiate, take steps for or otherwise pursue criminal prosecution for a tax offence arising from the relevant tax irregularity.

(2) A decision by the Lesotho Revenue Authority under this section shall be subject to objection and appeal under the relevant Act.

DATED:

**DR. MOEKETSI MAJORO
MINISTER OF FINANCE**

NOTE

1. Act No. 9 of 1993