

THE KINGDOM OF LESOTHO

INCOME TAX ACT 1993

ACT NO 9 OF 1993

[Date of Assent:]
[Commencement: see section 2]

ACT

[The term "Act" substituted by sec. 3(1) of Act No. 2 of 1994]

To consolidate and amend the law relating to the taxation of income.

Enacted by the Parliament of Lesotho

Chapter I

PRELIMINARY

Short Title

1. This Act may be cited as the Income Tax Act 1993.

[The term "this Act" wherever occurring was substituted by sec. 3(2) Act No. 2 of 1994]

Commencement and Application

2. (1) Subject to subsection (2), this Act shall come into operation on 1 April 1993.

(2) Section 36(2) shall come into operation on 1 April 1994.

(3) This Act applies to years of assessment commencing on or after 1 April 1993.

Interpretation

3. (1) In this Act, unless the context otherwise requires-

"adjusted cost base", in respect of an asset, means the cost base of the asset, reduced by depreciation and other items of reduction properly chargeable to capital account, and increased by the cost of improvements and other costs properly added to capital account in respect of the asset (other than an amount allowed as a deduction);

"associate", in relation to a person, means any other person who acts or is likely to act in accordance with the directions, requests, suggestions, or wishes of the person whether or not the directions, requests, suggestions, or wishes are communicated to that other person;

"branch" means a place where a person carries on business, and includes -

- (a) a place where a person is carrying on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such; or
- (b) a place where a person has, is using, or is installing substantial equipment or substantial machinery; or
- (c) a place where a person is engaged in a construction, assembly, or installation project;

"business" includes a trade, profession, or vocation, and an isolated transaction with a business character;

"business asset" means an asset which produces income subject to tax, including tax under section 107 or 108, and which is used in a business or is held for sale in a business;

"business debt" means a debt the proceeds of which are used to incur a business expense which is deductible under Division IV of Part IV of Chapter II or to acquire a business asset;

"business income" has the meaning in section 19;

"chargeable income" has the meaning in section 13;

"Commissioner General" means the Commissioner General appointed under section 200;

"company" means a body corporate or unincorporate, whether created or recognized under the law in force in Lesotho or elsewhere, but does not include a partnership or trust;

"complying superannuation fund" means an employer superannuation fund and a self-provided superannuation fund as defined in section 94;

"consideration received" has the meaning in section 61;

"contractor" means a person engaged in the business of leasing vehicles, plant, or equipment, or of providing construction, transportation, or any other service prescribed by regulations, under a contract, where the primary purpose of the contract is the performance of services, whether or not goods are also provided under the contract;

"cost base" has the meaning in section 60;

"debt obligation" means a right to receive a repayment of money or property from another person, including deposits in banks and other financial institutions, accounts receivable, notes, bills of exchange, and bonds;

"depreciable asset" means tangible movable property or an industrial building which is wholly or partly used in the production of income subject to tax and which is likely to lose value because of wear and tear, or obsolescence;

"disposal", in relation to an asset, means -

- (a) the sale, exchange, redemption, or distribution of the asset; or
- (b) the transfer of the asset as a gift; or
- (c) the destruction, loss, or extinction of the asset,

and includes the disposal of a part of an asset, but does not include the passing of an asset to the personal representative of the taxpayer or to a beneficiary on the death of a taxpayer;

"dividend" means a distribution by a company to a member of the company as member, other than a liquidation distribution;

"employee" means an individual who is in employment;

"employer" means a person who employs or remunerates an employee;

"employment" means -

- (a) the position of an individual in the employ of another person; or
- (b) a directorship of a company; or

(c) a position entitling the holder to a fixed or ascertainable remuneration; or

(d) a public office;

"employment income" has the meaning in section 18;

"exempt organisation" means an organisation described in section 25(1);

"expatriate taxpayer" means a resident individual, other than a citizen or permanent resident of Lesotho, who is employed or engaged under a technical services contract;

"foreign currency gain" means a gain attributable to currency exchange rate fluctuations in respect of foreign currency or a debt obligation denominated in foreign currency;

"foreign currency loss" means a loss attributable to currency exchange rate fluctuations in respect of foreign currency or a debt obligation denominated in foreign currency;

"fringe benefits taxable amount" means the amount calculated under section 117;

"income subject to tax" means income subject to income tax under this Act, other than under section 107 or 108;

"industrial building" means a building wholly or principally used for the purpose of carrying on manufacturing, or for the purpose of research and development into improved or new methods of manufacture;

"interest" includes -

(a) an amount paid or accrued under a debt obligation which is not a return of capital; and

(b) any discount, premium, swap payment, or similar payment;

"investment asset" means an asset other than -

(a) a business asset; or

- (b) an asset that does not produce income subject to tax, including tax under section 107 or 108, and that is held primarily for personal use by the taxpayer;

"Lesotho Government" includes a statutory corporation and any other body in which the Government or a statutory corporation has a controlling interest;

"Lesotho-source income" has the meaning in section 103;

"management charge" means a payment or remuneration, however described, for a management or administrative service;

"manufacturing" means the substantial transformation of tangible movable property, but does not include construction, installation, assembly, transportation, power generation, or the provision of public utility services;

"member", in relation to a company, means a shareholder or other holder of an equity interest in the company;

"membership interest", in relation to a company, includes a share;

"Minister" means the Minister of Finance;

"minor" means an individual who is under 18 years of age at the end of the year of assessment;

"natural resource payment" means a payment for minerals or a living or non-living resource of the land, or a payment calculated in whole or in part by reference to the quantity or value of minerals or living or non-living resource taken from the land;

"non-resident" means a person who is not resident in Lesotho;

"nominated officer" has the meaning in section 211;

"paid" includes credited;

"payment" includes an amount payable, the transfer of property and any other means of conferring value or benefit on a person;

"permanent resident" means a resident individual who has been present in Lesotho for a period or periods in total of seven years or more;

"person" includes a partnership, a company, a government, a political subdivision of a government, and a public international organisation;

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

[Definition of "personal credit" inserted by sec. 4 of Act No. 10 of 1996]

"property income" has the meaning in section 20;

"public international organisation" means an organisation listed in the First Schedule to this Act;

"royalty" means a payment for -

- (a) the use of, or the right to use, a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right; or
- (b) the use of, or the right to use, industrial, commercial, or scientific equipment; or
- (c) the supply of know-how; or
- (d) the use of, or right to use, a cinematographic film, video tape, sound recording, and any other like medium; or
- (e) the supply of assistance ancillary to the matters referred to in paragraphs (a) to (d); or
- (f) a total or partial forbearance with respect to a matter referred to in paragraphs (a) to (e);

"standard rate of tax" means a rate of 25%;

"superannuation fund" means a pension, provident, benefit, or retirement annuity fund, and group life assurance;

"taxpayer" means a person subject to a tax imposed by this Act;

"technical services contract" means a contract under which accounting, auditing, economic, financial, legal, management, engineering, architectural, surveying, or other similar professional service is performed;

"Tribunal" means the Revenue Appeals Tribunal established by section 3 of the Revenue Appeals Tribunal Act 2005;

[Definition of "Tribunal" amended by sec. 3 of Act No. 2 of 2005]

"trust" includes the estate of a deceased person, but does not include a grantor trust or qualified beneficiary trust described in section 80;

"trustee" includes -

- (a) an executor, administrator, tutor, or curator; and
- (b) a liquidator or judicial manager; and
- (c) a person having or taking on the administration or control of property subject to a trust; and
- (d) a person acting in a fiduciary capacity; and
- (e) a person having the possession, control, or management of the property of a person under a legal disability;

"underlying ownership or control", in relation to a company, means ownership interests held, or control exercised, directly or indirectly through interposed entities;

"withholding agent" means a person required to withhold tax under Part VII of Chapter IV;

"year of assessment" means the period of 12 months ending on 31 March or, in the case of a company, such other period as the Commissioner General may allow under section 49.

(2) In interpreting this Act, regard should be had to the Explanatory Memorandum accompanying the Act.

Chapter II

INCOME TAX

Part I: Tax Imposed

Income Tax Imposed

4. (1) Income tax is hereby imposed on every individual, trustee, company, and non-resident who has chargeable income for the year of assessment.

(2) The income tax payable is calculated by applying the relevant rates of tax to the chargeable income and subtracting any allowable tax credits.

(3) With respect to the chargeable income of a non-resident partnership, subsection (1) applies to the partners, rather than the partnership.

Part II: Treatment of Persons as Residents

Resident Individual

5. (1) Subject to subsections (2) and (3), an individual is a resident individual for the entire year of assessment if that individual -

- (a) has a normal place of abode in Lesotho and is present in Lesotho for part of the year of assessment; or
- (b) is present in Lesotho on more than 182 days in any consecutive period of twelve months which includes all or part of the year of assessment; or
- (c) is an official of the Lesotho Government posted overseas during the year of assessment; or
- (d) is otherwise a resident of Lesotho.

(2) An individual who was not a resident in the preceding year of assessment shall not be treated as a resident during the period preceding the day the individual was first present in Lesotho during the year of assessment.

(3) An individual who is not a resident in the following year of assessment shall not be treated as a resident for the period following the last day on which the individual was present in Lesotho during the year of assessment if during that period the individual had a closer connection to a foreign country than to Lesotho.

Resident Company

6. (1) A company is a resident company if it -

- (a) is incorporated or formed under the laws of Lesotho; or
- (b) has its management and control in Lesotho; or
- (c) undertakes the majority of its operations in Lesotho.

(2) A branch in Lesotho of a non-resident company is treated as a separate person which is a resident company.

Resident Partnership

7. A partnership is a resident partnership for a year of assessment if at any time during that year a partner was a resident of Lesotho.

Resident Fund

8. A superannuation fund is a resident fund if it -

- (a) is organised in Lesotho and operated for the principal purpose of providing superannuation benefits to resident individuals; and
- (b) has its management and control in Lesotho.

Part III: Rates of Income Tax

Rate of Income Tax for Resident Individuals

9. (1) The rates prescribed in the Second Schedule apply to the chargeable income of a resident individual.

(2) The chargeable property income of a resident minor is subject to tax at the rate prescribed in the Fourth Schedule.

[Sec. 9 amended by sec. 5 of Act No.10 of 1996 by repealing sub-secs. (3), (4) and (5)]

Rate of Income Tax for Resident Companies

10. (1) The chargeable income of a resident company is subject to tax at the rates prescribed in the Third Schedule.

(2) The special rate for manufacturing income applies to chargeable income which is Lesotho-source and is derived from manufacturing but does not apply to a Lesotho branch of a non-resident company.

Rate of Income Tax for Trustees

11. (1) Subject to subsection (2), the chargeable trust income of a trustee is subject to tax at the rate prescribed in the Fourth Schedule.

(2) The chargeable trust income of a trustee of the estate of a deceased taxpayer who, at the date of death, was a resident individual, is subject to tax at the rates specified in the Second Schedule for -

- (a) the year of assessment in which death occurred; and
- (b) the following year of assessment.

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.

[Sec.12 substituted by sec. 4 of Act No. 2 of 1994]

Part IV: Income Tax Base

Division I: Chargeable Income

Chargeable Income

13. (1) Subject to this Chapter, the chargeable income of a taxpayer for a year of assessment is determined by subtracting from the gross income of the taxpayer any deduction allowed under this Act.

(2) Subject to section 109, where the taxpayer is a non-resident, no deduction is allowed in determining the amount of income subject to withholding tax under section 107 or 108.

Chargeable Property Income of Minors

14. The chargeable property income of a resident minor is the property income included in gross income, reduced by the deductions allowed under Division IV of Part IV which relate to the production of that income.

[Sec. 14 amended by sec. 6 of Act No. 10 of 1996]

Chargeable Trust Income

15. The chargeable trust income of a trustee is determined under Part VII.

Minimum Chargeable Income

16. (1) If the chargeable income of a resident individual under section 13 is less than the minimum chargeable income under this section, then the chargeable income is the minimum chargeable income.

(2) The minimum chargeable income is the sum of the following amounts for the year of assessment -

- (a) the air travel amount multiplied by the factor specified in the Fifth Schedule; and
- (b) the electricity amount multiplied by the factor specified in the Fifth Schedule; and
- (c) the principal-residence amount multiplied by the factor specified in the Fifth Schedule; and
- (d) the schooling amount multiplied by the factor specified in the Fifth Schedule; and
- (e) the secondary home amount multiplied by the factor specified in the Fifth Schedule; and
- (f) the vehicle amount multiplied by the factor specified in the Fifth Schedule,

less any income derived during the year of assessment which is not included in gross income.

(3) No deductions are allowed in determining minimum chargeable income.

(4) This section does not apply -

- (a) to a person whose gross income for the year of assessment (other than income subject to a final withholding tax) consists exclusively of employment or pension income;
- (b) to a person in receipt of employment or services income that is exempt under section 22 or under an agreement referred to in section 112.

(5) In the case of a husband and wife, if neither spouse is described in subsection (4), this section applies to the spouse whose chargeable income under section 13 is the greater.

(6) In this section, subject to subsection (7),

"air travel amount" means the total cost of air or sea travel by the taxpayer, the taxpayer's spouse, and the taxpayer's minor children, with the exception of travel on an employer's business;

"electricity amount" means the value of electricity consumed in the taxpayer's principal residence and secondary home;

"principal-residence amount" means -

- (a) where the principal residence is owned by the taxpayer or the taxpayer's spouse, the greater of the adjusted cost base of the residence or the value of that residence for purposes of property rates; or
- (b) in cases not described in paragraph (a), 8 times the greater of the actual annual rental or the annual fair market rental;

"schooling amount" means the tuition and related fees incurred in respect of the taxpayer's minor children;

"secondary home amount" means the amount, determined under the same principles as the principal residence amount, with respect to a residence or residences, other than the principal residence, available for use by the taxpayer, the taxpayer's spouse, or the taxpayer's minor children;

"vehicle amount" means the value (determined in accordance with tables specified by the Commissioner General) of a motor vehicle or vehicles owned or used by the taxpayer, the taxpayer's spouse, or the taxpayer's minor

children, other than a vehicle that is not available to any extent for personal use.

(7) An amount described in subsection (6) is taken into account for purposes of this section only if it exceeds the relevant amount specified in the Fifth Schedule.

Division II: Gross Income

Gross Income

17. (1) Subject to subsections (2) and (3), the gross income of a taxpayer for a year of assessment is the sum of -

- (a) employment income; and
- (b) business income; and
- (c) property income; and
- (d) any other income or gain,

but does not include amounts exempt from income tax.

(2) The gross income of a resident taxpayer includes income from all geographical sources.

(3) The gross income of a non-resident taxpayer includes only Lesotho-source income.

Employment Income

18. (1) Employment income means a payment or benefit arising from an employment, but does not include -

- (a) a benefit included in the fringe benefits taxable amount of the taxpayer's employer under section 117 and in respect of which fringe benefits tax is payable; and
- (b) an exempt fringe benefit under section 118; and
- (c) the reimbursement of expenditure incurred by an employee on behalf of the employer for which the employer would be entitled to a deduction under Division IV if incurred directly; and

- (d) passage granted to an employee at the commencement or termination of employment.

(2) Where a benefit included in employment income would be subject to tax under Chapter III but for the employer being exempt, the value of the benefit to the employee is determined according to the valuation rules in Chapter III.

Business Income

19. (1) Business income means the profits or gains arising from a business.
- (2) For the purposes of this section, business income includes -
- (a) gains on the disposal of business assets or on the satisfaction of business debts, whether or not the asset or debt was on capital or revenue account; and
 - (b) a payment received as consideration for accepting a restriction on the capacity to carry on business.

Property Income

20. Property income includes dividends, interest, natural resource payments, rent, royalties, and gains on the disposal of investment assets, but does not include income which is business or employment income.

Division III: Exemptions

Public International Organisations

21. A public international organisation is exempt from income and fringe benefits tax.

Diplomatic and Similar Privileges

22. The following amounts are exempt from income tax -
- (a) the official employment income of an individual who is not a citizen or permanent resident of Lesotho and who is a diplomatic officer, consular officer, administrative or technical employee of a diplomatic mission or consulate, consular employee, member of the service staff of a diplomatic mission or consular post, or a private servant of a member of a diplomatic mission;

- (b) the official employment income of a person in the public service of the government of a foreign country where -
 - (i) the person is resident in Lesotho solely for the purposes of performing the duties of his or her office; and
 - (ii) the income is payable from the public funds of that country; and
 - (iii) the income is subject to income tax in that country;
- (c) foreign-source income derived by a person whose employment income is exempt under paragraph (a) or (b) or by a member of the family of such person.

Foreign Service Allowance

23. A foreign service allowance paid to a person serving in a Lesotho foreign mission is exempt from income tax to the extent declared by the Minister by notice in the Gazette.

Property Income of Expatriate Taxpayers

24. The property income derived -

- (a) from a foreign source; or
- (b) from the disposal of an investment asset generating foreign-source income,

by an expatriate taxpayer is exempt from income tax.

Exempt Organisations

25. (1) The income of an organisation which is -

- (a) religious or charitable; or
- (b) an amateur sporting association; or
- (c) a trade union or similar organisation,

is exempt from income tax.

- (2) Subsection (1) applies to an organisation only if -
 - (a) it has obtained a written ruling from the Commissioner General finding that it is an exempt organisation; and
 - (b) none of its income or assets confers, or may confer, a private benefit on any person.

(3) Subsection (1) does not apply to property income or to business income that is not related to the function constituting the basis for the organisation's exemption.

War Pensions

26. War pensions and gratuities paid by the Lesotho Government in respect of persons who retired before the date of enactment of this Act are exempt from income tax.

Interest

27. (1) The first M500 of interest derived from one savings account by a resident individual who is not a minor is exempt from income tax.

- (2) Subsection (1) applies only if the account -
 - (a) has been nominated by the individual as the one to which the exemption applies; and
 - (b) bears the individual's taxpayer identification number; and
 - (c) is with a financial institution resident in Lesotho, which is licensed under the Financial Institutions Act 1973.

Scholarships

28. A scholarship payable in respect of tuition or fees for full-time instruction at an educational institution is exempt from income tax.

Subsistence Farming

29. (1) The income derived by a resident individual from subsistence farming carried on in Lesotho is exempt from income tax.

(2) In this section, "subsistence farming" means primary farming operations, whether pastoral or agricultural where the output of the operations is principally used for own consumption.

[Sec. 19 amended by sec. 7 of Act No. 10 of 1996]

Maintenance and Child Support

30. Maintenance or child support payments received are exempt from income tax.

Gifts

31. (1) Subject to this section, the value of property acquired by gift, bequest, devise, or inheritance is exempt from income tax.

(2) Subsection (1) does not apply to the income from property referred to in subsection (1), or to the extent that the gift, bequest, devise, or inheritance is itself income.

(3) Subsection (1) does not apply to an amount transferred by, or for, an employer to, or for the benefit of, an employee; and such amount is treated as employment income.

Terminal Benefits

32. (1) In this section, unless the context otherwise requires –

“terminal benefit” means a gratuity payment, severance payment and superannuation fund payments;

“contract gratuity” means a gratuity, expressed as a percentage of salary earned during the contract period, which is paid upon expiry, termination or renewal of a written contract of employment to an employee;

“severance payment” means a severance payment made under section 79 of the Labour Code Order 1992²;

“superannuation fund payment” means a payment made under section 99.

(2) Terminal benefits shall be exempt from the income tax: Provided they do not exceed 25% of basic salary earned during the period of employment.

[Sec. 32 substituted by sec. 5 of Act No. 2 of 1994, which itself was substituted by sec. 2 of Act No. 11 Of 2012 as rectified by Legal Notice No. 59 of 2012]

Division IV: Deductions

Expenses of Deriving Income

33. (1) Subject to this Division, a deduction is allowed for any expense or loss (including a depreciation or amortisation expense, or other expense or loss specifically provided for in this Division), but only to the extent incurred by the taxpayer during the year of assessment in the production of income subject to tax.

(2) Subsection (1) applies to a taxpayer who is an employee only to the extent prescribed in regulations.

(3) No deduction is allowed under subsection (1) for -

- (a) any expense or loss to the extent it is of a personal nature; or
- (b) income tax; or
- (c) subject to section 40, expenses of acquiring, producing, or improving property or for other expenses chargeable to capital account, including indirect expenses such as depreciation, interest, or taxes incurred during the construction period; or
- (d) the cost of a gift made directly or indirectly to an individual if the gift is excludable from the individual's gross income; or
- (e) a fine or similar penalty paid to a government for breach of any law; or
- (f) an insurance premium paid to a non-resident insurer in respect of an asset or risk located in Lesotho.

(4) In this section, expenses of a personal nature include -

- (a) the cost of commuting between a taxpayer's residence and work; or
- (b) the cost of clothing worn to work, except for clothing that is not suitable for wearing outside of work; or
- (c) the cost of caring for dependents; or

- (d) the cost of education leading to a degree or diploma.

Compensation Expense

34. Compensation which otherwise satisfies section 33 is not deductible to the extent to which it exceeds a reasonable amount.

Sports Donations

34A (1) Subject to subsection (2), where a taxpayer has made a charitable donation of M1000 or more in cash or in goods and services, to:

- (a) support sport and recreation development through provision of sports equipment and facilities; and
- (b) provide sponsorship of different sport codes and sport competitions and tournaments at different levels of the sports development continuum the taxpayer shall be entitled to a deduction in income tax equal to the value of the donation.

(2) A charitable donation referred to in subsection (1) shall be paid to the Lesotho Sports and Recreation Commission established under section 5 of Lesotho Sport and Recreation Act 2002² for distribution to the beneficiary sporting association, body, community, team, or individual athletes as stipulated by the donor in a letter of donation.

(3) The Commissioner General may disallow or reverse a deduction claimed in accordance with subsection (1) where he or she is satisfied that the donation was indirectly meant to benefit the taxpayer, his or her family or his or her associates.

(4) Regulations published under the Lesotho Sport and Recreation Act 2002 with regard to sporting sponsorships and other sporting financial assistance shall apply for purposes of this section.

[Sec 34A inserted by sec. 2 of Act No. 2 of 2007]

Limitation on Entertainment Expenses

35. (1) Only 50% of otherwise allowable deductions for expenses (including depreciation expenses) of entertainment or meals is allowed.

(2) Subsection (1) does not apply where the cost of providing the entertainment or meal is subject to fringe benefits tax or is an exempt fringe benefit under section 123(3).

Interest Deduction

36. (1) Subject to subsection (2), a taxpayer is entitled to a deduction for interest incurred on a borrowing used by the taxpayer in the production of income subject to tax.

(2) Where a resident company not principally engaged in a money-lending business has a debt-to-equity ratio in excess of 3 to 1, the Commissioner General may disallow a deduction for the interest paid on that part of the debt in excess of the 3 to 1 ratio.

Bad Debts

37. A deduction is allowed for a bad debt incurred on revenue account in a business giving rise to income subject to tax when the debt is written off in the taxpayer's accounts.

Annuities Paid to Former Employees

38. (1) A deduction is allowed for an annuity paid to a former employee of the taxpayer or to a dependent of a former employee to the extent prescribed by regulation.

(2) Subsection (1) only applies where the former employee worked in a business of the taxpayer the income from which was subject to income tax in Lesotho.

(3) If the former employee worked in a manufacturing business of a company, the deduction under subsection (1) may only be applied against the company's manufacturing income.

Approved Training Expenditure

39. (1) A taxpayer carrying on business in Lesotho is allowed to deduct 125% of expenditure incurred for training or tertiary education of a citizen of Lesotho who is employed by the taxpayer in a business the income from which is subject to tax in Lesotho.

(2) Subsection (1) applies only to expenditure approved by the Commissioner General on the basis of guidelines to be published by the Commissioner General.

Research and Experimental Costs

40. (1) A deduction is allowed for research and development expenditure incurred in the production of income subject to tax.

(2) No deduction is allowed under subsection (1) for the acquisition of a depreciable asset or land.

(3) This section does not apply to an expense for ascertaining the existence, location, extent, or quality of a natural deposit.

Depreciation of Premises and Equipment

41. (1) A deduction is allowed for depreciation of a taxpayer's depreciable assets, other than an asset to which section 42(2) applies.

(2) Depreciable assets are classified into four groups with depreciation rates set out in the Sixth Schedule.

(3) Where an election under subsection (5) is not made, the depreciation allowed for each asset is -

$$\mathbf{A \times B \times C/D}$$

where -

A is the relevant depreciation rate specified in subsection (2); and

B is the adjusted cost base of the asset; and

C is the number of days in the year of assessment during which the asset was used in the production of income subject to tax; and

D is the number of days in the year of assessment.

(4) Where a depreciable asset to which subsection (3) applies is only partly used for the purpose of producing income subject to tax, only so much of the deduction allowed under subsection (3) as relates to that use is allowed as a deduction.

(5) If the taxpayer so elects, the assets in groups 1, 2, and 3 in the Sixth Schedule are placed into separate pools for each group, and the depreciation deduction for each pool is determined under subsections (6) through (11).

(6) An election under subsection (5) -

- (a) applies only to assets wholly used in the production of income subject to tax; and
- (b) applies to all such assets acquired during the year of assessment for which the election is made and subsequently; and
- (c) must be made by the due date for the return of income for such year; and
- (d) is irrevocable.

(7) The depreciation deduction for each pool is calculated by applying the rate of depreciation specified in subsection (2) against the balance of the pool at the end of the year of assessment.

(8) The balance of the pool at the end of the year of assessment is the total of -

- (a) the balance of the pool at the end of the preceding year of assessment after allowing for the deduction under subsection (7) for the preceding year of assessment; and
- (b) half the cost of assets added to the pool in the preceding year of assessment; and
- (c) half the cost of assets added to the pool in the current year of assessment,

reduced, but not below zero, by the consideration received from the disposal of assets in the pool during the year of assessment.

(9) Where the consideration received from the disposal during a year of assessment of assets in a pool exceeds the balance of the pool at the end of the year of assessment disregarding those amounts, the excess is included in gross income.

(10) If -

- (a) the balance of the pool at the end of the year of assessment, after allowing for the deduction under subsection (7), is less than M500; and
- (b) no assets have been added to the pool in the current year of assessment, a deduction is allowed for the amount of the balance.

(11) Where all the assets in a pool are disposed of, a deduction is allowed for the balance of the pool at the end of the year of assessment.

(12) Where a taxpayer has incurred costs in more than one year of assessment for a depreciable asset, depreciation is calculated as if the costs incurred in different years of assessment were for different assets.

(13) Where an industrial building is bought or sold together with land, the Commissioner General will apportion the total consideration reasonably to arrive at a separate value of the building.

Repairs, Spare Parts, and Minor Capital Equipment

42. (1) A deduction is allowed for expenditure (other than expenditure of a capital nature) incurred on repairs to assets used in the production of income subject to tax.

(2) A deduction is allowed for the cost of acquiring a depreciable asset with a cost of less than M50.

Mineral Extraction

43. The cost of mineral extraction expenditures incurred in the production of income subject to tax, in the nature of exploration, drilling, development or the acquisition of rights, is recovered as if it were incurred for a depreciable asset in group 3 in the Sixth Schedule.

Amortisation of Intangible Assets

44. (1) An amortisation deduction is allowed for the cost of an intangible asset (other than an asset referred to in section 45) having an ascertainable useful life and used for the production of income subject to tax.

(2) Except as otherwise provided in regulations, the deduction under subsection (1) is calculated on a straight-line basis over the life of the asset.

Start-up Costs

45. An amortisation deduction is allowed for expenditures incurred in starting up a business to produce income subject to tax as if it were incurred for a depreciable asset in group 2 in the Sixth Schedule.

Apportionment of Deductions

46. A deduction relating to more than one class of income must be reasonably apportioned among the classes of income to which it relates.

[Sec. 46 amended by sec. 8 of Act No. 10 of 1996]

Losses Carried Forward

47. (1) Where business income of an individual taxpayer is exceeded by 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 business income in subsequent years of assessment.

(2) Where property income of an individual taxpayer is exceeded by 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 chargeable property income in subsequent years of assessment.

(3) Subject to subsection (4), where the taxpayer is a company, the excess of the deductions allowed over the taxpayer's gross income shall be carried forward and may be deducted in determining chargeable income in subsequent years of assessment.

(4) Where manufacturing income of a resident company 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 company but shall be carried forward; and
- (b) may be deducted in determining the chargeable manufacturing income in subsequent years of assessment.

(5) Subsections (1), (2), and (3) apply separately to Lesotho-source income and foreign-source income of a resident taxpayer.

(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 arising from farming; and

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

[Sub-secs. (6) and (7) added by sec. 9 of Act No. 10 of 1996]

Losses on Disposal of Business Assets

48. A loss arising from the disposal of a business asset, whether or not the asset was on capital or revenue account, is allowed as a deduction.

Division V: Tax Accounting Rules

Substituted Accounting Period for Tax Purposes

49. The Commissioner General may, on written application by a company, grant permission to the company to use a twelve-month period other than the twelve-month period ending on 31 March as the year of assessment for the purposes of this Act upon the company showing a compelling need, subject to any conditions prescribed by the Commissioner General.

Method of Accounting

50. (1) A taxpayer's method of accounting must clearly reflect the taxpayer's income.

(2) A taxpayer may account for tax purposes on a cash or accrual basis, except that where the taxpayer's gross income for a year of assessment exceeds M150,000, the taxpayer must account on an accrual basis in all succeeding years of assessment.

(3) In the case of an individual or trustee, the requirement to account on an accrual basis applies only to business income.

(4) Except for a change from the cash basis to the accrual basis required under subsection (2), a taxpayer may only change its method of accounting with the prior written permission of the Commissioner General.

(5) If the taxpayer's method of accounting is changed, adjustments to items of income, deduction, or credit, or to other items must be made so that no item is omitted and no item is included more than once.

(6) The method of accounting for the income of an insurance business is prescribed in the regulations.

Cash-Basis Accounting

51. A cash-basis taxpayer must take income into account when received or made available and must take deductions into account when paid.

Accrual-Basis Accounting

52. (1) An accrual-basis taxpayer must take income and deductions into account when payable.

(2) Subject to this Act, an amount is payable to the taxpayer when the taxpayer becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by instalments.

(3) Subject to this Act, an amount will be treated as payable by the taxpayer when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance with respect to the amount occurs.

(4) For purposes of subsection (3), economic performance -

- (a) with respect to the acquisition of services or property occurs at the time the services or property are provided; or
- (b) with respect to the use of property occurs at the time the property is used; or

- (c) in any other case occurs at the time the taxpayer makes payment in satisfaction of the liability.

Claim of Right

53. (1) Where a cash-basis taxpayer includes in gross income an amount which the taxpayer is not entitled to receive or claims a deduction for an amount the taxpayer is not obligated to pay, the calculation of chargeable income shall be adjusted for the year of assessment in which the taxpayer refunds the amount received or receives back the amount paid.

(2) An accrual-basis taxpayer shall include an amount in gross income or claim a deduction even if not legally entitled to receive the amount or liable to pay the deduction, if the taxpayer claims to be legally entitled to receive the amount or to be legally obliged to pay the deduction.

(3) Where an accrual-basis taxpayer includes an amount in income or claims a deduction under subsection (2), the calculation of chargeable income shall be adjusted for the year of assessment in which the taxpayer ceases to claim the right to receive the amount or the obligation to pay the amount.

Prepayments

54. An otherwise allowable deduction for an expense which is not of a capital nature and which relates to a service or other benefit that extends beyond three months after the end of the year of assessment is allowed proportionately over the years of assessment to which the service or other benefit relates.

Long-Term Contracts

55. (1) Income and deductions relating to a long-term contract are taken into account on the basis of the percentage of the contract completed during the year of assessment.

(2) The percentage of completion is determined by comparing costs allocated to the contract and incurred before the end of the year of assessment with the estimated total contract costs as determined at the time of commencement of the contract.

(3) Where, in the year of assessment in which a long-term contract is completed, it is determined that the contract has made a final year loss, the Commissioner General may allow the loss to be carried back to the preceding year

of assessment and applied against income included in gross income under subsection (1) for that year.

(4) A carry-back of a final year loss under subsection (3) may only be allowed where the Commissioner General is satisfied that the taxpayer is unable to carry the loss forward under section 47 or obtain the benefit of the loss for tax purposes in another jurisdiction.

(5) In this section,

“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 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

"long-term contract" means a contract for manufacture, installation, or construction, or, in relation to each, the performance of related services, which is not completed within the year of assessment in which work under the contract commenced.

[Sub-secs. (2), (3), (4) and (5) amended by sec. 10 of Act No. 10 of 1996]

Trading Stock

56. (1) A taxpayer who maintains stocks of goods in process or of finished goods must, if necessary to clearly reflect income, establish and maintain inventories of such stocks.

(2) The deduction for the cost of goods sold is determined by adding to the opening trading stock the cost of goods acquired during the year, and subtracting the closing trading stock.

(3) A cash-basis taxpayer may calculate the cost base of trading stock on the prime-cost or absorption-cost method, and an accrual-basis taxpayer must calculate the cost base of trading stock on the absorption-cost method.

(4) The value of trading stock on hand at the end of the year of assessment is the lower of its cost base or market value at that date.

(5) Where particular items of trading stock are not readily identifiable, a taxpayer may account for the trading stock on the first-in-first-out method, or the average-cost method.

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

[Sub-sec. (6) added by sec. 11 of Act No. 10 of 1996]

Annuities and Debt Obligations with Discount

57. (1) The discount or premium on a debt obligation is taken into account as it accrues.

(2) The income from an annuity is taxed on the same basis as a debt obligation with discount.

Foreign Currency Gains and Losses

58. (1) Foreign currency gains and losses of an accrual-basis taxpayer are taken into account on the last day of each year of assessment.

(2) Foreign currency gains and losses are treated as interest income and expense, respectively.

Division VI: Gains and Losses on Disposal of Assets

Gains and Losses on Disposal of Assets

59. (1) Subject to this Act the gain or loss on the disposal of a business asset or an investment asset is taken into account in determining chargeable income.

(2) The gain from the disposal of an asset is the excess of the consideration received over the adjusted cost base of the asset.

(3) The loss from the disposal of an asset is the excess of the adjusted cost base over the consideration received.

(4) No loss is taken into account on the disposal of an asset directly or indirectly to an associate of the taxpayer.

(5) No gain or loss on disposal of a depreciable asset in relation to which an election under section 41 has been made is taken into account otherwise than under that section.

(6) The gain or loss on disposal of an asset that is not a business or investment asset is not taken into account in determining chargeable income.

Cost Base

60. (1) The cost base of an asset is the asset's tax cost.

(2) Subject to this Act and to any regulations made under this section, the tax cost of an asset is determined under the principles of this section.

(3) The tax cost of an asset purchased, produced, or constructed by the taxpayer is the amount paid or incurred by the taxpayer, including amounts described in section 33(3)(c) and the market value of any consideration in kind given for the asset.

(4) Subject to subsection (5), the tax cost of an asset acquired in a non-arm's length transaction is the fair market value of the asset at the date of acquisition.

(5) The tax cost of an asset acquired by gift is the greater of the adjusted cost base of the transferor or the fair market value of the asset at the date of acquisition.

(6) The tax cost of an asset acquired in a transaction in which a gain is not taken into account is the adjusted cost base of the asset given in exchange, or the adjusted cost base of the transferor, as the case may be.

(7) Where a part of an asset is disposed of, the adjusted cost base of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with their market values at the time of acquisition.

(8) The tax cost of an asset acquired before 1 April 1993 is the greater of the fair market value or the adjusted cost base of the asset at that date indexed for inflation as prescribed by regulations.

(9) Subsection (8) does not apply to an asset, the gain or loss on disposal of which would be recognised for tax purposes under the Income Tax Act 1981.

(10) Where the asset is an investment asset being an interest in immovable property which has been held by the taxpayer for more than 12 months, the adjusted cost base of the asset is indexed for inflation as prescribed by regulations.

Consideration Received

61. (1) The consideration received on disposal of an asset includes the market value of any consideration in kind.

(2) Subject to subsection (3), where the asset is disposed of in a non-arm's length transaction, the disposer is treated as having received consideration equal to the fair market value of the asset at the date of disposal.

(3) Where the asset is disposed of by gift, the disposer is treated as having received consideration equal to the greater of the adjusted cost base of the disposer or the fair market value of the asset at the date of disposal.

(4) Where a part of an asset is disposed of, the consideration received is apportioned between the part of the asset disposed of and the part retained in accordance with their market values at the time of acquisition.

Losses on Disposal of Investment Assets

62. (1) A deduction for losses on the disposal of investment assets is allowed only to the extent of gains on the disposal of investment assets.

(2) A loss disallowed by reason of subsection (1) for the year of assessment is treated as incurred in the following year.

(3) Sections 60(8) and (10) do not apply in calculating the amount of a loss on disposal of an asset.

[Sec. 6(3) amended by sec. 5A of Act No. 2 of 1994]

Nonrecognition of Gain or Loss

63. (1) No gain or loss is taken into account in determining chargeable income on -

(a) a transfer of assets between spouses; or

(b) a transfer of assets between former spouses as part of a divorce settlement; or

- (c) an involuntary conversion of an asset, where the proceeds are reinvested in an asset of a like kind.

(2) The tax cost of a replacement asset described in subsection (1)(c) is determined with reference to the adjusted cost base of the replaced asset.

Division VII: Miscellaneous Rules for Determining Chargeable Income

Income of Joint Owners

64. Income or deductions relating to jointly owned property are apportioned among the joint owners in proportion to their respective interests in the property.

Valuation

65. (1) Where the calculation of chargeable income involves a receipt, an outgoing, or any other amount in the form of property, services, or other benefit, its fair market value on the date taken into account for tax purposes is used in determining the chargeable income.

(2) The fair market value of property transferred to an employee or other provider of services is determined without regard to any restriction on transfer.

Currency Conversion

66. (1) Chargeable income under this Act is calculated in Maloti.

(2) Where the calculation of chargeable income involves an amount in a currency other than Maloti, the amount shall be converted at the exchange rate applying between the currency and Maloti on the date that the amount is paid, accrued, or otherwise taken into account for tax purposes.

(3) A taxpayer may use the average rate of exchange during the year of assessment where this method does not substantially differ from the actual exchange rates.

(4) With the prior permission of the Commissioner General in writing, a taxpayer may keep books of account in a currency other than Maloti.

Indirect Payments and Benefits

67. (1) The income of a taxpayer includes -

- (a) a payment that directly or indirectly benefits the taxpayer; and
- (b) a payment dealt with as the taxpayer directs,

which would have been income of the taxpayer if the payment had been made directly to the taxpayer.

(2) The deductions of a taxpayer include a payment made on behalf of the taxpayer or as the taxpayer directs which would have been a deduction of the taxpayer if the payment had been made directly by the taxpayer.

Finance Leases

68. (1) Where a lessor leases property to a lessee under a finance lease, the transaction is treated as a purchase of the property by the lessee and a loan by the lessor to the lessee.

(2) A lease of property is a "finance lease" if -

- (a) the lease term exceeds 75% of the effective life of the property;
or
- (b) the lessee has an option to purchase the property for a fixed or determinable price at the expiration of the lease; or
- (c) the estimated residual value of the property to the lessor at the expiration of the lease term is less than 20% of its fair market value at the commencement of the lease.

(3) For the purposes of subsection (2), the lease term includes options to renew.

(4) For the purposes of subsection (2), the effective life of property, where that property is an asset included in a group of assets in the Sixth Schedule, is determined as follows -

Group 1	-	5 years
Group 2	-	7 years

Group 3	-	15 years
Group 4	-	30 years.

Exclusion of Doctrine of Mutuality

69. (1) The doctrine of mutuality (whereby a payment made as a contribution to a club, a mutual insurance company, or other similar body is not treated as income) is not applicable for the purposes of this Act.

(2) In the case of a social club, or other membership organisation which is operated primarily to furnish goods or services to members, deductions attributable to furnishing goods or services to members are allowed only to the extent of income derived from members.

Compensation Receipts

70. Compensation received takes the character of the thing that is compensated.

Recouped Deductions

71. (1) Where a previously deducted expenditure, loss, or bad debt is recovered, the amount recovered is income of the year of assessment in which it is recovered and takes the character of the income to which the deduction related.

(2) For the purposes of subsection (1), a deduction is considered recovered upon the occurrence of an event inconsistent with the basis for the deduction.

Part V: Taxation of Individuals

Individual as Tax Unit

72. Subject to this Part, the chargeable income of each spouse is determined separately.

Personal Credit

73. (1) A resident individual (other than a resident minor) is allowed a non refundable personal credit of M5,184 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, M5,184 less the amount of any credit allowed under paragraph (a).

[Amounts in sub-secs. (1) and (2)(b) revised in terms of Income Tax (Amendment of Monetary Amounts) Regulations, 2010]

(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.

[Sec. 73 substituted by sec. 12 of Act No.10 of 1996]

Income Splitting

74. (1) Where an individual taxpayer attempts to split income with a spouse, child, associate, or other person, whether -

- (a) by a loan at a stated interest rate below the open market value; or
- (b) by payment for services rendered either in excess of the open market rate or where there is no economic need for the services; or
- (c) by assignment of property subject to a condition; or
- (d) by assignment of the right to receive income; or
- (e) by the use of a partnership or trust; or
- (f) by any other means,

the Commissioner General may adjust the chargeable income of the taxpayer and the other party to prevent the income splitting.

(2) In determining whether the taxpayer is seeking to split income through a partnership or trust, the Commissioner General must consider the value given by the other party to the partnership or trust.

Part VI: Partnerships

Principle of Taxation for Partnerships

75. (1) The partners rather than the partnership are taxed, but the partnership is required to file a partnership return of income.

(2) An election, notice, or statement required by this Act to be filed in relation to a partnership's activities shall be filed by the partnership.

Calculation of Partnership Income or Loss

76. (1) Partnership income or loss is calculated as if the partnership were a resident individual taxpayer, but disregarding the application of section 27 or 158(2), and the carry forward of a loss, deduction, or credit.

[Sub-sec. (1) amended by sec. 13 of Act No. 10 of 1996]

(2) A monetary limit provided in this Act which is relevant to a partnership's activities is taken into account in calculating partnership income or loss.

Taxation of Partners

77. (1) The gross income of a resident partner includes the partner's distributive share of partnership income.

(2) The gross income of a non-resident partner includes the partner's distributive share of the Lesotho-source partnership income.

(3) A resident partner is allowed a deduction for the partner's distributive share of a partnership loss.

(4) A non-resident partner is allowed a deduction for the partner's distributive share of a partnership loss but only to the extent that the activity giving rise to the loss would have given rise to Lesotho-source income if a loss had not been incurred.

(5) Income, expenses, or losses derived or incurred by a partnership retain their character as to geographic source and type of income, expense, or loss in the hands of the partners.

(6) A partner's distributive share of partnership income or loss is equal to the partner's percentage interest in the partnership.

(7) A partner's distributive share of partnership loss is allowed only to the extent of the adjusted cost base of the partner's interest in the partnership at the end of the year of assessment in which the loss occurred, and any excess of such loss over such basis may be carried forward.

Formation, Reconstitution, or Dissolution of a Partnership

78. (1) An asset of a partner that is contributed to the partnership is treated as if it had been disposed of to the partnership.

(2) No gain or loss is recognised under subsection (1) where the partner's interest in the partnership immediately after the contribution is 50% or greater.

(3) Where there is a change in the constitution of a partnership, or a partnership is dissolved, the partnership income or loss for the year of assessment in which the event occurs is calculated as if the assets of the partnership at the time of the event were disposed of by the partnership -

(a) to the reconstituted partnership in the case of a change in constitution; or

(b) to the partners in the case of dissolution.

(4) Subsection (3)(a) does not apply where there is a continuity of ownership of 50% or more of the interests in the partnership during the one-year period ending immediately after the change in the constitution of the partnership.

Determination of Adjusted Cost Base of Partner's Interest

79. The adjusted cost base of a partner's interest in a partnership is the cost base--

(a) increased by the sum of the partner's distributive share for the year of assessment and prior years of assessment of partnership income and income of the partnership exempt from tax under this Act; and

- (b) decreased (but not below zero) by distributions by the partnership and by the sum of the partner's distributive share for the year of assessment and prior years of assessment of partnership losses and expenditures of the partnership not deductible in computing its chargeable income and not properly chargeable to capital account.

Part VII: Trusts

Interpretation

80. In this Part,

“bonus units” means the bonus units as defined under the Lesotho Unit Trust Act, 2003;

“deed” means the Deed as defined under the Lesotho Unit Trust Act, 2003;

"grantor" means a person who transfers property to, or confers a benefit on, a trust for no consideration or for a consideration less than its open market value;

"grantor trust" means a trust in relation to a whole or part of which, the grantor has -

- (a) the power to revoke or alter the trust so as to acquire a beneficial interest in the corpus or income; or
- (b) a reversionary interest in either the corpus or income;

"qualified beneficiary trust" means -

- (a) a trust in relation to which a person has a power solely exercisable by that person to vest the corpus or income in that person; or
- (b) a trust whose sole beneficiary is an individual or an individual's estate or appointees.

“unit” means as defined under the Lesotho Trust Unit Act, 2003;

“Unit Trust” means the Lesotho Unit Trust as established in terms of the deed.

[Sec. 80 amended by s. 3 of Act No. of 2003"]

Principles of Taxation for Trusts

81. (1) The income of a trust is taxed to the trustee, or to the beneficiaries of the trust, as provided in this Part.

(2) A grantor trust or a qualified beneficiary trust is not treated as an entity separate from the grantor or beneficiary, respectively.

(3) Trust income or loss is calculated as if the trust were a resident individual taxpayer, but disregarding the application of section 27 or 158(2).

[Subsec. (3) amended by sec. 14 of Act No. 10 of 1996]

(4) Any monetary limits provided in this Act which are relevant to a trust's activities must be taken into account in calculating trust income or loss.

(5) Separate calculations of trust income and loss shall be made for separate trusts regardless of whether they have the same trustee.

(6) Income, expenses, or losses derived or incurred by a trustee retain their character as to geographic source and type of income, expense, or loss in the hands of the beneficiary.

(7) A trust is required to file a trust return of income.

Taxation of Beneficiaries

82. (1) The gross income of a resident beneficiary under a trust includes the share of the trust income to which the beneficiary is presently entitled.

(2) The gross income of a non-resident beneficiary under a trust includes the Lesotho-source income of the trust to which the beneficiary is presently entitled.

(3) No beneficiary is allowed a deduction for a trust loss.

Taxation of Trustees

83. (1) The trustee is liable for income tax on so much of the chargeable trust income as is -

- (a) Lesotho-source income; and
- (b) foreign-source income where the grantor was a resident at the time of making a transfer to the trustee, or is a resident in the year of assessment in question, or where a resident person may ultimately benefit from the income.

(2) Chargeable trust income for a year of assessment is calculated by subtracting from trust income -

- (a) the amount included in the gross income of any beneficiary; and
- (b) in the case of a non-resident beneficiary, the amount which would have been included in the gross income of the beneficiary under section 82 if the beneficiary were a resident.

(3) Trustees are jointly and severally liable for a tax liability arising from trust income that is not satisfied from trust assets; but any trustee required to meet such liability is entitled to a contribution from each of the other trustees.

(4) This section is subject to section 84.

Exemption of the Unit Trust

83A. Notwithstanding this Act, the Unit Trust shall be exempt from all taxes under this Act.

[Sec. 83A inserted by s. 4 of Act No. ... of 2003"]

Taxation of unit holders

83B. (1) Notwithstanding this Act, any returns from the Unit Trust realised in the hands of a unit holder shall be exempt from all taxes under this Act for an period of 5 years effective from the commencement date of this Act.

(2) The exemption under subsection (1) shall also apply to all gains accruing from disposal of units.

(3) This section is, mutates and mutandis, subject to section 84.

[Sec. 83B inserted by s. 4 of Act No. ... of 2003"]

Taxation of bonus units

83C. (1) Any bonus units issued to a unit holder and any funds realised by a unit holder from the sale of such bonus shall be deemed as equivalent to dividends to the unit holder.

(2) Bonus units and any funds realised from their disposal shall be exempt from tax to the extent that dividends are not liable for income tax under this Act.

(3) The exemption under subsection (2) shall be for an initial period of 5 years effective from the commencement date of this Act.

[Sec. 83C inserted by s. 4 of Act No. ... of 2003"]

[S.83A, 83B, 83C have been introduced by s.4 of Act No. 2 of 2004]

Taxation of Estates of Deceased Persons

84. (1) Income accruing or received -

- (a) in the year of assessment of the death of a taxpayer; and
- (b) prior to the date of death,

which would, but for the death of the taxpayer, have been chargeable to tax to the taxpayer for any year of assessment is charged to tax as chargeable trust income upon the executor or administrator of the deceased taxpayer for that year of assessment.

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

[Subs-ec. (2) amended by sec. 15 of Act No. 10 of 1996]

(3) Income -

- (a) accruing or received after the date of death of a deceased taxpayer; and
- (b) arising from an income-producing activity of the taxpayer before the taxpayer's death,

which would, but for the taxpayer's death, have been chargeable to tax to the taxpayer for any year of assessment is charged to tax as chargeable trust income upon the executor or administrator of the deceased taxpayer for that year of assessment.

(4) The executor or administrator of a deceased taxpayer is taxed on income subject to subsections (1) and (3) for the year of assessment on the basis that no beneficiary is presently entitled to the income; and no beneficiary is taxed on that trust income.

(5) An executor or administrator of a deceased taxpayer is responsible for the tax liability of the taxpayer arising from any year of assessment prior to the year of assessment in which the taxpayer died.

Part VIII: Companies

Interpretation

85. In this part, "qualified income" means manufacturing income described in section 10(2) less the income tax payable on such income, and the amount of any dividends received from another resident company.

[Sec. 85 amended by sec. 16 of Act No. 10 of 1996]

Principles of Taxation for Companies

86. A company is liable to tax separately from its members, and dividends are only taxable to the extent provided in this Act.

Advance Corporation Tax

87. (1) A resident company which pays a dividend is liable to make advance payments of income tax (hereinafter referred to as advance corporation tax) at the rate specified in subsection (2), except to the extent that the distribution is made out of qualified income.

(2) The rate of advance corporation tax is -

$$\frac{\mathbf{A}}{100 - \mathbf{A}} \times 100$$

where **A** is the rate of tax specified in the Third Schedule for income other than manufacturing income.

(3) For the purposes of this section, a dividend is treated as paid first out of qualified income and then out of other income.

(4) The liability to pay advance corporation tax may be satisfied by -

- (a) an instalment of tax which has been paid and has not been set off against a final liability for income tax under section 150; or
- (b) income tax paid before 1 April 1993, to the extent the distribution is made out of chargeable income in respect of which the tax was paid,

to the extent of the amount of such instalment or tax paid, respectively, which has not already been taken into account under this subsection.

(5) Advance corporation tax may be set off against -

- (a) a liability for an instalment of tax arising after the dividend is paid; or
- (b) a final liability for income tax after set off of instalments of tax under section 150 arising after 31 March 1993.

(6) A dividend paid by a resident company shall not be included in the gross income of a resident shareholder.

(7) In the case of a redemption which is not pro rata, the gain or loss is taxed to the redeeming shareholders on the same basis as if the redemption had taken the form of a dividend followed by a purchase of shares from the redeeming shareholders by the shareholders whose proportionate interest in the company increased.

Disguised Dividends

88. A loan, payment for property or services, disposal of an asset, provision of services, or release of a liability by a company to, or in favour of, a member or an associate of a member which in substance is a distribution is treated for the purposes of this Act as a dividend paid by the company to the member.

Dividend Stripping

89. Where a company -

- (a) takes part in a transaction in the nature of dividend stripping; and
- (b) receives a dividend from a resident company in the transaction,

the dividend is not treated as paid out of qualified income of the company receiving the dividend to the extent that the Commissioner General considers necessary to offset any decrease in the value of the shares in respect of which the dividend is paid, or of other property the value of which is affected by payment of such dividend.

Liquidations

90. The liquidation of a company by winding up under the Companies Act 1967 or by any other means is treated as a disposal of the membership interest by the member.

Incorporation and Liquidation Roll-Overs

91. (1) Where -

- (a) a resident person transfers an asset (with or without any liability not in excess of the adjusted cost base of the asset) to a resident company in exchange for a membership interest in the resident company; and
- (b) the resident person has a 50% or greater membership interest in the resident company immediately after the exchange,

the transfer is not treated as a disposal of the asset by the transferor.

[Sub-sec. (1) amended by sec. 17(a) of Act No. 10 of 1996]

(2) The transferee's cost base of an asset to which subsection (1) applies is the same as the transferor's adjusted cost base at the time of transfer.

(3) The cost base of a membership interest received in an exchange described in subsection (1) is equal to the adjusted cost base of the asset transferred, less any liability transferred.

(4) Where -

- (a) a resident company is liquidated under the Companies Act 1967 or by any other means; and
- (b) an asset, apart from money, is transferred to a member which is a resident company; and

- (c) the member held a 50% or more interest in the resident company immediately prior to the liquidation,

then -

- (d) the transfer is not treated as a disposal of the asset by the liquidated company; and
- (e) the cost base to the member of the asset transferred is the same as the adjusted cost base of such asset to the liquidated company prior to the transfer; and
- (f) the distribution of the asset is not a dividend; and
- (g) no gain or loss is taken into account on the cancellation of the member's interest in the liquidated company.

[Sub-sec. (4) amended by sec. 17(b) of Act No. 10 of 1996]

Reconstruction Roll-Over

92. Where a resident company or group of resident companies is reconstructed without any significant change in the underlying ownership or control of the resident company or group of resident companies -

- (a) the transaction is treated as not giving rise to the disposal of an asset or the realisation of a liability, as the case may be; and
- (b) the adjusted cost base of the taxpayer's assets and liabilities is carried over.

[Sec. 92 amended by sec. 18 of Act No. 10 of 1996]

Change in Control of Companies

93. Where there has been a change of 50% or more in the underlying ownership or control of a company, the carry-forward of a loss, deduction, or credit ceases to be available, unless the company -

- (a) continues to conduct the same business; and
- (b) does not engage in a new business or investment except with the approval of the Commissioner General,

for a period of three years after the change.

Part IX: Long Term Savings

Division I: Superannuation Funds

Interpretation

94. In this Division,

"employer superannuation fund" means a resident superannuation fund established and maintained by an employer which satisfies the conditions prescribed by the regulations;

"self-provided superannuation fund" means a resident superannuation fund which satisfies the conditions prescribed by the regulations.

Contributions to an Employer Superannuation Fund

95. (1) Subject to subsection (3), an employer is entitled to a deduction for a contribution made to an employer superannuation fund in respect of a resident employee during the year of assessment.

(2) A resident employee is entitled to a deduction for a contribution made to an employer superannuation fund during the year of assessment.

(3) The total amount allowed as deductions under subsections (1) and (2) is limited to 20% of the employment income paid by the employer to the employee for the year of assessment.

(4) In calculating the total amount for the purposes of subsection (3), the employee's contributions are taken into account first.

Contributions to a Self-Provided Superannuation Fund

96. (1) Subject to subsection (2), a resident individual who is a member of a self-provided superannuation fund is entitled to a deduction for a contribution made to the fund during the year of assessment.

(2) The amount of the deduction allowed under subsection (1) is limited to -

- (a) 20% of the member's gross income for the year of assessment;
- (b) reduced by any amount contributed with respect to the individual under section 95.

Contributions to Non-Resident Funds

97. (1) Sections 95 and 96 apply to contributions made to a non-resident superannuation fund by, or on behalf of, a resident of Lesotho (other than an expatriate taxpayer) provided -

- (a) the trustee or fund manager has given the Commissioner General a statement in writing that it will withhold tax at the rate specified by the Commissioner General on payments to the person for whom the contributions were made or the person's dependents; and
- (b) the fund complies with the conditions prescribed in the regulations.

(2) Sections 95 and 96 apply to contributions made to a non-resident superannuation fund by, or on behalf of, an expatriate taxpayer.

Income of a Complying Superannuation Fund

98. The income of a complying superannuation fund is exempt from income tax.

Lump Sum Payments Made by a Superannuation Fund

99. (1) Subject to subsection (2), a lump sum payment from a complying superannuation fund to a member of the fund or a dependant of a member of the fund where the member has died is subject to tax at the standard rate of tax unless the recipient elects for the payment to be included in gross income.

[Sub-sec. (1) amended by sec. 7(a) of Act No. 2 of 1994 and by sec. 19(a) of Act No. 10 of 1996]

(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.

[sub-sec. (2) substituted by sec. 7(b) of Act No. 2 of 1994]

(3) A lump sum payment from a non-complying superannuation fund is included in the gross income of the recipient.

(4) In this section, "dependent" 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.

[sub-sec. (4) added by sec. 19(b) of Act No. 10 of 1996]

Division II: Life Assurance Companies

Income of Life Assurance Business

100. (1) The income of the life assurance business of a taxpayer, calculated in accordance with the regulations, is exempt from income tax.

(2) In this section, "life assurance business" means the business of assuming the obligation as insurer under life policies other than group life assurance, but does not include funeral insurance business.

Proceeds of a Life Assurance Policy

101. The proceeds of a life assurance policy paid by a life assurance company are exempt from income tax, except to the extent attributable to premiums for which a deduction was allowed.

102.

[Sec. 102 repealed by sec. 20 of Act No. 10 of 1996]

Part X: International Taxation

Source of Income

103. (1) Income is Lesotho-source income if it is -
- (a) derived from an activity which occurs in Lesotho; or
 - (b) derived from services performed under a contract entered into with the Lesotho Government; or
 - (c) derived by a resident of Lesotho from services performed as a driver of a vehicle, or an officer or member of the crew of any vehicle or aircraft, where the services are performed both in and out of Lesotho; or
 - (d) derived from immovable property located in Lesotho, including gains from the disposal of an interest in such immovable property and from the disposal of shares in a company the property of which consists directly or indirectly principally of interests in immovable property located in Lesotho; or
 - (e) derived by a resident of Lesotho from the disposal of movable property, other than business income derived from a business conducted outside of Lesotho; or
 - (f) derived from the disposal of a membership interest in a resident company; or
 - (g) derived from the rental of movable property used in Lesotho; or
 - (h) derived from the sale or license of industrial or intellectual property used in Lesotho; or
 - (i) interest where the debt is secured by immovable property located in Lesotho, where the borrower is a resident of Lesotho, or where the borrowing relates to a business carried on in Lesotho; or
 - (j) a dividend, management fee, or director's fee paid by a resident company; or
 - (k) a pension or annuity where -

- (i) the pension or annuity is paid by the Lesotho Government or a resident of Lesotho; or
- (ii) the services or employment in respect of which the pension or annuity was granted were rendered or exercised in Lesotho; or
- (l) a natural resource payment for a natural resource taken from Lesotho; or
- (m) derived by a resident of Lesotho in carrying on a business as owner or charterer of a vehicle, vessel, or aircraft; or

[Para. (m) amended by sec. 8 of Act No. 2 of 1994]

- (n) taxable in Lesotho under an international agreement.

[Para. (n) added by sec. 8 of Act No. 2 of 1994]

(2) Any income which is not Lesotho-source income is foreign-source income.

Foreign Employment Income of Residents

104. Foreign-source income from employment in a foreign country derived by a resident individual is exempt from income tax if the income is chargeable to tax in the foreign country.

Foreign Tax Credit

105. (1) A resident taxpayer is entitled to a foreign tax credit against liability to Lesotho income tax in respect of any foreign income tax borne directly or indirectly by the resident on foreign-source income subject to tax in Lesotho.

(2) The foreign tax credit may not exceed the Lesotho income tax on the foreign-source income, calculated by applying the average rate of Lesotho income tax to the foreign-source income reduced by any deduction properly allocated to that income.

(3) The calculation of the foreign tax credit of a taxpayer is made separately for business income and for other income.

(4) Foreign income tax borne by -

- (a) a partnership is treated as borne by the partners; or

- (b) a trustee (where the income on which the trustee was assessed is included in the gross income of a beneficiary under this Act) is treated as borne by the beneficiary; or
- (c) a beneficiary (where the income on which the beneficiary was assessed is included in the income of a trustee under this Act) is treated as borne by the trustee.

(5) Where a resident company is entitled to both a credit for advance corporation tax and a foreign tax credit, the foreign tax credit shall be applied first.

(6) For the purposes of this section -

"average rate of Lesotho income tax" is the percentage that the Lesotho income tax calculated after allowance of the personal credit but before the foreign tax credit, is of chargeable income of the taxpayer and, in the case of a taxpayer with both business and other income, the average rate of tax is to be calculated separately for both categories of income;

[Sub-sec. (6) substituted by sec. 21 of Act No. 10 of 1996]

"foreign income tax" includes a foreign withholding tax, but does not include a foreign tax designed to raise the foreign tax level on the income so that the taxation of the country of residence of the taxpayer is reduced.

Tax Havens

106. (1) Where a resident of Lesotho has entered into a transaction that directly or indirectly has the effect that income is foreign-source income derived through a non-resident company which is connected to a tax haven, the Commissioner General may adjust the income and foreign tax credit position of the resident to reverse the tax effect of the transaction.

(2) The Commissioner General may treat a foreign country as a tax haven where that country has -

- (a) effective tax rates significantly lower than those of Lesotho; or
- (b) laws providing for the secrecy of financial or corporate information which facilitate the concealment of the identity of the real owner of any asset.

(3) The Commissioner General will not treat a foreign country as a tax haven under this section if the Government has entered into an agreement with that country for the avoidance of double taxation.

Withholding Tax on International Transactions

107. (1) Subject to this section, withholding tax at the standard rate of tax is payable on the gross amount of a Lesotho-source dividend, interest, royalty, natural resource payment, or management charge paid to a non-resident and is charged to that non-resident.

(2) No withholding tax is payable on a Lesotho-source dividend paid out of manufacturing income subject to a concessional rate of tax under section 10(2).

(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 concessional 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 concessional rate of tax under section 10(2),

is 15% of the gross amount of the interest, royalty, or management charge.

[Sub-sec. (3) substituted by sec. 9 of Act No. 2 of 1994]

(4) For purposes of subsection (1), interest in the form of a discount or premium is treated as paid at the time it accrues under section 57.

(5) This section does not apply to a payment to a trustee which is taxed under section 83 or 84.

(6) In the case of any payment of interest under subsection (1), the Minister may by notice in the Gazette, declare a non-resident to be exempt from tax in respect of a particular payment or particular transaction, or a series of transactions.

(7) In making a decision under subsection (6), the Minister must have regard to -

- (a) the economic and other benefits likely to accrue to Lesotho; and
- (b) the recommendation of the Commissioner General;

and may only advise that a notice should be issued if of the opinion that it would be in the public interest to issue such a notice.

Services Income Paid to a Non-Resident

108. (1) Withholding tax at the rate of 10% is payable on the gross amount of a payment under a Lesotho-source services contract paid to a non-resident and is charged to that non-resident.

(2) Subsection (1) does not apply to a management charge subject to withholding tax under section 107.

(3) In this section, "Lesotho-source services contract" means a contract (other than an employment contract) under which the primary purpose is the performance of services whether or not goods are provided, which services give rise to Lesotho-source income.

Nature of Tax Imposed

109. (1) Withholding tax payable under section 107 or 108 is a final tax, unless the non-resident files a return of income in which the non-resident elects to be taxed by assessment.

(2) A non-resident electing under subsection (1) may deduct only those expenses or losses that are otherwise deductible and, in the case of an expense, the expense constitutes Lesotho-source income in the hands of the person to whom it was paid.

(3) A non-resident electing under subsection (1) is subject to tax at the rate specified in the Fourth Schedule.

Agents for Non-Residents

110. A person liable to make a payment to a non-resident that is likely to give rise to Lesotho-source income of that non-resident, other than a payment to which section 107 or 108 applies, may not make the payment unless -

- (a) the person has given the Commissioner General a statement in writing setting out the amount of the payment; and
- (b) the Commissioner General has given the person notice in writing of the amount (if any) required to be withheld from the payment in respect of tax due, or which may become due, by the non-resident; and
- (c) the person has complied with the notice in paragraph (b).

Taxation of Branch Profits

111. (1) A branch in Lesotho of a non-resident company is subject to tax at the standard rate of tax on repatriated income in addition to income tax on the chargeable income of the branch.

- (2) Repatriated income is the chargeable income of the branch, less -
 - (a) Lesotho income tax paid on that chargeable income; and
 - (b) any profit reinvested in the branch,

and every repatriation of moneys by the branch is treated for tax purposes as having been made first out of branch income, notwithstanding that it may be treated otherwise in the records of the branch.

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 a reciprocal assistance in the collection of taxes and the Commissioner General 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 General may, by notice in writing, require the person to pay to the Commissioner General on a date specified in the

notice the amount owing for transmission by the Commissioner General 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 General 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 taxation agreement" includes an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities.

[Sec. 112 substituted by sec. 22 of Act No. 10 of 1996]

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 Act.

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

[sec. 112A inserted by sec. 10 of Act No. 2 of 1994, repealed by sec. 23 of Act No. 10 of 1996, and substituted by sec. 3 of Act No. 11 of 2000]

Part XI: Anti-Avoidance

Transfer Pricing

113. (1) In any transaction between taxpayers who are associates, the Commissioner General may distribute, apportion, or allocate gross income, deductions, or credits between the taxpayers as is necessary to prevent the evasion of taxes or to clearly reflect the income of such taxpayers.

(2) The Commissioner General may adjust the income arising in respect of any transfer or license of intangible property between associates so that it is commensurate with the income attributable to the intangible.

(3) In making any adjustment under subsections (1) and (2), the Commissioner General may recharacterise the source of income and the nature of any payment or loss as revenue, capital or otherwise.

(4) Where property has been disposed of for payment in instalments and the disposal does not otherwise give rise to income (apart from interest on the outstanding sale price) -

- (a) the Commissioner General may apportion the instalments into principal and interest components; and
- (b) the interest component is treated as income of the seller of the property,

unless the sale includes interest at an open market rate, at the time of sale, in which case no apportionment of the instalments will be made.

Recharacterisation of Income and Deductions and Reimbursement Agreements

114. For the purposes of determining liability to tax under this Act, the Commissioner General may -

- (a) recharacterise an element of a transaction that was entered into as part of a tax avoidance scheme; or
- (b) disregard a transaction that does not have substantial economic effect; or
- (c) recharacterise a transaction the form of which does not reflect the substance.

Chapter III

FRINGE BENEFITS TAX

Part I: Interpretation

Interpretation

115. In this Chapter -

"employee" includes an associate of an employee but does not include a domestic assistant;

"employer" includes an associate of an employer;

"fringe benefit" means a car-, housing-, utilities-, domestic assistance-, meal or refreshment-, medical-, loan-, debt waiver-, or excessive superannuation contributions fringe benefit as defined in Part IV;

"medical expenditure" includes a premium or other amount paid for medical insurance;

"tax-exempt employer" means an employer whose income is not subject to tax other than an employer exempt under section 21 or under an agreement referred to in section 112;

"utilities expenditure" means any expenditure for fuel, power, water, sewerage, or telephone in respect of the employee's place of residence.

Part II: Tax Imposed

Fringe Benefits Tax Imposed

116. (1) Fringe benefits tax is hereby imposed on every employer who has a fringe benefits taxable amount.

(2) The fringe benefits tax payable is calculated by applying the rate of tax specified in the Fourth Schedule to the fringe benefits taxable amount.

Part III: Fringe Benefits Taxable Amount

Fringe Benefits Taxable Amount

117. The fringe benefits taxable amount of an employer is calculated in accordance with the following formula -

$$A \times \frac{1}{1 - B}$$

where,

A is the sum of the taxable values of all fringe benefits provided by the employer during the year of assessment other than exempt fringe benefits; and

B is the rate of tax specified in the Fourth Schedule.

Exempt Fringe Benefits

118. The following are exempt fringe benefits -

- (a) a fringe benefit within section 123(3) or 124(3); and
- (b) a fringe benefit relating to exempt employment income; and
- (c) a fringe benefit the value of which (after taking into account the frequency with which similar benefits are provided by the employer) is so small as to make accounting for it unreasonable or administratively impracticable.

Part IV: Fringe Benefits

Car Fringe Benefit

119. (1) A benefit provided by an employer to an employee consisting of the use, or the availability for use, of a motor vehicle wholly or partly for private purposes of the employee is a car fringe benefit.

(2) The taxable value of a car fringe benefit is -

$$(15\% \times A \times B/C) - D$$

where -

- A** is the market value of the motor vehicle at the time when it was first provided for the private use of the employee; and
- B** is the number of days on which the motor vehicle was used or available for use for private purposes during all or a portion of such days; and
- C** is the number of days in the year of assessment; and
- D** is any payment made by the employee for the benefit.

Housing Fringe Benefit

120. (1) A benefit provided by an employer to an employee consisting of accommodation or housing is a housing fringe benefit.

(2) Subject to subsection (3), the taxable value of a housing fringe benefit is the open market rent of the accommodation or housing reduced by any payment made by the employee for the benefit.

(3) The taxable value of a housing fringe benefit shall not exceed 20% of the remuneration paid by the employer to the employee for the year of assessment in which the benefit is provided.

Utilities Fringe Benefit

121. (1) A benefit provided by an employer to an employee consisting of the reimbursement or discharge of the employee's utilities expenditure is a utilities fringe benefit.

(2) The taxable value of a utilities fringe benefit is the amount of the reimbursement or discharge.

Domestic Assistance Fringe Benefit

122. (1) A benefit provided by an employer to an employee consisting of the provision of a housekeeper, chauffeur, gardener or other domestic assistant (other than a security guard) is a domestic assistance fringe benefit.

(2) The taxable value of a domestic assistance fringe benefit is the total employment income paid to the domestic assistant in respect of services rendered to the employee reduced by any payment made by the employee for the benefit.

Meal or Refreshment Fringe Benefit

123. (1) Subject to subsection (3), a benefit provided by an employer to an employee consisting of the provision of any meal or refreshment is a meal or refreshment fringe benefit.

(2) The taxable value of a meal or refreshment fringe benefit is the cost to the employer of providing the meal or refreshment reduced by any consideration paid by the employee for the meal or refreshment.

(3) A meal or refreshment provided in a canteen, cafeteria, or dining room operated by or on behalf of the employer solely for the benefit of employees and which is available to all non-casual employees on equal terms is an exempt fringe benefit.

Medical Fringe Benefit

124. (1) A benefit provided by an employer to an employee consisting of the reimbursement or discharge of the employee's medical expenses is a medical fringe benefit.

(2) The taxable value of a medical fringe benefit is the amount of reimbursement or discharge.

(3) A medical fringe benefit available to all non-casual employees on equal terms is an exempt fringe benefit.

Loan Fringe Benefit

125. (1) A benefit provided by an employer to an employee consisting of a loan at a rate of interest below two-thirds of the Central Bank of Lesotho discount rate is a loan fringe benefit.

(2) The taxable value of a loan fringe benefit is the difference between the interest paid during the year of assessment, if any, and the interest that would have been paid if the loan had been made at an interest rate equal to two-thirds of the Central Bank of Lesotho discount rate.

[Sub-secs. (1) and (2) amended by sec.11 of Act No. 2 of 1994]

Debt Waiver Fringe Benefit

126. (1) A benefit provided by an employer to an employee consisting of the waiver of an obligation of the employee to pay or repay an amount owing to the employer or to any other person is a debt waiver fringe benefit.

(2) The taxable value of a debt waiver fringe benefit is the amount of the payment or repayment waived.

Excessive Superannuation Contributions

127. (1) A benefit provided by a tax-exempt employer to an employee consisting of contributions to a superannuation fund which, if the employer were taxable, would not be allowed as a deduction under section 95 is an excessive superannuation contributions fringe benefit.

(2) The taxable value of an excessive superannuation contributions fringe benefit is the amount of the deduction which has not been allowed.

Chapter IV

PROCEDURE AND ADMINISTRATION

Part I: Returns

Filing of Return of Income

128. (1) Subject to section 129, every taxpayer and every nominated officer of a partnership or trust must file a return of income for each year of assessment not later than the last day of the third month following the end of that year.

- (2) A return of income must -
- (a) be in the form;
 - (b) state the information; and
 - (c) be filed,

as prescribed by the Commissioner General.

(3) The Commissioner General may require a taxpayer to file a return of income covering a period of less than 12 months, by service of a notice in writing which specifies the due date for the return if -

- (a) it appears that the taxpayer may leave Lesotho with no intention of returning; or
- (b) the taxpayer ceases to carry on business; or
- (c) it is otherwise expedient to so require a return to be made.

(4) A return of income must be signed by the taxpayer, unless legally incapacitated, and must contain a representation that the return, including any attached material, is complete and accurate.

(5) Where a return of income is signed by the taxpayer's representative, the taxpayer is deemed to know the contents of the return and is treated as having made the representation as to completeness and accuracy referred to in subsection (4).

(6) A balance sheet, statement of income and expenses, or other document prepared by a person other than the taxpayer or the taxpayer's

representative and submitted in support of a return of income of a taxpayer shall, if required by the Commissioner General, be accompanied by a certificate executed by the preparer of such document certifying that the preparer has examined the books of account and other relevant documentation, and that the document correctly reflects the data and transactions to which it relates.

Cases Where Return Not Required

129. No return of income is required under this Act from a resident individual -

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

[Para (a) substituted by sec. 24 of Act No. 10 of 1996]

- (b) whose gross income for the year of assessment (other than income subject to a final withholding tax under this Act) consists exclusively of -
 - (i) employment income of less than M50,000 derived from a single employer upon which tax has been withheld; or
 - (ii) a pension from which tax has been withheld.

Information Returns

130. Every company or partnership that makes payments of Lesotho-source interest, dividends, royalties, management fees, rent, or other income as specified by the Commissioner General must make a return of such payments to the Commissioner General within 28 days of the end of the year of assessment in which the payments were made, setting out -

- (a) the name, address, and, where appropriate, the taxpayer identification number of each person to whom such payments were made; and
- (b) the amount paid; and
- (c) such additional information as the Commissioner General may require.

Extension of Time to Lodge Returns

131. (1) Upon application in writing by the taxpayer, the Commissioner General may extend the period in which a return of income required under section 128 or an information return required under section 130 is to be made.

(2) Where a taxpayer is required to pay instalments of income tax under section 150, an extension of time to lodge a return of income may only be granted if the taxpayer has paid the instalments of tax due for the year of assessment.

(3) The granting of an extension of time under subsection (1) does not affect the due date for payment of income tax under section 143.

(4) Where a taxpayer has been granted an extension of time to file a return, the amount of tax payable on the due date under section 143 is the amount of tax estimated by the taxpayer to be due for the year of assessment less instalments of tax paid.

Free Postage for Returns

132. A return required to be furnished under this Act if marked "Income Tax" and "On Government Service" is exempt from Post Office charges and delivery fees.

Part II: Assessments

Deemed Assessments

133. (1) Where a taxpayer has filed a return of income for a year of assessment, the Commissioner General is deemed to have made an assessment of the chargeable income of the taxpayer and the income tax payable on that chargeable income for that year of assessment, being those respective amounts as specified in the return.

(2) Where a taxpayer does not file a return of income for a year of assessment pursuant to section 129, the Commissioner General is deemed to have made an assessment of the chargeable income of the taxpayer and the income tax payable on that chargeable income, being respectively, the total of the amount of payments made to the taxpayer and the tax withheld from those payments as set out in the tax withholding certificate or certificates delivered to the taxpayer for the year of assessment.

(3) The return of income is treated as a notice of an assessment under subsection (1); and the tax withholding certificate or certificates is treated as a notice of an assessment under subsection (2).

(4) A deemed assessment under subsection (1) is treated as served on the taxpayer on the due date for filing of the return of income, or the actual date the return is filed, whichever is the later; and a deemed assessment under subsection (2) is treated as served on the date that the taxpayer would otherwise have had to file a return for the year of assessment.

Default and Special Assessments

134. (1) Where a person defaults in filing a return of income for a year of assessment, the Commissioner General may make an assessment of the chargeable income of the person and the income tax payable thereon for that year of assessment.

(2) In the circumstances specified in section 128(3), in lieu of requiring a return, the Commissioner General may make an assessment of the chargeable income of the person and the tax payable on that chargeable income for any year of assessment.

(3) Where an assessment has been made under subsection (1) or (2), the Commissioner General must serve notice of the assessment on the person assessed, which notice must state -

- (a) the amount of chargeable income assessed; and
- (b) the amount of income tax payable; and
- (c) the amount of income tax paid; and
- (d) the time, place, and manner of objecting to the assessment.

Amended Assessments

135. (1) The Commissioner General may, within the time limits set out in subsection (2), amend an assessment by making such alterations or additions to the assessment as the Commissioner General considers necessary, and the Commissioner General must serve notice of the amended assessment on the person assessed.

(2) The time limits for amending an assessment are -

- (a) where fraud, or gross or wilful neglect has been committed by or on behalf of a person in relation to income tax for a year of assessment, an assessment for that year may be amended at any time; and
- (b) where paragraph (a) does not apply, the assessment may be amended within 4 years after service of notice of the assessment.

(3) An amended assessment is treated in all respects as an assessment under this Act.

(4) A taxpayer may, within 4 years after the deemed service of notice of an assessment under section 133, apply to the Commissioner General for an amendment of the assessment.

(5) An application under subsection (4) must specify in detail the grounds upon which it is made; and after considering the application, the Commissioner General may amend the assessment or disallow the application.

(6) The Commissioner General must serve the taxpayer with notice in writing of the decision on the application for amendment of an assessment.

(7) If the Commissioner General has not made a decision under subsection (5) within 90 days of the application being filed, the Commissioner General is deemed to have made a decision to disallow the amendment and to have served notice of the decision on that day.

(8) For all purposes of this Act, the Commissioner General's decision is treated as an objection decision.

General Provisions in Relation to Assessments

136. (1) The production of a notice of assessment or a certified copy of a notice of assessment is receivable in any proceeding as conclusive evidence of the due making of the assessment, and except in proceedings under Part III relating to the assessment, that the amount and all the particulars of the assessment are correct.

(2) No assessment or other document purporting to be made, issued, or executed under this Act shall be -

- (a) quashed or deemed to be void or voidable for want of form; or

- (b) affected by reason of mistake, defect, or omission therein,
- if -
- (c) it is, in substance and effect, in conformity with this Act; and
- (d) the person assessed, or intended to be assessed or affected by the document is designated in it according to common understanding.

Part III: Objections and Appeals

Objection to Assessment

137. (1) A taxpayer who is dissatisfied with an assessment (other than an amended assessment) may file an objection to the assessment with the Commissioner General within 4 years after service of the notice of assessment.

(2) An objection to an amended assessment may be filed with the Commissioner General within 4 years after service of the notice of original assessment or 60 days after service of the notice of amended assessment, whichever is the later.

(3) The objection must be in writing and specify in detail the grounds upon which it is made.

(4) After consideration of the objection, the Commissioner General may allow the objection in whole or part and amend the assessment accordingly, or disallow the objection; and the Commissioner General's decision is referred to as an objection decision.

(5) The Commissioner General must serve the taxpayer with notice in writing of the objection decision.

(6) If the Commissioner General has not made an objection decision within 90 days of the objection being filed, the Commissioner General is deemed to have made a decision to disallow the objection and to have served notice of the decision on that day.

138.

[Sec 138 repealed by sec. 29 of Act No. 2 of 2005]

139.

[Sec 139 repealed by sec. 29 of Act No. 2 of 2005]

Appeal to Court of Appeal

140. (1) A party to a proceeding before the High Court may, with special leave of the Court of Appeal, appeal the decision of the High Court to the Court of Appeal.

(2) Notice of an appeal under subsection (1) must be filed by the party appealing, with the Registrar of the Court of Appeal within 60 days of being notified of the decision of the High Court; and the party so appealing must serve a copy of the notice of appeal on the other party to the proceeding before the High Court.

General Provisions in Relation to Objections and Appeals

141. (1) The burden of proving that an assessment is excessive is on the taxpayer.

(2) The Minister may make regulations governing an appeal against an objection decision.

Powers of the Commissioner General after Appeal

142. (1) Subject to subsection (2), nothing in this Part prevents the Commissioner General from amending an assessment within the time limits in section 135(2) if the amendment does not re-open a matter which has been determined on appeal.

(2) Where any fraud, or gross or wilful neglect has been committed by or on behalf of any person in relation to income tax for any year of assessment, the Commissioner General may make an amended assessment on that person for such year of assessment even if it involves a re-opening of any matter which has been determined on appeal, but only where the fraud, or gross or wilful neglect came to the notice of the Commissioner General after the determination of the appeal.

Part IV: Collection and Refund of Tax

Division I: Due Date for Payment

Due Date for Payment of Income Tax

143. (1) Subject to subsections (2) and (5), income tax payable under this Act is due and payable on the date on which the return of income is due.

(2) Income tax assessed under section 134 or 135 is due and payable 30 days after service of the notice of assessment.

(3) Where an objection to, notice of appeal against, or an application for amendment to, an assessment has been filed, the amount of income tax payable under the assessment is due and payable, and may be recovered, notwithstanding that objection, appeal, or application.

(4) Upon written application by the taxpayer, the Commissioner General may, where good cause is shown, extend the time for payment of income tax beyond the date on which it is required to be paid under subsection (1) or (2), or make such other arrangements as appropriate to ensure the payment of the income tax liability.

(5) Notwithstanding any other provision of the Act, the Commissioner General may demand that the income tax payable under an assessment issued pursuant to section 134(2) be paid immediately.

(6) If a person liable for income tax as a result of filing a return under section 128(3) or the making of a section 134(2) assessment fails to pay the tax by the due date, the Director of Immigration shall prevent the person from leaving Lesotho until the person -

- (a) makes payment in full; or
- (b) makes an arrangement satisfactory to the Commissioner General for the payment of the tax.

(7) A letter from the Commissioner General to the Director of Immigration that income tax is due and payable by a person referred to in subsection (6) is sufficient authority for the Director of Immigration to act in pursuance of that subsection.

Division II: Recovery of Tax

Income Tax as a Debt Due to the Lesotho Government

144. (1) Income tax that is due and payable is a debt owed to the Lesotho Government and is payable to the Commissioner General.

(2) If a person fails to pay income tax when it is due and payable, the Commissioner General may file with the clerk of a court of competent jurisdiction a statement certified by the Commissioner General setting forth the amount of the tax owed, and that statement is treated for all purposes as a civil judgment lawfully given in that court in favour of the Commissioner General for a debt in the amount set forth.

(3) The statement referred to in subsection (2) may be filed with the Subordinate Court having jurisdiction over the taxpayer, notwithstanding any provision of the Subordinate Courts Act 1988 to the contrary.

Recovery From Assets of Taxpayer

145. From the date on which income tax becomes due and payable, the Commissioner General has a preferential claim, as provided in the Insolvency Proclamation 1957, upon the assets of the taxpayer until the tax is paid.

Recovery From Spouse of Taxpayer

146. Any income tax due and payable by a person married within community of property may be recovered from the assets or income of the spouse of that person.

Distress Proceedings

147. (1) The Commissioner General may recover unpaid income tax by distress proceedings against the property of the taxpayer by issuing an Act in writing, specifying the taxpayer against whose property the proceedings are authorised, the location of the property, and the assessment to which the proceedings relate; and may require a police officer to be present while the distress is being executed.

(2) For the purpose of executing distress under subsection (1), the Commissioner General may at any time enter any house or premises described in the Act authorising the distress proceeding.

(3) Property upon which a distress is levied under this section must be kept for 10 days either at the premises where the distress was levied or at such other place as the Commissioner General may consider appropriate, at the cost of the taxpayer whose tax liability is involved.

(4) If the taxpayer does not pay the tax due, together with the costs of the distress, within 10 days after the distress is levied, then the property distrained upon may be sold by public auction, or in such manner as the Commissioner General may

direct, the proceeds of the sale being applied first toward the cost of taking, keeping, and selling the property distrained upon, then toward the income tax due and payable, and the remainder of the proceeds, if any, shall be restored to the owner of the property.

(5) Nothing in this section precludes the Commissioner General from proceeding under section 144 with respect to any balance owed if the proceeds of the distress are not sufficient to meet the costs thereof and the income tax due.

Recovery of Tax From Person Owing Money to the Taxpayer

148. (1) Where a taxpayer fails to pay income tax on the date on which it becomes due and payable, the Commissioner General may by notice in writing require a person -

- (a) owing or who may owe money to the taxpayer; or
- (b) holding or who may subsequently hold money for, or on account of, the taxpayer; or
- (c) having authority from some other person to pay money to the taxpayer,

to pay the money to the Commissioner General on the date set out in the notice, up to the amount of tax due.

(2) The date specified in the notice under subsection (1) must not be a date before the money becomes due to the taxpayer, or held on behalf of the taxpayer.

(3) A copy of a notice issued under subsection (1) must be forwarded to the taxpayer.

(4) A person making a payment pursuant to a notice under subsection (1) is deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is hereby indemnified in respect of the payment.

Duties of Receivers

149. (1) A receiver must notify the Commissioner General within 14 days after being appointed to the position or of taking possession of an asset in Lesotho, whichever first occurs.

(2) The Commissioner General may notify a receiver of the amount which appears to the Commissioner General to be sufficient to provide for any income tax which is or will become payable by the person whose assets are in the possession of the receiver.

(3) A receiver must not part with any asset in Lesotho held in that capacity without the prior written permission of the Commissioner General.

(4) A receiver -

- (a) must set aside out of the proceeds of sale of an asset the amount notified by the Commissioner General under subsection (2), or such lesser amount as is subsequently agreed by the Commissioner General; and
- (b) is liable to the extent of the amount set aside for the income tax of the person who owned the asset; and
- (c) may pay any debt that has priority over the income tax referred to in this section notwithstanding any provision of this section.

(5) A receiver is personally liable to the extent of any amount required to be set aside under subsection (4) for the income tax referred to in subsection (2) if, and to the extent that, the receiver fails to comply with the requirements of this section.

(6) In this section, "receiver" means a person who, with respect to an asset in Lesotho, is -

- (a) a liquidator of a company; or
- (b) a receiver appointed out of court or by a court; or
- (c) a trustee for an unrehabilitated insolvent; or
- (d) a mortgagee in possession.

Division III: Instalments of Income Tax

Instalments of Income Tax

150. (1) A taxpayer who derives income in a year of assessment is liable to pay three instalments of tax due on 30 September, 31 December, and 31 March of that year of assessment, the amount of each instalment of tax being -

30% x (A-B)

where -

- A** is the taxpayer's liability under this Act for the preceding year of assessment after any foreign tax credit but before set off of advance corporation tax; and
- B** is so much of A as was paid in the preceding year of assessment by amounts withheld at source under Part VII.

(2) Where a taxpayer referred to in subsection (1) is a company in relation to which the Commissioner General has granted permission under section 49 to use a substituted accounting period, the company is liable to pay three instalments of tax due on the last day of the sixth, ninth, and twelfth months after the date on which the substituted accounting period commences.

(3) The Commissioner General may reduce any instalment payable under this section where there has been a reduction in a year of assessment (compared to the most recent year of assessment) of a taxpayer's income which is not subject to withholding of tax at source under Part VII.

(4) The provisions of this Act relating to the collection and recovery of income tax apply to the collection and recovery of any instalment of tax.

(5) Each instalment of tax is credited against the income tax assessed to the taxpayer for the year of assessment to which the instalment relates.

(6) Where the instalments credited under subsection (5) exceed the income tax liability assessed to the taxpayer, Commissioner General 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.

[Sub-sec. (6) substituted by sec. 25 of Act No. 10 of 1996]

(7) The fact that advance corporation tax has been satisfied by or credited against an instalment of tax does not prevent subsection (5) applying to the instalment.

Division IV: Refunds of Tax

Repayment of Overpaid Tax

151. (1) Subject to this Act, if it is proved to the satisfaction of the Commissioner General that any person has, for any year of assessment, paid income tax by withholding or otherwise in excess of the amount which ought to have been paid for that year according to the assessment issued to the person, the Commissioner General 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.

[Sub-sec. (1) amended by sec. 26 of Act No. 10 of 1996]

(2) A claim for a repayment under this section must be made within 4 years after service of the notice of assessment to which it relates, or, where the tax is a final withholding tax, within 4 years after the payment from which the tax was withheld was made.

Part V: Fringe Benefits Tax

Return of Fringe Benefits

152. (1) Every employer must file a return of fringe benefits for each period of three months ending on 30 June, 30 September, 31 December, and 31 March showing the fringe benefits taxable amount and fringe benefits tax payable for the period.

(2) The return must be filed within 14 days of the end of the period to which it relates.

(3) Sections 128(3), 131, and 132 apply, with the necessary changes made, to the filing of returns of fringe benefits.

Assessments, Appeals, and Collection - Fringe Benefits Tax

153. Parts II and III, and Divisions I, II, and IV of Part IV apply, with the necessary changes made, to fringe benefits tax payable under this Act.

Part VI: Advance Corporation Tax

Return of Advance Corporation Tax

154. (1) A resident company must, within seven days of paying a dividend, file a return of advance corporation tax stating -

- (a) the amount of dividends paid; and
- (b) advance corporation tax payable; and
- (c) the amount of any advance corporation tax which has been satisfied in accordance with section 87(4); and
- (d) any other information required by the Commissioner General.

(2) Section 132 applies, with the necessary changes made, to the filing of a return of advance corporation tax.

Assessments, Appeals, and Collection - Advance Corporation Tax

155. Parts II and III, and Divisions I, II, and IV of Part IV apply, with the necessary changes made, to advance corporation tax payable under this Act.

Part VII: Withholding of Tax at Source

Division I: Withholding Obligations

Withholding of Tax by Employers

156. (1) An employer must withhold tax from a payment of employment income to an employee (other than a domestic assistant) as prescribed in the regulations.

(2) The liability of an employer to withhold tax under subsection (1) is not abated or extinguished -

- (a) because the employer has a right, or is otherwise under an obligation, to deduct and withhold any other amount from such payments; or
- (b) because of any law providing that the amount of any such payment shall not be reduced or be subject to attachment.

Payments to Resident Contractors

157. (1) Subject to this section, a person who contracts with a resident contractor must withhold tax on the payment to the contractor at the rate of 5% of the gross amount of the payment.

(2) Subsection (1) does not apply to payments by an individual relating to the erection or improvement of the individual's principal residence.

(3) Subsection (1) applies only commencing with the first month in which payments under the contract exceed M3,000 in that month.

(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 General which certificate is valid at the date of payment.

(6) A resident contractor may apply in writing to the Commissioner General or a certificate of exemption from withholding tax.

(7) The Commissioner General shall issue a certificate of exemption from withholding tax to a resident contractor where the Commissioner General 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 General 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 General 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 General may withdraw a certificate of exemption from withholding tax issued to a resident contractor if the Commissioner General is no longer satisfied of the matters in subsection (7).

(11) The Commissioner General 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 General to refuse 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.

[Sub-secs. (4)-(12) added by sec. 27 of Act No. 10 of 1996]

Payments of Interest

158. (1) Subject to section 27, a person resident in Lesotho, other than an individual, who pays interest to a person resident in Lesotho must withhold tax on the payment at the rate of 10% of the gross amount of the payment.

(2) Where tax has been withheld under subsection (1) on a payment of interest to a resident individual (other than a resident individual in the capacity of a trustee) or to an exempt organisation, the interest is excluded from gross income and the withholding tax is a final tax.

(3) This section does not apply to a person whose interest income is exempt from income tax.

Payments by a Superannuation Fund

159. (1) A trustee or fund manager of a superannuation fund must withhold tax from a lump sum or periodic payment made by the fund to a beneficiary as prescribed in the regulations.

(2) Where tax has been withheld under subsection (1) on a lump sum payment made by a complying superannuation fund and the recipient has not made an election under section 99 (1), the payment is excluded from gross income and the withholding tax is a final tax.

[Sub-sec. (2) amended by sec.12 of Act No. 2 of 1994]

Payments by a Liquidator

160. A liquidator making a payment to a member of a company must withhold tax on the payment at the rate of 10% of the gross amount of the payment.

International Payments

161. (1) A person making a payment of the kind referred to in section 107 or 108 must withhold from the payment the tax levied under the relevant section.

(2) Where the payment is to be made to a trustee and the payer is uncertain of the application of the relevant section, the payer may -

- (a) withhold tax at the rate specified in the relevant section; and
- (b) pay that tax to the Commissioner General,

in which event the payer is relieved of liability to pay the amount of tax withheld to the person entitled to the payment.

(3) If a trustee or beneficiary proves to the satisfaction of the Commissioner General that all or part of a payment is not liable to withholding tax, the Commissioner General must refund the tax withheld pursuant to subsection (2) to the person entitled to it.

(4) Where the Minister has published a notice in the Gazette under section 107(6), the payer of the interest is relieved of the obligation imposed by this section.

(5) A person making a payment to a non-resident who is required by the Commissioner General by notice in writing given under section 110 to withhold tax from the payment must withhold tax in accordance with that notice.

Division II: General Provisions Relating to Withholding of Tax at Source

Interpretation

162. In this Division, "payee" means a person receiving payments from which tax is required to be withheld under Division I.

Tax Withholding Certificates

163. (1) A withholding agent must deliver to the payee a tax withholding certificate setting out the amount of payments made and tax withheld during the year of assessment.

(2) A tax withholding certificate must be delivered -

(a) in the case of an employee or recipient of a superannuation pension or annuity, within 28 days after the end of the year of assessment, or where an employee has ceased employment during the year of assessment, within 7 days of the date on which employment ceased; or

[Sub-sec. (2)(a) amended by sec. 13 of Act No. 2 of 1994]

(b) in any other case, on the date of payment.

(3) A tax withholding certificate must be attached to the return (if required) of the payee for the year of assessment to which the certificate relates.

Record of Payments and Tax Withheld

164. (1) A withholding agent must maintain, and keep available for inspection by the Commissioner General, records showing, in relation to each year of assessment -

(a) payments made to a payee; and

(b) tax withheld from those payments.

(2) A withholding agent must within 28 days after the end of the year of assessment, or within such further time as the Commissioner General may allow, file with the Commissioner General a statement in the prescribed form specifying -

(a) the name and address of each payee; and

(b) the amounts paid or payable to such persons; and

(c) the amounts of tax withheld; and

(d) any other information as the Commissioner General may require.

Failure to Withhold Tax

165. (1) A withholding agent who fails to withhold tax in accordance with this Part is personally liable to pay to the Commissioner General the amount of tax which has not been so withheld; but the withholding agent is entitled to recover this amount from the payee.

(2) The provisions of this Act relating to the collection and recovery of tax apply to the liability imposed by subsection (1).

Payment of Tax Withheld

166. (1) A withholding agent must pay the tax withheld to the Commissioner General within the time prescribed in the regulations.

(2) The provisions of this Act relating to the collection and recovery of tax apply to any amount withheld under this Part.

(3) Regulations for the purposes of subsection (1) may prescribe different time periods for different withholding agents.

Priority of Tax Withheld

167. (1) Tax withheld by a withholding agent under this Part -

(a) is held in trust for the Lesotho Government; and

- (b) is not subject to attachment in respect of a debt or liability of the withholding agent,

and in the event of any liquidation, assignment, or bankruptcy of the withholding agent, an amount withheld under this Part does not form part of the estate in liquidation, assignment, or bankruptcy and shall be paid in full to the Commissioner General before any distribution of property is made.

(2) Every sum which a withholding agent is required under this Part to withhold from a payment is -

- (a) a first charge on that payment; and
- (b) withheld prior to any other deduction which the withholding agent may be required to make by virtue of an Act of a court or any other law.

Adjustment on Assessment

168. (1) Tax withheld under this Part is treated as received by the payee at the time it was withheld; and the income of the payee is calculated accordingly.

(2) Tax withheld from a payment under this Part is -

- (a) deemed to have been paid by the person to whom the payment is made; and
- (b) except in the case of a final tax under section 109 or 158(2), set off for the purpose of collection of tax by assessment against the income tax assessed on the person for the year of assessment in which the payment is made.

(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 General shall-

- (a) apply the excess in reduction of any other tax due from the tax payer; 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;
- (c) refund the remainder (if any) to the taxpayer.

[Sub-sec. (3) substituted by sec. 28 of Act No. 10 of 1996]

Part VIII: Records and Investigation Powers

Accounts and Records

169. (1) A taxpayer must maintain in Lesotho in the Sesotho or English languages such records as may be necessary for the accurate determination of the tax payable by the taxpayer.

(2) The Commissioner General may disallow a claim for a deduction (including a deduction under section 73) if the taxpayer is unable without reasonable excuse to produce a receipt or other record of the transaction, or to produce evidence relating to the circumstances giving rise to the claim for the deduction.

(3) The record or evidence referred to in subsections (1) or (2) must be retained by the taxpayer for so long as they remain material in the administration of this Act.

Access to Books, Records, and Computers

170. (1) In order to enforce the provisions of this Act, the Commissioner General, or any officer authorised by the Commissioner General in writing for this purpose -

- (a) shall have at all times and without any prior notice full and free access to any premises, place, book, record, or computer; and
- (b) may make an extract or copy from any book, record, or computer-stored information to which access is obtained under paragraph (a); and
- (c) may seize any book or record that, in the opinion of the Commissioner General or authorised officer, affords evidence which may be material in determining the liability of any person to tax under this Act; and
- (d) may retain any such book or record for as long as it may be required for determining a person's liability or for any proceeding under this Act; and

- (e) may, where a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required.

(2) An officer who attempts to exercise a power under subsection (1) on behalf of the Commissioner General is not entitled to enter or remain on any premises or place if, upon being requested by the occupier of the premises or place, the officer does not produce an authorisation in writing from the Commissioner General to the effect that the officer is authorised to exercise that power under this section.

(3) The owner, manager, or any other person on the premises or place entered or proposed to be entered under this section must provide all reasonable facilities and assistance for the effective exercise of power under this section.

(4) A person whose books, records, or computer have been removed and retained under subsection (1) may examine them and make copies or extracts from them during regular office hours under such supervision as the Commissioner General may determine.

Notice to Obtain Information or Evidence

171. (1) The Commissioner General may, by notice in writing, require a person, whether a taxpayer or not, to furnish such information as may be required by the notice.

(2) The Commissioner General may by notice in writing, require a person, whether a taxpayer or not, to attend at the time and place designated in the notice for the purpose of being examined on oath before the Commissioner General or any officer authorised by the Commissioner General for this purpose, concerning the income of, or fringe benefits provided by or to, or assessment of that person or any other person, and for that purpose require such person to produce any book, record, or computer-stored information in the control of that person.

(3) Where the notice requires the production of documents or other records, it is sufficient if such documents or other records are described with reasonable certainty.

(4) A notice issued under this section must be served by or at the direction of the Commissioner General by a signed copy delivered by hand to the person to whom it is directed, or left at the person's last and usual place of abode, and the certificate of service signed by the person serving the notice is evidence of the facts stated therein.

Books and Records not in Sesotho or English Language

172. Where any book or record referred to in section 170 or 171 is not in the Sesotho or English language, the Commissioner General may, by notice in writing, require the person keeping the book or record to provide at the taxpayer's expense a translation into the Sesotho or English language by a translator approved by the Commissioner General for this purpose.

Part IX: Tax Clearance Certificates

Tax Clearance Certificate

173. If required by regulations, a taxpayer must obtain a tax clearance certificate from the Commissioner General before transferring funds from Lesotho.

Part X: Taxpayer Identification Number

Taxpayer Identification Number

174. The Commissioner General may require a taxpayer to include the taxpayer identification number issued by the Commissioner General to that taxpayer in any return, notice, or other document used for the purposes of this Act.

Part XI: Offences and Penalties

Division I: Offences

Offences Related to Returns

175. (1) A person who fails to file a return or document as required by this Act is guilty of an offence and liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding six months, or both.

(2) If a person convicted of an offence under subsection (1) fails to file the return or document within the period specified by the Commissioner General, that person is guilty of an offence and liable on conviction to a fine of M1,000 for each day during which the failure continues and to imprisonment for three months without the option of a fine in lieu of imprisonment.

Offences Related to the Maintenance of Proper Records

176. (1) A person who fails to maintain proper records in accordance with the requirements of this Act is guilty of an offence and liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding six months, or both.

(2) Where a person guilty of an offence under subsection (1) knowingly or recklessly kept incorrect records, the person is liable on conviction to a fine not exceeding M10,000 or to imprisonment for a term not exceeding two years, or both.

Offences Related to Failure to Comply with a Section 148 Notice

177. (1) A person who fails to comply with a notice under section 148 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.

(2) Where a person is convicted of an offence under subsection (1), the Court may, in addition to imposing a penalty, Act the convicted person to pay to the Commissioner General an amount not exceeding the amount which the person failed to pay under the section 148 notice.

Offences Related to Failure to Withhold Tax

178. A withholding agent who fails to -

- (a) withhold tax in accordance with the requirements of Part VII; or
- (b) furnish the tax withholding certificate required under section 163(2),

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.

Offences Related to Failure to Give a Statement Required by Section 110

179. A person required by section 110(a) to give the Commissioner General a statement in writing who fails to give the statement 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.

Offences Related to Failure to Remit Amounts Withheld Under Part VII

180. A withholding agent who fails to remit the tax withheld to the Commissioner General within the time required under section 166 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.

Offences Related to Tax Withholding Certificates

181. A person who -

- (a) knowingly makes, issues, causes or allows to be made or issued, possesses, uses, or causes to be used, a tax withholding certificate which is false;
- (b) alters a tax withholding certificate, or falsely pretends to be the person named in the certificate, or obtains credit for an amount of tax withheld from payments to another person; or
- (c) without being authorised by the withholding agent, issues a document purporting to be a tax withholding certificate or causes such a document to be issued,

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.

Offences Related to Failure to Provide Reasonable Assistance

182. A person who fails to provide the Commissioner General or authorised officer with all reasonable facilities and assistance as required by section 170(3) is guilty of an offence and liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding six months, or both.

Offences Related to Failure to Comply With a Section 171 Notice

183. A person who fails to comply with a notice issued under section 171 is guilty of an offence and liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding six months, or both.

Offences Related to Tax Clearance Certificates

184. A person other than the Commissioner General 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.

[Sec. 184 substituted by sec. 14 of Act No. 2 of 1994]

Offences Related to Taxpayer Identification Numbers

185. (1) A person who knowingly uses a false taxpayer identification number (including the taxpayer identification number of another person) on a return or document prescribed or used for the purposes of this Act 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.

(2) Subsection (1) shall not apply where a person has used the taxpayer identification number of another person with the permission of the other person on a document relating to the tax affairs of the other person.

Offences Related to Secrecy

186. A person who contravenes subsection 202(1) is guilty of an offence and liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding six months, or both.

Offences Related to Contempt of the Tribunal

187. A person who contravenes section 207(7) is guilty of an offence and liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding six months, or both.

False or Misleading Statements

188. (1) Subject to subsection (2), a person who -
- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
 - (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular,

is guilty of an offence and liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding six months, or both.

(2) Where the person guilty of an offence under subsection (1) knowingly or recklessly made the statement, the person is liable on conviction to a fine not exceeding M10,000 or to imprisonment for a term not exceeding two years, or both.

(3) It is a defence to a prosecution under subsection (1) if it is proved that the person did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading.

(4) A reference in this section to a statement made to a taxation officer is a reference to a statement made orally, in writing, or in any other form to that officer acting in the performance of duties under this Act, and includes a statement made -

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, or furnished under this Act; or
- (b) in information furnished under this Act; or
- (c) in a document furnished to a taxation officer otherwise than under this Act; or
- (d) in answer to a question asked of a person by a taxation officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

Obstructing Taxation Officers

189. A person who obstructs the Commissioner General or an authorised officer in the performance of duties under this Act 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.

Offences Related to Failure to Comply with Section 149

190. A receiver who fails to comply with Section 149 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.

Offences by Corporate Bodies

191. (1) Where an offence under this Part has been committed by a company which is a corporate body, every person who at the time of the commission of the offence -

- (a) was a nominated officer, director, general manager, secretary, or other similar officer of the company; or
- (b) was acting or purporting to act in such capacity,

is deemed to have committed the offence.

(2) It is a defence to a prosecution under subsection (1) that -

- (a) the offence was committed without such person's consent or knowledge; and
- (b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of such person's functions and all the circumstances.

Division II:

Interpretation

192. In this Division, the "specified rate" is the rate as published from time to time by the Commissioner General based on the normal commercial lending rates in Lesotho.

Additional Tax for Failure to File Returns

193. A taxpayer who fails to file a return (other than a return required under section 130) within the time required under this Act is liable for additional tax at the specified rate on the tax payable for the year of assessment from the date the return was due.

Additional Tax for Failure to Pay Tax When Due

194. (1) A person who fails to pay tax imposed by this Act (including an instalment of tax under section 150) on or before the date on which such payment is

due is liable for additional tax at the specified rate on the deficiency calculated from the date on which the payment was due.

(2) If a person pays additional tax under subsection (1), and the tax to which it relates is found not to have been due and payable by that person and is refunded, then the additional tax, or so much of the additional tax as relates to the amount of the refund, must also be refunded to such person.

Additional Tax for Under-Estimation of Tax Payable

195. Where a taxpayer has been granted an extension of time to file a return and the tax estimated to be payable by the taxpayer under section 131(4) is more than 10% below the actual amount payable (after set off of instalments of tax paid), the taxpayer is liable for additional tax at the specified rate on the whole of the deficiency calculated from the date the payment was due.

Additional Tax in Relation to Tax Withheld Under Part VII

196. (1) A withholding agent liable under section 165 for failing to withhold tax is liable for additional tax at the specified rate on the amount of tax not withheld calculated from the due date for payment of such tax.

(2) A withholding agent who fails to comply with section 166 is liable for additional tax at the specified rate on the amount of tax which that person has failed to pay to the Commissioner General calculated from the due date for payment of such tax.

(3) Additional tax recoverable under subsection (1) or (2) is borne personally by the person on whom it is levied, and no part thereof is recoverable from the payee, or credited against an assessment of tax.

Additional Tax in Relation to Records

197. A taxpayer who fails to maintain proper records in accordance with the requirements of this Act is liable for additional tax equal to double the amount of tax payable by the taxpayer for the year of assessment.

Additional Tax in Relation to False or Misleading Statements

198. (1) Where a taxpayer knowingly or recklessly -

- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
- (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular,

and the tax properly payable by the taxpayer exceeds the tax that would have been payable if the taxpayer was assessed on the basis that the statement was not false or misleading, the taxpayer is liable for additional tax equal to double the amount of the excess.

(2) Section 188(4) applies in determining whether a taxpayer has made a statement to a taxation officer.

Recovery of Additional Tax

199. (1) The provisions of this Act relating to the collection and recovery of income tax apply to any additional tax imposed.

(2) The Commissioner General may remit in whole or part the additional tax payable.

(3) Subject to subsection (4), the imposition of additional tax is in addition to any penalty imposed as a result of a conviction for an offence under Division I.

(4) No additional tax is payable under section 197 or 198 where the taxpayer has been convicted of an offence under section 176 or 188 for the same act or omission.

(5) If additional tax under section 197 or 198 has been paid and the Commissioner General institutes a prosecution proceeding under section 176 or 188 for the same act or omission, the Commissioner General must refund the amount of additional tax paid; and that additional tax is not payable unless the prosecution is withdrawn.

Part XII: Administration

Division I: Office of the Commissioner General

Appointment of Commissioner General

200. (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 1995.

(2) The Commissioner General has the general administration of this Act.

(3) The Deputy Commissioner shall, under the direction of the Commissioner General, perform such general official duties as required by this Act or by the Commissioner; and shall, in the case of illness, absence, or temporary incapacity of the Commissioner General, act in the office of the Commissioner.

(4) A gazette notice that a person has been appointed to an office under subsection (1) is conclusive evidence of the appointment.

[Although this section has not been specifically repealed, it no longer has any legal effect in view of the fact that the office of the Commissioner of Income Tax has now been taken over by the office of the Commissioner General, in terms of section 17 of the Lesotho Revenue Authority Act 2001. The position of Deputy Commissioner of Income Tax has, by necessary implication, been abolished by the Lesotho Revenue Authority Act 2001, which in terms of section 20 thereof, instead, empowers the Board of the Lesotho Revenue Authority to appoint such number of revenue commissioners as the Commissioner General may recommend.]

Delegation

201. The Commissioner may delegate to any officer of the Department of Income Tax any power or duty conferred or imposed on the Commissioner by this Act, other than this power of delegation.

[This section must be read together with section 19(2) of the Lesotho Revenue Authority Act 2001, which deals with delegation powers of the Commissioner General, and with section 31 (b) of the same Act, which stipulates that any reference to the Department of Income Tax should be deemed to be a reference to the Lesotho Revenue Authority]

Secrecy

202. (1) Subject to subsections (3) and (4), a person appointed under or employed in the carrying out of the provisions of this Act must preserve secrecy with regard to all information or documents which may come to his or her knowledge in an official capacity in the performance of duties under this Act, and must not communicate such information or the contents of such documents to any other person except in the performance of his or her duties under this Act or by Act of a competent court.

(2) A person appointed to audit the assessments and accounts of the Commissioner General, is, for the purposes of this section, deemed to be a person employed in carrying out the provisions of this Act.

(3) Subsection (1) does not prohibit the disclosure of information or documents to -

- (a) the Minister or any other person where such disclosure is necessary for the purposes of this Act or any other fiscal law; or

[Sub-sec. (3)(a) substituted by sec. 15 of Act No. 2 of 1994]

- (b) the Auditor-General or any person authorized by the Auditor-General; or

- (c) the competent authority of the government of a country with which an agreement for the avoidance of double taxation exists, to the extent permitted under that agreement.

(4) Information obtained by the Commissioner General in the performance of the Commissioner General's duties under this Act may be used by the Commissioner General for purposes of any other fiscal law administered by the Commissioner General or under which the Commissioner General is appointed collector of tax.

(5) No officer or employee of the Authority may enter upon his or her duties unless he or she has first taken and subscribed before a Commissioner of Oaths the prescribed oath of secrecy.

203.

[Sec 203 repealed by sec. 29 of Act No. 2 of 2005]

204.

[Sec 204 repealed by sec. 29 of Act No. 2 of 2005]

205.

[Sec 205 repealed by sec. 29 of Act No. 2 of 2005]

206.

[Sec 206 repealed by sec. 29 of Act No. 2 of 2005]

207.

[Sec 207 repealed by sec. 29 of Act No. 2 of 2005]

208.

[Sec 208 repealed by sec. 29 of Act No. 2 of 2005]

Division III: Forms and Notices

Forms and Notices; Authentication of Documents

209. (1) Forms, notices, returns, statements, tables, and other documents prescribed or published by the Commissioner General may be in such form as the Commissioner General determines for the efficient administration of this Act and publication of such documents in the Gazette is not required.

(2) The Commissioner General shall make such documents available to the public at the Taxation Office and at such other locations, or by mail, as the Commissioner General may determine.

(3) A notice or other document issued, served, or given by the Commissioner General under this Act is sufficiently authenticated if the name or title of the Commissioner General, or authorised officer, is printed, stamped, or written on the document.

Service of Notices and Other Documents

210. (1) A notice or other document required or authorised by this Act to be served upon a person, other than a company, is considered sufficiently served if -

- (a) personally served upon that person; or
- (b) left at the person's usual or last known place of abode, office, or place of business in Lesotho; or

- (c) sent by registered post to such place of abode, office, or place of business, or to the person's usual or last known address in Lesotho.

(2) A notice or other document required or authorised by this Act to be served upon a company is considered sufficiently served -

- (a) if personally served on the Nominated Company Officer of the company; or
- (b) if left at the registered office of the company or the company's address for service of notices under the Act; or
- (c) where there is no such office or address, if it is left at or sent by registered post to any office or place of business of the company in Lesotho.

Division IV: Nominated Officers

Notification of Nominated Officers

211. (1) Every partnership, trust, superannuation fund, or company which carries on business in Lesotho or derives Lesotho-source income (apart from income subject to a final tax under section 109) is required to have a nominated officer for tax purposes.

(2) In the case of -

- (a) a partnership with a resident partner, the nominated officer must be a resident partner; or
- (b) a trust (other than a superannuation fund) with a resident trustee, the nominated officer must be a resident trustee; or
- (c) a superannuation fund with a resident trustee or fund manager, the nominated officer must be a resident trustee or, if there is no trustee, a resident person who manages the fund; or
- (d) a company with a resident officer, the nominated officer must be a company officer resident in Lesotho.

(3) The name of the nominated officer must be notified to the Commissioner General in the first year of assessment in which the partnership, trust, superannuation fund or company satisfies subsection (1).

(4) Where a partnership, trust, superannuation fund or company fails to comply with subsection (3), the nominated officer will be the person specified by the Commissioner General.

(5) Subject to subsection (2), a partnership, trust, superannuation fund, or company may by notice in writing change the nominated officer.

(6) The nominated officer is responsible for any obligation imposed on the partnership, trust, superannuation fund, or company under this Act and must notify the Commissioner General of the identity of any non-resident partners, beneficiaries, or shareholders as the case may be.

Chapter V

MISCELLANEOUS PROVISIONS

Regulations and Amendment of Schedules

212. (1) The Minister may make regulations -

(a) for the better carrying into effect of the purposes of this Act; or

(b) to amend the First, Fifth, and Sixth Schedule to this Act; or

[Para. (ab) amended by sec. 16(a) of Act No. 2 of 1994]

(c) to amend any monetary amount set out in this Act.

(2) The regulations may contain provisions of a saving or transitional nature consequent on the making of this Act.

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

[Sub-sec. (2A) inserted by sec. 16(b) of Act No. 2 of 1994]

(3) If the regulations so provide, they may take effect from the date on which this Act comes into effect or a later date, regardless of whether they are published in the Gazette before or after 1 April 1993.

Repeal

213. The Acts and Orders specified in the Seventh Schedule to this Act and any regulations made thereunder (referred to as the "Repealed Legislation") are hereby repealed.

Transitional Provisions

214. (1) The Repealed Legislation continues to apply to years of assessment prior to the year of assessment in which this Act comes into operation pursuant to section 2.

(2) All appointments made under the Repealed Legislation and subsisting at the date of commencement of this Act are deemed to be appointments made under this Act; and an oath of secrecy taken under the Repealed Legislation is treated as having been taken under this Act.

(3) A taxation agreement made under section 105 or 106 of the Income Tax Act 1981 or its predecessor continues to have effect under this Act.

(4) All forms and documents used in relation to the Repealed Legislation may continue to be used under this Act, and all references in those forms and documents to provisions of and expressions appropriate to the Repealed Legislation are taken to refer to the corresponding provisions and expressions of this Act.

(5) A reference in this Act to a previous year of assessment includes, where the context requires, a reference to a year of assessment under the Repealed Legislation.

(6) Where this Act requires a taxpayer to change its method of accounting for the year of assessment commencing on or after 1 April 1993, then one-third of the adjustment under section 50(5) to income or deductions is included in chargeable income for that year of assessment and in each of the two subsequent years of assessment.

(7) Section 11B of the Income Tax Act 1981 continues to apply to long-term contracts entered into before 1 April 1992 but which have not been completed at that date.

(8) Section 23 of the Income Tax Act 1981 continues to apply to a contract gratuity paid in respect of a contract entered into before 1 April 1993 but only to the extent calculated in accordance with the following formula -

$$A \times B/C$$

where,

- A** is the total amount of the contract gratuity paid; and
- B** is the total number of days before 1 April 1993 of the contract in respect of which the contract gratuity was paid; and
- C** is the total number of days of the contract.

(9) Sections 26(c) and (d) and 33 of the Income Tax Act 1981 continues to apply to assets used or brought into use prior to the date of enactment of this Act; and Section 41 of this Act applies to depreciable assets acquired after the date of enactment of this Act.

[Sub-sec. (9)(a) amended by sec. 17 of Act No. 2 of 1994]

(10) A company which was entitled to use a substituted accounting period under section 40 of the Income Tax Act 1981 is permitted to continue to use that period as the year of assessment under this Act until the Commissioner General decides otherwise.

(11) Where a taxpayer, other than a company, was entitled to use a substituted accounting period under section 40 of the Income Tax Act 1981, the year of assessment immediately preceding the year of assessment commencing on 1 April 1993 is treated as having ended on 31 March 1993.

(12) Section 90(a) and (b) of the Income Tax Act 1981 continues to apply to dividends and interest paid or credited to non-residents who are residents of the Republic of South Africa or the United Kingdom for the purposes of Lesotho's double tax treaties with those countries as in force at 1 April 1993.

(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-

$$\mathbf{A + B}$$

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.

[Sub-secs. (13) and (14) added by sec. 30 of Act No. 10 of 1996]

SCHEDULES

First Schedule **(Section 3)**

Public International Organisations

African Development Bank
African Development Fund
Anglo De Beers Forest Services (Lesotho) Ltd
Catholic Relief Services
Co-operative for American Remittances Everywhere
Crown Agents
Customs Cooperation Council
Development Bank of South Africa
European Bank for Reconstruction and Development
European Development Fund
Food and Agriculture Organisation
Intergovernmental Maritime Consultative Organisation
International Atomic Energy Agency
International Bank for Reconstruction and Development
International Centre for Settlement of Investment Disputes
International Civil Aviation Organisation
International Committee of the Red Cross
International Criminal Police Organisation
International Development Association
International Finance Corporation
International Fund for Agricultural Development
International Labour Organization
International Maritime Satellite Organisation
International Monetary Fund
International Secretariat for Volunteer Services
International Telecommunications Union
International Telecommunications Satellite Organisation
International Voluntary Services
International Wheat Advisory Committee
Multilateral Investment Guarantee Agency
Organisation of African Unity
Overseas Development Administration
Southern African Development Co-ordination Conference
The United Nations Organization and the agencies thereof
The United States Peace Corps
United International Bureau for the Protection of Intellectual Property
Universal Postal Union
Voluntary Service Overseas

World Health Organisation
World Intellectual Property Organisation
World Meteorological Organisation
World Meteorological Union
World Tourism Organisation

Second Schedule
(section 9(1))

Resident Individual Income Tax Rates

Chargeable income	Rate of tax
First M40,368	22%
Over M40,368	35%

[Second Schedule substituted by sec. 31(a) of Act No. 10 of 1996 and amended by Act No. 17 of 2008 and by Regulations LN No. 61 of 2009]

Third Schedule
(section 10)

Resident Company Income Tax Rates

Nature of income	Rate of tax
1. Manufacturing income derived from a manufacturing activity of an industrial, scientific or educational nature which promotes industrial, scientific, educational or other development within Lesotho	10%
2. Manufacturing income derived from manufacturing activities relating exclusively to exports to any country other than a country within the Southern African Customs Union Other manufacturing income	0%
3. Other manufacturing income	10%
4. Other income	25%

[Third Schedule substituted by sec. 3 of Act No. 2 of 2007]

Fourth Schedule
(sections 9(2), 11, 109, and 116)

1. Tax rate for Trustees, Minors, Fringe Benefits, and Electing Non-Residents

The applicable rate is 40%

2. Tax rate on persons undertaking commercial farming-

The applicable rate is 10%

[Item 2 of the Fourth Schedule amended by sec. 3 of Act No. 17 of 2008]

Fifth Schedule
(section 16)

Minimum Chargeable Income

1. The multiplication factors for the purposes of section 16(2) are -

	multiplication factor
air travel amount	100 percent
electricity amount	100 percent
principal-residence amount	5 percent
schooling amount	100 percent
secondary home amount	5 percent
vehicle amount	25 percent

2. The amounts specified for the purposes of section 16(6) are -

air travel amount	M2,500
electricity amount	M3,000
principal-residence amount	M150,000
schooling amount, per child	M1,000
secondary home amount	M20,000
vehicle amount	M20,000

Sixth Schedule
(section 41)

Declining Balance Depreciation Rates

Group	Assets included	Depreciation Rate
1	Automobiles; Taxis; Light General Purpose Trucks; Tractors for use over-the-road; Special Tools and Devices	25%
2	Office Furniture, Fixtures, and Equipment; Computers and Peripheral Equipment and Data Handling Equipment; Buses; Heavy General Purpose Trucks; Trailers and Trailer Mounted Containers; Construction Equipment	20%
3	Any depreciable asset not included in another group	10%
4	Railroad Cars and Locomotives and Railroad Equipment; Vessels, Barges, Tugs, and Similar Water Transportation Equipment; Industrial Buildings; Engines and Turbines; Public Utility Plant.	5%

Seventh Schedule
(Section 213)

Repealed Legislation

The Income Tax Act 1981 and the Amending Acts and Orders thereto.

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, 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 1B of the project.

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

“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 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.

“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 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 to payment 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 exemption 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 General, 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 conclude 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 General 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 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 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 General 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 rectify 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 A1

Not applicable to this Schedule

ANNEX B

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 provision of this Annex;
- (b) any Contract entered into 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 the 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 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.

“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 work; 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 any part of such service.

“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 person (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.

2.0 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.

3.0 WITHHOLDING TAXES

3.1 Payment 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 General.

- 3.1.2 The Commissioner General shall issue an Exemption Certificate in such form as the Commissioner General may determine, to a resident contractor engaged on an Annex B Contract within 30 days of such contractor applying to the Commissioner General for such Certificate. Such Certificate shall remain valid unless the Commissioner General 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 General 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.

4.0 PERSONAL INCOME TAX

4.1 Tax rate with regard o 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 (25%) percent.

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.

5.0 FRINGE BENEFIT 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.

6.0 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 allowance, 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 recognized 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 disbursement 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.

7.0 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 exempted 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 party Lesotho tax under the Laws of the Kingdom of Lesotho in force in the tax year applicable to the relevant transaction or transactions.

8.0 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 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.

ANNEX C

**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 Consultant	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	M89	Feb 1991	July 1999

ANNEX D

TAXATION OF CONTRACTS

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

1. DEFINITIONS

1.1 The definitions published in the Income Tax Act 1993 as prescribed 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 D Contract” means a Contract listed in Annex C to Protocol V to the Treaty and any sub-contract to such a 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, 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 any 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 Contracting 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 General for the purpose of settling the liability of such Party for Lesotho tax, shall be exempt from taxation in Kingdom of Lesotho.

3.0 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 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 deduction 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 Contracting Party for the provisions 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 FRINGE BENEFITS TO EXPATRIATES

The following reliefs and exemptions shall apply in determination of the taxable Value of payments and benefits, including the payments 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 disbursement 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 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 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 provisions of this Annex.

A Contracting Party shall, in respect of an Annex D Contract, be exempted from the 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 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.

ANNEX E

**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	M1,490	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

ANNEX F

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 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 such 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 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, in connection with the LHWP.

“Contracting Party” means a person who or which has entered into a Contract or Sub-contract, as the case 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 provisions 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 PROVISION OF THIS ANNEX

- 2.1 The provisions of paragraphs 3.1, 4.1.1, 4.1.2, 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 General.
 - 4.1.2 The Commissioner General shall issue an Exemption Certificate in such a form as the Commissioner General may determine, to a resident contractor engaged on an Annex F Contract within 30 days of such contract applying to the Commissioner General for such Certificate. Such Certificate shall remain valid unless the Commissioner General 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 General 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 recognized 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 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 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 provisions 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 in this Schedule

TABLE G1

Not applicable in this Schedule

TABLE G2

Not applicable in this Schedule

