
LEGAL NOTICE NO. 23 OF 1994

INCOME TAX REGULATIONS

Pursuant to section 212 of the Income Tax Order, 1993, I,

SELOMETSİ BAHOLU

Minister for Finance and Economic Planning, make the following regulations -

PART I PRELIMINARY

Citation

1. These regulations may be cited as the Income Tax Regulations, 1994.

Commencement

2. (1) Pursuant to section 212(3) of the Order, and subject to sub-regulation (2), these regulations are deemed to have come into effect on 1 April 1993.

(2) Part VII of these Regulations comes into operation on the date on which these regulations are published in the Gazette.

Interpretation

3. In these regulations, a reference to "the Order" is a reference to the Income Tax Order, 1993.

PART II CONTRACTORS

Contractors

4. For the purposes of the definition of "contractor" in section 3 of the Order, the following services are prescribed:

- (a) painting or decorating;
- (b) installation of services or appliances, (including electricity supply, heating appliances, cooking appliances, refrigeration, insulation, air conditioning, ventilation, communications, fire or security protection);
- (c) plumbing, drainage, water supply or irrigation;
- (d) roofing or tiling;
- (e) earthmoving or excavation;
- (f) landscaping;
- (g) building demolition;
- (h) site restoration.

PART III DEDUCTIONS

Interpretation

5. In this Part -

"home office" means that portion of the taxpayer's principal place of residence which the taxpayer uses -

- (a) exclusively and on a regular basis as his or her principal place of work; and
- (b) for the convenience and at the request of the taxpayer's employer;

"home office expense" means expenditure in respect of a home office incurred by the taxpayer in -

- (a) borrowing money for the purpose of acquiring a principal place of residence, including payments of interest on the money borrowed;
- (b) leasing a principal place of residence, including rental payments under the lease;
- (c) insuring the principal place of residence and its contents;
- (d) heating and lighting the principal place of residence;
- (e) maintaining the home office; or
- (f) depreciation and repair of furniture and equipment used in the home office;

"motor vehicle expenses" means expenses or losses incurred by the taxpayer in -

- (a) the operation, maintenance and repair of a motor vehicle;
- (b) borrowing money for the purpose of acquiring a motor vehicle, including payments of interest on the money borrowed;

(c) leasing a motor vehicle, including rental payments under the lease; or

(d) depreciation of a motor vehicle owned by the taxpayer;

"place of residence" includes a house, apartment or similar property and all structures or other property connected to the residence, but does not include that portion of the residence used exclusively as a hotel, motel, inn or similar establishment;

"travel expense" means -

- (a) fares;
- (b) registration fees for any conference, seminar, or convention; or
- (c) meals, accommodation and other expenses incidental to travel;

but does not include an expense (or any portion of an expense) attributable to -

- (d) a relative accompanying the taxpayer; or
- (e) the entertainment of the taxpayer or another person.

Deductions for Expenses Incurred in Producing Employment Income

6. (1) For the purposes of subsection 33(2) of the Order, a taxpayer who is an employee is entitled to deduct only those expenses incurred in the production of employment income provided in this regulation and in regulations 7 to 12 and only to the extent provided in those regulations.

(2) In addition to any other requirement imposed by these regulations, a taxpayer is only entitled to a deduction for an expense or loss incurred in the production of employment income -

(a) to the extent to which it is reasonable and necessary; and

(b) which the taxpayer is able to substantiate in accordance with regulation 14.

(3) Where an expense or loss incurred is not wholly attributable to the production of employment income, then unless a more specific procedure is prescribed in these regulations, the taxpayer is entitled to deduct only so much of the loss or expense as is attributable to the production of income subject to tax.

(4) No deduction is allowed for expenses incurred in the production of employment income unless the sum of the expenses incurred by the taxpayer in the year of assessment which are, apart from this sub-regulation, allowable as deductions (ignoring those deductions provided in sections 73, 95, and 96 of the Order and regulation 8) exceeds both M2,500 and 5% of the taxpayer's gross income.

(5) Nothing in sub-regulation (1) shall be taken to limit or qualify the entitlement of a taxpayer who is an employee to the deductions provided in sections 73, 95 and 96 of the Order.

Travel Expenses

7. (1) Subject to sub-regulations (2) and (3), travel expenses incurred by a taxpayer in the course of his or her employment are an allowable deduction.

(2) A travel expense which is attributable to more than one person shall be divided equally between the individuals to whom it is attributable.

(3) Where the taxpayer is not primarily engaged in employment activities on every day of a particular trip, the amount that a taxpayer is entitled to claim as a deduction under sub-regulation (1) in respect of the trip is calculated according to the formula -

$$\frac{ED \times E}{TD}$$

where -

ED is the number of days that the taxpayer is primarily engaged in employment activities while travelling;

TD is the total number of days travelling; and

E is the sum of the travel expenses incurred by the taxpayer.

(4) For the purposes of sub-regulation (3), a taxpayer is treated as engaged in an employment activity -

- (a) while in transit; and
- (b) on any day which is a weekend or public holiday where the taxpayer is primarily engaged in employment activities on the days both preceding and succeeding the weekend or public holiday.

Education Expenses

8. (1) Subject to sub-regulation (2) and section 33(4)(d) of the Order, expenses incurred by a taxpayer in order to maintain or improve skills and knowledge which the taxpayer requires in his or her current employment are an allowable deduction provided that the sum of those expenses incurred by the taxpayer in a year of assessment exceeds M1,000.

(2) The only expenses that are deductible under this regulation are -

- (a) enrolment and tuition fees;
- (b) examination fees; and
- (c) the cost of books, stationery, and other materials purchased by the taxpayer in order to undertake his or her study.

Motor Vehicle Expenses

9. (1) Motor vehicle expenses incurred by a taxpayer for the use of a motor vehicle by the taxpayer in the course of his or her employment are an allowable deduction.

(2) Where the motor vehicle is not used exclusively for the production of employment income throughout the year of assessment, the taxpayer may elect to claim as a deduction either -

- (a) an amount calculated according to the formula:

$$\frac{ET}{TT} \times E$$

where -

TT is the total distance travelled by the vehicle during the year of assessment;

ET is the distance travelled by the vehicle on employment-related travel; and

E is the sum of the motor vehicle expenses incurred by the taxpayer in the year of assessment; or

- (b) M1 for each kilometre travelled by the motor vehicle during the year of assessment on employment-related travel.

Technical and Trade Books and Journals

10. Expenses incurred by a taxpayer for books, journals, and other publications relevant to the taxpayer's current employment are an allowable deduction.

Subscriptions to Associations

11. Expenses incurred by a taxpayer for subscriptions to any trade or professional association, including a trade union, are an allowable deduction.

Home Office Expenses

12. (1) Subject to sub-regulation (2), home office expenses are an allowable deduction.

(2) Where a home office expense is not wholly attributable to the home office, the expense or loss shall be apportioned according to the formula -

$$\frac{FH}{TF} \times E$$

where -

FH is the floor area of home office;

TF is the total floor area of the principal place of residence; and

E is the sum of the home office expenses.

Personal Expenses

13. (1) For the purposes of section 33(3)(a) of the Order, a loss or expense referred to in this regulation which is incurred by an individual in the production of business income is of a personal nature to the extent provided in this regulation.

(2) Where a taxpayer incurs a loss or expense in the production of business income, being -

- (a) a travel expense;
- (b) a motor vehicle expense; or
- (c) a home office expense;

the proportion of the expense that is not of a personal nature is the same amount that the taxpayer would have been entitled to deduct if the taxpayer had incurred the loss or expense in the production of employment income and

- (d) any reference in regulations 7, 9 or 12 to employment were construed as a reference to business; and
- (e) paragraph (b) of the definition of "home office" in regulation 5 is disregarded.

Substantiation

14. (1) No deduction is allowable to a taxpayer unless the taxpayer can substantiate the incurring and the amount of the loss or expense by documentary evidence.

(2) For the purposes of sub-regulation (1), the documentary evidence required to substantiate a travel expense incurred in the production of business or employment income is -

- (a) a contemporaneous travel diary kept by the taxpayer showing -

- (i) the dates of departure and return for a trip;
 - (ii) the destination or locality of travel;
 - (iii) for each day of travel, the activities undertaken by the taxpayer while at the travel destination; and
 - (iv) the amount of any expense incurred by the taxpayer on that day for which a receipt is not necessary; and
- (b) where necessary, a receipt setting out the nature of the expense, the amount incurred, and the date on which the expense was incurred.
- (3) For the purposes of sub-regulation (2), a receipt is necessary for a travel expense which -
- (a) is an expense for fares, registration fees, or accommodation; or
 - (b) is greater than M50.
- (4) For the purposes of sub-regulation (1), the documentary evidence required to substantiate a motor vehicle expense incurred in the production of business or employment income is -
- (a) a daily log book kept by the taxpayer showing -
 - (i) the total distance travelled by the vehicle on that day;
 - (ii) the distance travelled by the vehicle on employment or business related travel, the destination and the object in making the trip; and

- (iii) the expenses incurred in relation to the motor vehicle; or
- (b) where the taxpayer is claiming a deduction under regulation 9(2)(b), a contemporaneous log book showing -
 - (i) the distance travelled by the vehicle on employment-related or business-related travel;
 - (ii) the destination; and
 - (iii) the object in making the trip.

Annuities

15. For the purposes of section 38 of the Order, the extent of the deduction to which a taxpayer is entitled for an annuity paid to a former employee of the taxpayer or to a dependent of a former employee is M1,200 per annum.

PART IV ACCOUNTING FOR INCOME FROM INSURANCE

Accounting for Income from Insurance

16. (1) For the purposes of section 50(6) of the Order, the chargeable income derived in carrying on insurance business is calculated in accordance with this regulation.

(2) In this regulation -
 "life insurance business" has the meaning given in section 100 of the Order;

"received in Lesotho" means -

- (a) received at an office of an insurer in Lesotho without the intervention of an agent; or
- (b) received by or through an agent of an insurer in Lesotho;

"short-term insurance business" means insurance business which is not life insurance business.

(3) An insurer shall specify separately in a return rendered in respect of its insurance business in Lesotho the income derived by it from -

- (a) fire insurance;
- (b) accident insurance including employer's liability insurance;
- (c) marine insurance;
- (d) funeral insurance;
- (e) fidelity or guarantee insurance; and
- (f) all classes of short-term insurance business other than those specified in paragraphs (a) to (e).

(4) The chargeable income of an insurer in respect of its short-term insurance business is determined by charging the losses, expenses and deductions in respect of its short-term insurance business which are specified in sub-regulation (5) against the sum of -

- (a) premiums received in Lesotho in respect of short-term insurance business;
- (b) amounts, other than premiums, received in Lesotho from carrying on short-term insurance business; and

- (c) the amount of reserve allowed as a deduction in the previous year of assessment for unexpired risks at the percentage for such risks adopted by the insurer in relation to its short-term insurance business operation as a whole.
- (5) The losses, expenses and deductions referred to in sub-regulation (4) include -
- (a) premiums paid on reinsurance;
 - (b) actual losses in Lesotho less losses recoverable from reinsurance;
 - (c) expenses of management in Lesotho other than those of a capital nature;
 - (d) commission incurred in Lesotho, that is to say, net commission after deduction of commission received on reinsurance;
 - (e) expenditure, other than under paragraphs (c) and (d) and other than of a capital nature, incurred in Lesotho in the production of income;
 - (f) an allowance of such an amount as the Commissioner may approve in respect of expenses incurred outside Lesotho in connection with premiums and other amounts referred to in sub-regulation 4(a) and 4(b); and
 - (g) the amount of reserve for insured risks at the percentage adopted for such risks by the insurer in relation to its short-term insurance business operations as a whole which is set aside by the insurer at the end of the year of assessment.

(6) In calculating the income of an insurer there shall, subject to section 33 of the Order, be deducted any assessed loss arising solely out of short term insurance business in Lesotho as determined under sub-regulation (4) incurred by the insurer in any previous year of assessment.

PART V

GAINS OR LOSSES ON DISPOSAL OF ASSETS

Cost Base

17. (1) For the purposes of section 60 of the Order, the cost base of an asset includes -

- (a) where the receipt of the asset represents income subject to tax, the amount or value included in income; and
- (b) where the receipt of the asset represents income which is exempt from tax, the amount or value which is exempt income.

(2) Under section 60(6) of the Order, where an asset is acquired by the taxpayer as beneficiary or as legal personal representative of a deceased person, the adjusted cost base of the asset is its adjusted cost base in the hands of the deceased at the date of death of the deceased.

(3) Where the asset is a bonus share, the cost base of the share is the sum of any amount payable in respect of the share, and so much of its paid up value as is treated as a dividend.

(4) In the case of an asset which is a licence or lease, the cost base of the asset is the expenditure incurred by the licensee or lessee in respect of the grant of the licence or lease.

(5) In the case of an asset which is an option, the cost base of the asset is the expenditure incurred by the taxpayer in respect of the grant of the option.

Inflation Adjustment

18. (1) For the purposes of section 60 of the Order, the indexed adjusted cost base of an investment asset is the total of all items which increase the cost base of the asset indexed for inflation using the formula:

$$\text{CPI D} \\ \text{CB} \times \frac{\text{—}}{\text{CPI A}}$$

where -

CB is the amount of the item of cost or expense incurred after 1 April 1993 included in the cost base of the asset (and in the case of an asset owned by the taxpayer on 1 April 1993, the market value of the asset on that date);

CPI D is the consumer price index number published for the quarter immediately prior to the date on which the asset was disposed (but if that number is less than CPI A, then CPI A);

CPI A is the consumer price index number published for the quarter immediately prior to the date on which the relevant item of cost or expense was incurred.

(2) For the purposes of sub-regulation (1), the "consumer price index number" means the consumer price index number published by the Bureau of Statistics indicating weighted changes in the prices of consumer goods, services and commodities within Lesotho.

(3) For the purposes of sub-regulation (1), the cost of an improvement made to an asset shall be deemed to be incurred at the time of completion of the construction of the improvement.

(4) No adjustment shall be made under this regulation to the adjusted cost base of an asset (or an improvement to an asset) which is depreciable.

PART VI WITHHOLDING OF TAX AT SOURCE

Amount of Tax to be Withheld

19. (1) A withholding agent obliged under section 156 or 159 of the Order to withhold tax from a payment of employment income or a superannuation payment made to an employee or a beneficiary (referred to as a "payee"), as the case may be, must withhold tax in accordance with this regulation.

(2) Where employment income, or a pension or annuity is paid by a withholding agent to a resident payee monthly and the payee has furnished the withholding agent with an employee or beneficiary declaration, the amount of tax to be withheld from a payment for a month (referred to as the "current month") is calculated according to the following formula -

$$\frac{(A-B)}{C}$$

C

where,

A is the amount of tax payable calculated according to the Second Schedule to the Order on the chargeable income of the payee calculated in accordance with sub-regulation (3); and

B is the amount of tax withheld from payments made to the payee in the previous months of the year of assessment; and

C is the number of months remaining in the year of assessment, including the current month.

(3) The chargeable income of a payee for the purposes of component **A** of the formula in sub-regulation (2) is calculated in accordance with the following formula -

$$((D + E) \times 12/F) - G$$

where,

D is the amount of the payment made in the current month; and

E is the amount of employment income (or, in the case of a superannuation payment made to a beneficiary - a pension or annuity) paid to the payee in the previous months of the year of assessment; and

F is the number of completed months in the year of assessment including the current month; and

G is the amount claimed by the payee in his or her employee or beneficiary declaration for the year of assessment as a deduction under section 73 or 95(2) of the Order as the case may be.

(4) Where employment income, or a pension or annuity is paid by a withholding agent to a resident payee fortnightly and the payee has furnished the withholding agent with an employee or beneficiary

(3) For the purposes of sub-regulation (1), the cost of an improvement made to an asset shall be deemed to be incurred at the time of completion of the construction of the improvement.

(4) No adjustment shall be made under this regulation to the adjusted cost base of an asset (or an improvement to an asset) which is depreciable.

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C

where,

A is the amount of tax payable calculated according to the Second Schedule to the Order on the chargeable income of the payee calculated in accordance with sub-regulation (3); and

B is the amount of tax withheld from payments made to the payee in the previous months of the year of assessment; and

C is the number of months remaining in the year of assessment, including the current month.

(3) The chargeable income of a payee for the purposes of component **A** of the formula in sub-regulation (2) is calculated in accordance with the following formula -

$$((D + E) \times 12/F) - G$$

where,

D is the amount of the payment made in the current month; and

E is the amount of employment income (or, in the case of a superannuation payment made to a beneficiary - a pension or annuity) paid to the payee in the previous months of the year of assessment; and

F is the number of completed months in the year of assessment including the current month; and

G is the amount claimed by the payee in his or her employee or beneficiary declaration for the year of assessment as a deduction under section 73 or 95(2) of the Order as the case may be.

(4) Where employment income, or a pension or annuity is paid by a withholding agent to a resident payee fortnightly and the payee has furnished the withholding agent with an employee or beneficiary

declaration, the amount of tax to be withheld from a payment for a fortnightly period (referred to as the "current fortnightly period") is calculated according to the following formula -

(A-B)

C

where,

A is the amount of tax payable calculated according to the Second Schedule to the Order on the chargeable income of the payee calculated in accordance with sub-regulation (5); and

B is the amount of tax withheld from payments made to the payee in the previous fortnightly periods of the year of assessment; and

C is the number of fortnightly periods remaining in the year of assessment, including the current fortnightly period.

(5) The chargeable income of a payee for the purposes of component **A** of the formula in sub-regulation (4) is calculated in accordance with the following formula -

((D + E) x 26/F) - G

where,

D is the amount of the payment made in the current fortnightly period; and

E is the amount of employment income (or, in the case of a superannuation payment made to a beneficiary - a pension or annuity) paid to the payee in the previous fortnightly periods of the year of assessment; and

F is the number of completed fortnightly periods in the year of assessment including the current fortnightly period; and

G is the amount claimed by the payee in his or her employee or beneficiary declaration for the year of assessment as a deduction under section 73 or 95(2) of the Order as the case may be.

(6) Where employment income, or a pension or annuity is paid by a withholding agent to a resident payee weekly and the payee has furnished the withholding agent with an employee or beneficiary declaration, the amount of tax to be withheld from a payment for a week (referred to as the "current week") is calculated according to the following formula -

$$\frac{(A-B)}{C}$$

C

where,

A is the amount of tax payable calculated according to the Second Schedule to the Order on the chargeable income of the payee calculated in accordance with sub-regulation (7); and

B is the amount of tax withheld from payments made to the payee in the previous weeks of the year of assessment; and

C is the number of weeks remaining in the year of assessment, including the current week.

(7) The chargeable income of a payee for the purposes of component **A** of the formula in sub-regulation (6) is calculated in accordance with the following formula -

$$((D + E) \times 52/F) - G$$

where,

D is the amount of the payment made in the current week; and

E is the amount of employment income (or, in the case of a superannuation payment made to a beneficiary - a pension or annuity) paid to the payee in the previous weeks of the year of assessment; and

F is the number of completed weeks in the year of assessment including the current week; and

G is the amount claimed by the payee in his or her employee or beneficiary declaration for the year of assessment as a deduction under section 73 or 95(2) of the Order as the case may be.

(8) Where employment income, or a pension or annuity is paid by a withholding agent to a payee who -

- (a) is a non-resident; or
- (b) has not furnished the withholding agent with an employee declaration under regulation 20 or a beneficiary declaration under regulation 22,

tax is to be withheld from each payment at the standard rate of tax.

(9) Where a superannuation payment is a lump sum payment made to -

- (a) a beneficiary by a complying superannuation fund; or
- (b) a non-resident beneficiary by a non-complying superannuation fund that is a resident fund,

tax is to be withheld from the payment at the standard rate of tax.

(10) Where a superannuation payment is a lump sum payment made by a non-complying superannuation fund to a resident

beneficiary, the amount of tax to be withheld from the payment is calculated by applying the rates in the Second Schedule to the Order to the amount of the payment.

(11) An employer must give each employee who leaves the employer's employment during the year of assessment a statement setting out -

- (a) the amount of employment income paid by the employer to the employee during the year of assessment; and
- (b) the amount of tax withheld under section 156 of the Order by the employer from that income; and
- (c) the period of the year of assessment that the employee was employed.

(12) An employee who receives a statement under sub-regulation (11) must furnish that statement to his or her new employer who must take the amounts set out in the statement into account in applying this regulation to employment income paid to the employee.

(13) In this regulation a reference to a "resident payee" includes a non-resident to whom section 12(1) of the Order applies.

Employee Declaration

20. (1) An employee who is entitled to a deduction under section 73 or 95(2) of the Order and who wishes to have the deduction taken into account for the purposes of section 156 in determining the amount of tax to be withheld from employment income paid to the employee must furnish an employee declaration to his or her employer.

- (2) An employee declaration must -
 - (a) be in the form determined by the Commissioner; and

- (b) be signed and dated by the employee; and
- (c) specify separately the amount, if any, the employee claims as a deduction under section 73 or 95(2) for the year of assessment to which the declaration relates; and
- (d) be furnished to the employer -
 - (i) by 1 April of the year of assessment to which the declaration relates; or
 - (ii) where the employee takes up employment during the year of assessment - within 7 days of the date employment commenced; or
 - (iii) where regulation 23(2) applies - within 7 days of the change in circumstances.
- (3) An employee must not furnish an employee declaration to an employer while another employee declaration or beneficiary declaration is in force.

Secondary Employment Form

21. (1) Where an employee has more than one employer at any time during the year of assessment, the employee must furnish a secondary employment form to each employer other than the employer to whom an employer declaration has been furnished under regulation 20.

- (2) A secondary employment form must be -
 - (a) in the form determined by the Commissioner; and
 - (b) signed and dated by the employee; and

- (c) furnished to the employer by 1 April of the year of assessment to which the form relates or, where the employee takes up employment during the year of assessment, within 7 days of the date employment commenced.

Beneficiary Declaration

22. (1) A beneficiary who is entitled to a deduction under section 73 or 95(2) of the Order and who wishes to have the deduction taken into account for the purposes of section 159 in determining the amount of tax to be withheld from a pension or annuity paid to the beneficiary by a superannuation fund must furnish a beneficiary declaration to the trustee or fund manager.

(2) A beneficiary declaration must -

(a) be in the form determined by the Commissioner; and

(b) be signed and dated by the beneficiary; and

(c) specify separately the amount, if any, the beneficiary claims as a deduction under section 73 or 95(2) for the year of assessment to which the declaration relates; and

(d) be furnished to the trustee or fund manager -

(i) by 1 April of the year of assessment to which the declaration relates; or

(ii) where the beneficiary becomes entitled to the pension or annuity during the year of assessment - within 7 days of becoming so entitled; or

(iii) where regulation 23(2) applies - within 7 days of the change in circumstances.

(3) A beneficiary must not furnish a beneficiary declaration to a trustee or fund manager while another beneficiary declaration or an employee declaration of the beneficiary is in force.

Requirements Relating to Declarations and Secondary Employment Forms

23. (1) An employee or beneficiary declaration, or secondary employment form applies only to amounts of tax to be withheld after the date the declaration or form is furnished to the withholding agent and continues in force until -
- (a) withdrawn by the employee or beneficiary in accordance with sub-regulation (2); or
 - (b) the end of the year of assessment to which the declaration or form relates; or
 - (c) in the case of an employee, the employee ceases to be in the employment of the employer to whom the employee furnished the declaration or form; or
 - (d) in the case of a beneficiary, the beneficiary ceases to be in receipt of a pension or annuity; or
- (2) Where, after furnishing an employee or beneficiary declaration to a withholding agent, a change occurs in the circumstances affecting the amount of a deduction referred to in regulation 20(1) or 22(1), the employee or beneficiary must, in writing, withdraw the declaration and furnish the withholding agent with a new declaration.
- (3) A withholding agent must file with the Commissioner a copy of an employee or beneficiary declaration, or secondary employment form furnished to the agent by a new employee or beneficiary.

(4) A withholding agent must maintain and keep available for inspection by the Commissioner for a period of four years declarations and secondary employment forms furnished by employees or beneficiaries under regulation 20, 21 or 22.

Tax Withholding Certificates

24. (1) This regulation applies to the issue of tax withholding certificates by an employer, or a trustee or fund manager under section 163 of the Order.

(2) An employer, or trustee or fund manager who is required to issue a tax withholding certificate to a person who is or has been an employee or a beneficiary must sign the certificate and may issue it -

(a) by causing it to be delivered to that person personally; or

(b) by posting it by prepaid letter post addressed to that person's last known postal address.

(3) Where a tax withholding certificate which has been posted in accordance with this regulation is returned to the employer, or trustee or fund manager undelivered, the employer, or trustee or fund manager must forward the certificate to the Commissioner within 7 days after the date of return of the certificate.

(4) A payee whose tax withholding certificate has been lost, stolen, or destroyed may request that the withholding agent issue a duplicate tax withholding certificate.

(5) Where a request has been made under sub-regulation (4), the withholding agent must comply with the request and the tax withholding certificate so issued must be clearly marked "duplicate".

(6) The personal representative of an employee or beneficiary who dies during the year of assessment may apply in writing to the deceased's withholding agent for a tax withholding certificate in respect of that part of the year of assessment prior to the death of the employee or beneficiary.

(7) An employee who intends ceasing to be a resident of Lesotho may apply in writing to his or her employer for a tax withholding certificate in respect of that part of the year of assessment prior to the employee ceasing to be resident.

(8) Where an application has been made under sub-regulation (6) or (7), the withholding agent must issue the personal representative or employee with a tax withholding certificate within 7 days of the application being made.

(9) An employer who ceases to carry on business must issue a tax withholding certificate to each employee prior to ceasing business.

Payment of Tax Withheld

25. For the purposes of section 166 of the Order, a withholding agent must pay to the Commissioner the amount of tax withheld -

- (a) where tax has been withheld under section 156, 157, or, in the case of periodic payments only, 159 of the Order, within 15 days from the end of the month in which the tax was withheld; or
- (b) in any other case, immediately after the tax was withheld.

PART VII

TAX CLEARANCE CERTIFICATES

Interpretation

26. In this Part,

"Common Monetary Area" means the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa, Kingdom of Swaziland and any other country which becomes signatory to the agreement known as the Multilateral Monetary Agreement of 5 December 1974 as amended from time to time;

"foreign exchange dealer" means a person who is in the business of entering into foreign exchange transactions on behalf of customers;

"prescribed transaction" means a transaction by which a taxpayer -

- (a) credits money to an account outside the Common Monetary Area from an account in Lesotho; or
- (b) purchases in Lesotho the currency of a country which is not within the Common Monetary Area; or
- (c) sends currency out of the Common Monetary Area; or
- (d) places any currency in Lesotho to the credit of a person who is not a resident of the Common Monetary Area; or
- (e) proposes to do an act or thing which, without the grant of authority or permission, is prohibited under the Exchange Control Act 1975 or the Exchange Control Regulations,

but does not include a transaction in respect of -

- (f) an amount less than M20,000; or
- (g) the acquisition of goods, trading stock, plant, or capital equipment; or
- (h) in the case of -
 - (i) a complying superannuation fund; or
 - (ii) resident bank; or
 - (iii) a resident who carries on a life assurance business,
- the acquisition by the taxpayer of a membership interest or debt obligation in a company which is not a resident of Lesotho or of an interest in a trust that is not a resident of Lesotho where -
 - (iv) interests and obligations of the kind acquired by the taxpayer in the company or trust are actively traded on a regular basis on a stock exchange in a country; and
 - (v) the country is not treated as a tax haven under section 106 of the Order; or
- (i) an amount paid to a non-resident that is a dividend, interest, royalty, natural resource payment, management charge, or services payment which is subject to withholding tax under section 107 or 108 of the Order, or would be subject to withholding tax if sections 107(2), (5) and (6) of the Order were ignored; or

(3) The Commissioner may, by notice served on the taxpayer, withdraw a certificate already granted and, where this is done, the taxpayer is deemed not to have obtained a tax clearance certificate for any prescribed transaction entered by the taxpayer after the date of the notice.

(4) A decision by the Commissioner refusing to grant a tax clearance certificate, to impose conditions in connection with the grant of a certificate or to withdraw a certificate is, for the purposes of Part III of Chapter IV of the Order, deemed to be an assessment and is subject to objection and appeal as if it were an assessment.

Obligations of Foreign Exchange Dealers

28. (1) A foreign exchange dealer must notify the Commissioner immediately of a request by a customer to enter into a prescribed transaction of an amount of M100,000 or more unless the customer has a tax clearance certificate in respect of the transaction.

(2) A prescribed transaction in respect of which a foreign exchange dealer has notified the Commissioner under sub-regulation (1) can be completed -

- (a) when the customer produces a tax clearance certificate in respect of the transaction; or
- (b) after the expiration of seven days of so notifying the Commissioner unless the Commissioner serves a notice under section 148 of the Order on the foreign exchange dealer in relation to the customer.

(3) A foreign exchange dealer must report to the Commissioner within seven days of completing a prescribed transaction of less than M100,000.

(4) The report required by sub-regulation (3) must state-

- (b) the amount of the transaction; and
- (c) the country of destination of the transaction; and
- (d) the date of the transaction.

PART VIII TRANSITIONAL

Contract Gratuities

29. (1) Pursuant to section 212(2) of the Order, section 214(8) of the Order applies to a contract gratuity paid to a taxpayer on or after 1 April 1993 in respect of a contract entered into before that date unless the taxpayer has made an election for this regulation to apply to the gratuity.

(2) Where an election under sub-regulation (1) has been made -

(a) section 23 of the Income Tax Act 1981 applies to the contract gratuity; and

(b) the rates of tax applicable under the Income Tax Act 1981 to resident individuals as at 31 March 1993 apply to the chargeable income of the taxpayer derived during the unexpired portion of the contract term.

(3) An election under sub-regulation (1) is irrevocable and must be made in writing to the Commissioner by the earlier of-

(a) the completion of the contract; or

- (5) (b) the due date for the taxpayer's return of income for the year of assessment ending on 31 March 1994.

(4) The Commissioner may extend the period referred to in sub-regulation (3).

(5) The unexpired portion of the contract term is the period of the contract commencing on 1 April 1993 until the expiration of the contract.

Dated: 10 March 1994

SELOMETSI BAHOLO

MINISTER FOR FINANCE AND ECONOMIC PLANNING