



LESOTHO Government Gazette

Vol. 59

Friday – 21st March, 2014

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Remission of Additional Tax and Penalties Notice, 2014

Pursuant to sections 199(2), 58(1) and 94 of the Income Tax Act, 1993¹, the Value Added Tax Act, 2001², the Customs and Excise Act, 1982³ and section 31(a) of the Lesotho Revenue Authority Act, 2001⁴, I,

THABO MICHAEL LETJAMA

Commissioner General of the Lesotho Revenue Authority hereby publish the following Guidelines for remission of additional tax imposed under the above revenue laws.

DATED: 12TH MARCH, 2014

THABO MICHAEL LETJAMA
COMMISSIONER GENERAL-LESOTHO REVENUE AUTHORITY

NOTE

1. Act No. 9 of 1993
2. Act No. 9 of 2001
3. Act No. 10 of 1982
4. Act No. 14 of 2001

Grid on remission of Additional Tax
Guidelines on Remission of Additional Tax under Value Added Tax Act and Income Tax Act

Nature of contra-vention	Behaviour	% of remission of Additional Tax	% of remission of Additional Tax	% of remission of Additional Tax	% of remission of Additional Tax
		0%	25%	50%	75%
					100%

Item (i):

(a) If failure to register was

i. influenced by the Taxpayer's honest but mistaken reasonable interpretation of the law that the supply of services or goods by the Taxpayer are exempt (which interpretation was about as likely to be correct as incorrect or was more likely to be correct than incorrect or with only the tribunal or court later deciding that it was incorrect);

✓

- ii. a result of the Taxpayer's deliberate action to evade payment of tax or was intentional; ✓
 - iii. a result of negligence on the part of the Taxpayer and failure to register was discovered:
 - aa) as a result of the Taxpayer having approached the LRA; ✓
 - bb) at the special instance and initiation of the LRA. ✓
- Item (ii):
Failure to file
Return
- a) If failure to file is a result of intentional conduct of the Taxpayer. ✓
 - b) If failure to file is a result of recklessness conduct of the Taxpayer. ✓
 - c) If failure to file is a

result of gross negligence.

d) If failure to file is a result of negligence. ✓

e) If failure to file is not a result of grounds listed above but is a result of a reasonable grounds advanced by the Taxpayer and the return was: ✓

aa) filed on the earliest date deemed to have been reasonably possible for the taxpayer to have filed the Return;

bb) was not filed on the earliest date deemed to have been reasonably possible for the taxpayer to have filed the Return but was filed: ✓

i. within five business

days from such a date;

✓

ii. within ten business days from such a date;

✓

iii. beyond ten business days from such a date;

✓

Item (iii)
Failure to pay
Tax when due

a) If failure to pay was occasioned as a result of item (i)[(a)(i)] above.

b) If failure to pay is a result of intentional conduct of the Taxpayer. ✓

c) If failure to pay is a result of recklessness conduct of the Taxpayer. ✓

d) If failure to pay is a result of gross negligence of the Taxpayer. ✓

e) If failure to pay is a result of negligence of the Taxpayer.

f) If failure to pay is not a result of grounds listed above but is a result of reasonable grounds advanced by the Taxpayer and the tax was:

aa) paid on the earliest date deemed to have been reasonably possible for the taxpayer to have paid tax due;

✓

bb) was not paid on the earliest date deemed to have been reasonably possible for the taxpayer to have paid tax due but:

i. within five business days from such date;

✓

ii. within ten business days from such a date; or ✓

iii. beyond ten business days from such a date. ✓

Item (iv): a) If intention was to evade tax. ✓

Failure to maintain proper records b) If conduct attributable to recklessness. ✓

c) If conduct attributable to gross negligence. ✓

d) If conduct attributable to negligence. ✓

Item (v): a) Intentionally made. ✓

Making a false or misleading statement b) Recklessly made. ✓

c) Negligently made. ✓

Item (vi): a) Intentional tax evasion. ✓

Under estimation of Tax payable b) No reasonable grounds for tax position taken (reckless). ✓

c) Reasonable care not taken in completing return. (negligence). ✓

d) Substantial understatement as a result of recklessness. ✓

e) Substantial understatement as a result of negligence. ✓

Item (vii): a) Intentionally. ✓

Failure to Withhold b) As a result of recklessness. ✓

c) As a result of gross negligence. ✓

d) As a result of negligence. ✓

**PENALTY GRID FOR PURPOSES OF CONTRAVENTIONS
UNDER CUSTOMS AND EXCISE ACT**

Type of Behaviour Resulting in Contravention of the Act

	Standard case (i.e. is a result of negligence)	If it is repeat case	If obstructive there is element of gross negligence	If it is repeat case and obstructive or intentional evasion
Amount of Penalties expressed in percentage, to be imposed in relation to value of goods which a contravention has been committed in respect of.	25%	50%	75%	100%

NOTES

- A person acts negligently if he fails to observe a legally recognised standard of obligation which another reasonable person in the same circumstances as the first person would have observed.
- Gross negligence is a higher degree of negligence and a person acts gross negligently if he pays no consideration whatever to the consequences of his acts and acts in total disregard of his duties.
- Recklessness connotes at the very least gross negligence and is used to describe a higher degree of gross negligence. It consists of an entire failure to give consideration to the consequences of one's actions, in other words an attitude of reckless disregard of such consequences.
- The imposition of Additional Tax under the Income Tax Act or VAT Act

is a penalty of an administrative nature and entirely different from a fine imposed under the Customs and Excise Act. The imposition therefore of Additional Tax under the Tax Acts and a fine under the Customs and Excise Act in relation to one and the same set of circumstances does not amount to 'double jeopardy' or to impermissible multiple punishment for the same act.