INCOME TAX (AMENDMENT) ACT, 1996

EXPLXNATORY MEMORANDUM

This section-by-section commentary provides an explanation of the Act entitled the *Income Tax (Amendment) Act 1996.*

1. Short Title

This section provides that the Act may be cited as the *Income Tax (Amendment) Act, 1996* (hereinafter it is referred to as the *Amendment* Law"). It amends the *Income Tax Act. 1993* ("the Principal Law") in several substantive respects and makes some technical corrections.

2. Commencement

This section provides for the commencement of the Amending Law. Subsection (1) provides that the Amending Law comes into operation on the date on which it is published in the Gazette. However, subsection (1) is expressed to be subject to subsections (2) and (3) of the section. Under these subsections, certain of the provisions in the Amending Law have a commencement date which is different from the date the Amending Law is published in the Gazette. Subsection (2) provides that the amendments in sections 10, 16-19 and 30 of the Amending Law are deemed to have come into operation on 1 April 993. being the date on which the Principal Law came into operation. This is because these amendments are in the nature of technical corrections. Subsection (3) provides that the amendments in sections 4-9, 11-15, 21, 24, 31 and 32 of the Amending Law are deemed to have come into operation on 1 April 1996, being the start of the current year of assessment.

3. Principal Law

This section defines "Principal Law" for the purposes of the Amending Law as the *Income Tax Act, 1993.*

4. Interpretation

This section amends section 3 of the Principal Law which is the general definition section in the Principal Law.

The amendment includes a definition of "personal credit" in subsection 3(1) of the Principal Law. "Personal credit" is defined to mean the credit allowed under section 73 of the Principal Law. The inclusion of the definition is consequent upon the introduction of the personal credit in place of the abatement.

By virtue of subsection 2(3) of the Amending Law, this amendment is deemed to have come into operation on 1 April 1996, being the date on which the new personal **credit** comes into operation.

5. Rate of Income Tax for Resident Individuals

This section amends section 9 of the Principal Law which provides for the rate of income tax applicable to resident individual taxpayers.

Current Law

The amendments relate specifically to the concessional rate of tax provided for expatriate taxpayers in subsection 9(3) of the Principal Law. Under that subsection, the chargeable income of an expatriate taxpayer which represents compensation for services rendered under an aid project is subject to tax at the standard rate of tax (currently 25%). According to the definition in subsection 3(1) of the Principal Law, an expatriate taxpayer is a resident individual (other than a citizen or permanent resident of Lesotho (see subsection 3(1) definition)) who is employed or engaged under a technical services contract (also defined in subsection 3(l)). To qualify for the exemption, the technical services must be rendered under an raid project". According to the definition in subsection 9(4), an "aid project~~ is a project financed by a foreign~ government or a public international organisation through a grant or loan".

Summary of Amendments

Section 5 of the Amending Law repeals the concessional rate of tax provided in subsection 9(3) of the Principal Law. This is achieved by omittin2 subsections 9(3), (4), and (5) from the Principal Law.

By virtue of subsection 2(3) of the Amending~ Law, this amendment is deemed to have come into operation on I April 1996.

Explanation of Amendments

This amendment is consequent upon the further reduction in personal income tax rates included in the Amending Law and is deemed to come into operation on 1 April 1996, beinc the start of the current year of assessment.

6. Chargeable Property Income of Minors

This section amends section 14 of the Principal Law which pro\ides for the calculation of the chargeable property income of resident minors.

Current Law

Under section 14, the chargeable property income of a .resident minor is the property income of the minor which is included in cross income less deductions allowed under Division IV of Part IV relating to the earning of the property income. This amount is then reduced "by a personal deduction of M 1,000"; the personal deduction being in lieu of the section 73 abatement. The chargeable property income of a resident minor is taxed at a fiat rate of 40% under subsection 9(2) of the Principal Law.

Summary of Amendment

Section 14 is amended by omitting the words "and reduced by a personal deduction of Ml,000".

By virtue of subsection 2(3) of the Amending Law, this amendment is deemed to have come into operation on 1 April 1996.

Explanation of Amendment

The amendment to section 14 is consequent upon the introduction of the personal credit in place of the abatement (the personal deduction in section 14 being the equivalent of the abatement in relation to the chargeable property income of resident minors). Under the new paragraph 73(2)(a), a resident minor is allowed a personal credit of M400 to be applied against the income tax payable by the minor on chargeable property income.

This amendment comes into operation on 1 April 1996, being the date on which the new personal credit comes into operation.

7. Farming

This section amends section 29 of the Principal Law which provides an exemption for certain farming income.

Current Law

Under subsection 29(1), the income derived by a resident individual from farming carried ___ on in Lesotho is exempt from income tax. By virtue of the definition of "farming" in subsection (2), the exemption is only available for primary farming operations, whether pastoral or agricultural.

Summary of Amendments

Section 29 is amended in several respects to confine the availability of the exemption to income from subsistence farming. This amendment is achieved by adding the word "subsistence" before the word "farming" wherever it appears in the section. Subsection (2) has been amended so that it now provides a definition of "subsistence farming". Under that definition, subsistence farming is primary farming operations, whether pastoral or agricultural, where the output of the operations is principally used for own consumption.

Transitional rules are included in section 32 of' the Amending Law.

By virtue of subsection 2(3) of the Amending Law, section 7 is deemed to have come into operation on 1 April 1996.

Explanation of Amendments

The exemption in section 29 of the Principal Law continued the exemption in paragraph 2(l)(m) of the *Income Tax Act. 1981.* The exemption is largely for the purposes of administrative convenience in that most farming operations in Lesotho are subsistence in nature. The exemption recognizes that subsistence farmers may make some sales of produce in access of their own needs and ensures that such sales do not give rise to income tax consequences. Such sales are irregular and vary from ear to year depending on the amount of the farmers produce.

It is now apparent that resident individuals are undertaking commercial farming operations in Lesotho which are benefiting from the section 29 exemption. There is no good policy reason why such persons should be treated any differently to persons conducting other forms of commercial activity. The amendments to section 29 in section 7 of the Amendin2 Law, therefore, ensure that the exemption is properly targeted to those to whom it is intended to apply.

This is achieved by confining~ the exemption to income derived by a resident individual from "subsistence farming carried on in Lesotho subsection 29(2) of the Principal Law has been amended to provide a definition of subsistence farming". The amended definition ensures that farming operations only qualify for the exemption where the output (i.e. produce) of the operations is principally .used by the farmer for own consumption. This is intended to reflect the essential meaning of subsistence in that the total output of the operation is just enough to provide for the sustenance of the farmer and his or her immediate family. The definition does not require excessivety of use in this way; rather it requires that the output be principally so used. This ~ intended to reflect the reality that. in some seasons, there may be a small amount of output in excess of the sustenance needs which the farmer may sell. Small sales in these circumstances. therefore. will not deny the farmer the benefit of the exemption.

This amendments deemed to have come into operation on 1 April 1996, being the start of the current year or assessment.

8. .Apportionment of Deductions

This section amends section 46 or' the Principal Law which provides for the apportionment of deductions between different classes of income.

Current Law

Subsection 46(1) provides that a deduction relatin2 to more than on~ ass of income must be reasonably apportioned among those classes. Subsection 46(2) provides that the personal deduction allowed under sc on 72 or' the Principal Law to a resident individual is to be allocated rateably to each class or income derived by the individual.

Summary of Amendment

Section 8 of the Amending Law repeals subsection 46(2).

By virtue of subsection 2(3) of the Amending Law, section 8 of the Amending Law is deemed to have come into operation on 1 April 1996.

Explanation of Amendment

The amendment in section 8 of the Amendin2 Law is consequent upon the introduction of the personal credit in place of the abatement. As personal relief' is no longer provided for in the form of a deduction, the allocation rule in subsection 46(2) is no longer necessary.

This amendment is deemed to have come into operation on 1 April 1996, being the date on which the personal credit comes into operation.

9. Losses Carried Forward

This section amends section 47 of the Principal Law which provides rules for the carry forward of losses.

Current Law

Section 47 provides roles for the carry forward of losses, including the quarantining of losses arising from particular activities.

Summary of Amendments

Section 47 has been amended by ~e addition of new subsections (6) and (7) which provide for the quarantining of farming losses incurred by individuals. Where the farming income of an individual taxpayer is subject to tax and the amount of that income *is* exceeded by the deductions relating to that income, the excess may not be deducted against the taxpayer is other income for the year of assessment, but rather may be carried forward as a deduction in determining the taxpayer's chargeable farming income in the next V 'd subsequent) years of assessment.

The new subsection (7) defines chargeable farming income and~ "farming~ for the purposes of the new subsection 6).

By virtue of subsection 2(3) of the Amending Law. section 9 of the Amendin2 Law is deemed to have come into operation on 1 April 1996.

Explanation of Amendment

The amendment to section 47 is consequent upon the amendments made to section 29 of the Principal Law in relation to the exemption for farming income. Where farming income is subject to tax, the new subsection 47(6) provides for the quarantining of farming losses incurred by individual taxpayers. A farming loss cannot be deducted against the non-farming income of the taxpayer, but rather may be carried forward to the next year of assessment for deduction against the farming income of that year for the purpose of calculating the chargeable farming income for that year. The effect of the new subsection 47(6) is that farming losses may be carried forward indefinitely until expired.

The general rules for the allocation of deductions in section 46 will apply for the purposes of the new subsection 47(6). “Farming” is defined in the new subsection 47(7) to mean primary farming operations, whether pastoral or agricultural.

The quarantining role in the new subsection (6) is of an anti-avoidance nature. It is partic~..ar1v intended to apply to individuals who have a main earning activity (either as a self-employed person (e.g. professional) or as an employee) and who also carry on a small scale farming operation. The rule prevents these persons from deducting the farming tosses against the income from their main earning activity. In other words, it is intended to prevent such a taxpayer from using the losses arising from what is essentially a consumptive activity to shelter from tax the income arising from the taxpayer’s main earnin2 activity.

This amendment is deemed to have come into operation on 1 April 1996, being the date from which non-subsistence farming income is subject to tax as a result of the amendment in section 7 of the Amending Law.

10. Long-Term Contracts

This section amends section *55* of the Pr~n:½ai Law which provides tax accounting rules for the reco2nition or’ income under long-term contract.

Current Law

Section 55 requires that income and deductions arising under a long-term contract are to be recognised on the basis of the percentage-of-completion method. Under subsection 55(1), the estimated profit arising under the contract is brought to account as income on the basis of the percentage or’ the contract completed during the year of assessment. The estimated profit is calculated with regard only to amounts otherwise included in gross income or allowed as a deduction (this profit is referred to below as “estimated chargeable profit’). Subsection 55(2) provides that percentage of completion for a year or assessment is based on the ratio of contract costs incurred during the year of assessment to “estimated total contract costs”. An adjustment is

made in the year of assessment in which the contract is completed where the actual chargeable profit is greater or less than the estimated chargeable profit.

The application of the percentage or completion method is illustrated by the following example -

Taxpayer enters into a long-term contract to be completed over four years of' assessment. The estimated chargeable profit on the contract is M100. This is included in gross income for each year of the contract as follows -

Year	**1**	**2**	**3**	**4**
% completed	10%	20%	30%	40%
profit included in gross income	M10	M20	M30	M40

If the actual chargeable profit on the contract is equal to the estimated chargeable profit. then the above is Taxpayer's final tax position in respect of the contract. If the actual chargeable profit is, say, M120, then Taxpayer is required to include an additional M20 in gross income in the final year of the contract. Similarly, if the actual chargeable profit is. say, M80, then Taxpayer is allowed a deduction of M20 in the final year of the contract so that only M20 (M40 - N120) is included in chargeable income for that year.

Where a long-term contract gives rise to an "overall loss", subsection 55(3) gives the Commissioner the power to allow the loss to be carried back to the preceding year of assessment and to be applied against the amount included in the gross income of the taxpayer under subsection 55(l) for that year. Subsection 55(4) provides that the carry back of an overall loss is only permitted where the Commissioner is satisfied that the taxpayer is unable to carry the loss forward under section 47 of the Principal Law or is unable to obtain the benefit of the loss in another tax jurisdiction. According to the definition of subsection 55(5), an overall loss occurs where the deductions which would otherwise be allowed under the *Income Tax Act. 1993* in respect of expenses incurred under the contract exceed the gross income arising under the contract.

Summary of amendments

Section *55* is amended in two respects; First, by adding the words "as determined at the time of commencement of the contract" after "estimated total contract costs" in subsection (2).

Secondly, it is amended in subsection (3) to allow a final year loss to be carried back in accordance with true terms of that subsection. The concept of "final year loss" is defined in subsection 55(5) and replaces the existing concept of an "overall loss". A final year loss occurs where the chargeable profit estimated to be made under the

contract for the purposes of subsection 55(1) exceeds the actual chargeable profit (or loss made under the contract and the amount of the excess is greater than the amount included in gross income under subsection 55(l) for the year or assessment in which the contract was completed.

By virtue of subsection 2(2). these amendments apply from 1 July 1993.

Explanation of Amendments

These amendments are of a technical nature ensuring that section 55 applies in the manner originally intended.

It is clear from the terms of the section (particularly having regard to the loss carry back provision) that estimated total contract costs are to be determined at the start of the contract. The amendment to subsection 55(2) ensures that this is the basis for determining estimated total contract costs.

The amendment to subsection 55(3) broadens the circumstances where the loss carry-back rule applies. This is achieved by replacing the concept of “overall loss” with the concept of “final year loss”. “Final ;‘ear loss” is defined in subsection 55(5*).* While the concept of a final year loss includes an overall loss, it also covers a situation where the actual chargeable profit is less than the estimated chargeable profit and the amount of that difference is greater than the amount included in gross income under subsection 55(1) for the final year of assessment of the contract.

The problem which the amendment aims to overcome may be illustrated by returning to the example above. If the actual chargeable profit under the contract is Nt5 C. then it is necessary to write back M5O previously included in gross income under subsection 55(1). This can only be cone in the final year of assessment of the contract. However. under the current law. Taxpayer is left with a net loss of Ml0 (M40 - M50) in the final year of the contract. Under section 47 of the Principal Law, this may only be carried forward. If, after completion of the contract, Taxpayer has no income-producing activities in Lesotho. the loss is a terminal loss for Taxpayer. The existing carry-back rule in subsection 55(3) will not apply as there is no overall loss on the contract.

The amendment is intended to overcome this problem by treating the Ml0 as a final year loss which may be carried hack under subsection 55(3). The existing limitations on the carry back of a lose in subsection 55(4) will apply to a final year loss.

In the example, Taxpayer is required to include in cross income for the final year of assessment of the contract the balance of the estimated chargeable profit (M40). However, the write-back of >450 means t>t there is a loss in the final year of the contract of >410. This is now referred to as a final year loss and may be carried back to the previous year of assessment. Consequently, Taxpayer has no chargeable income in the final year of the contract and the chargeable income of the third year of assessment is reduced to M20 (M30 - M40) This ensures that the total chargeable profit included in gross income under section 55(1) is M50 (N1l0 (year 1) M420 (year 2) and M20 (year 3)).

As these amendments aim to ensure that section 55 operates in the manner originally intended, subsection 2(2') of the Amending Law provides that amendments apply from 1 April 1993, being the date the Principal Law came into force.

11. Trading Stock

This section amends section 56 of the Principal Law which provides rules in relation to trading stock.

Current Law

Section 56 provides tax accounting rules in respect of trading stock.

Summary of Amendment

Section 56 has been amended by the addition of a new subsection (6) which provides that the Minister may make regulations for the valuation of trading stock in relation to farming.

By virtue of subsection 2(3) of the Amending Law, this amendment is deemed to have come into operation on 1 April 1996.

Explanation of Amendment

The amendment of section 56 is consequent upon the amendments made to section 29 of the Principal Law in relation to the exemption for farming income. Where farming income is subject to tax, it is necessary to know the value of trading stock on hand. The r. subsection *56(6)* provides that the Minister may make regulations providing for the valuation of trading stock in relation to farming operations. Where there are no regulations in force, the normal rules for the valuation of trading stock in section 56 apply.

This amendment is deemed to have come into operation on 1 April 1996, being the date from which non-subsistence farming income is subject to tax as a result of the amendment in section 7 of the Amending law.

12. Repeal of Section 73 of the Principal Law

This section repeals the existing section 73 of the Principal Law which provides resident individuals with an abatement and substitutes a new section 73 which provides resident individuals with a personal credit

Current Law

Section 73 provides every resident individual with a personal deduction referred to as an "abatement". The amount of the deduction depends on the marital status of the individual and, if married, on the amount of income derived by the individual's

spouse. A resident individual who is married and whose spouse's gross income does not exceed M500 is entitled to a higher abatement than an unmarried individual or a married individual whose spouse's gross income exceeds M500.

The abatement, being a tax deduction. is included with the taxpayers other deductions in reducing gross income for the purposes of calculating chargeable income. The income tax payable by the individual is then determined by applying the rates of tax against chargeable income.

Summary of Amendment

The abatement is to be repealed and replaced by a personal credit.

The credit is allowed under the new subsection 73(1*)* to all resident individuals other than a resident minor. A special rule applicable to resident minors is provided for in subsection (2).

The amount of the credit allowed under subsection (1) is M2.640 which applies to all resident individuals regardless of marital status. The credit is applied to reduce the amount of income tax payable by the individual on chargeable income. It is not refundable if the amount of the credit exceeds the income tax payable by the individual; nor is any excess credit able to be carried forward to the next year of assessment.

Subsection (1) does not to apply to a "resident minor". A resident minor is an individual who is under IS years of age at the end of the ~'ear of assessment and who is a resident of Lesotho under one of the tests in subsection 5(l) of the Principal Law. Subsection (2) provides a special rule for resident minors. Under paragraph (2)(a), a resident minor is allowed a non-refundable personal credit of M400 to reduce the amount of income tax payable on the chargeable property income of the minor. The chargeable property income of a minor is calculated according to section 14 of the Principal Law. Under paragraph (2)(b), a resident minor is allowed a non-refundable personal credit of M2,640 to reduce the amount of income tax payable on the minor's other chargeable income (if any). The amount of the credit allowed under paragraph (2)(b) is reduced by the amount of the credit allowed under paragraph (2)(a) for the year of assessment. This ensures that the total credit allowed where a resident minor has both chargeable property income and other chargeable income does not exceed M2,640.

Subsection c 3) provides that an individual who qualifies for the personal credit for a period of less than twelve months is only allowed the credit on a pro rata basis. This applies to the personal credit allowed under both subsections (1) and.(2).

Subsection ~4) allows a non-resident individual to whom subsection 12(2) applies (i.e. a non-resident engaged in a full-time employment or business in Lesotho) to claim the personal credit.

By virtue of subsection 2(3), this amendment is deemed to have come into operation on 1 April 1996

Explanation of Amendment

The amendment in section 12 of the Amending Law repeals the abatement and replaces it with a non-refundable personal credit. The purpose of the abatement is to exclude from income tax. by way of a tax deduction, an amount of income which is considered to be necessary for subsistence. It is intended that this relief should primarily benefit low income taxpayers. This intention, however, is better achieved by a tax credit rather than a deduction. For this reason, it has been decided to replace the abatement with a tax credit so as to netter target the relief to low income taxpayers.

In replacing the abatement with a tax credit, it has also been decided to provide a sin2le credit available to all taxpayers entitled to the relief regardless of marital status. This will simplify administration and compliance particularly where taxpayers marry during the year of assessment. and obviate arguments over marital status an~ the level of income of spouses.

The special rule applicable to resident minors is consistent with the substance of the current law where a personal deduction of Ml.000 is allowed in calculating chargeable property income with the abatement allowed on any other chargeable income adjusted accordingly (see the example in the *Explanatory Memorandum* to section 14 of the Principal Law).

Subsection *(3)* requires an individual who qualifies for the personal credit for a period of 1CSS than twelve months to apportion the amount of the credit. For example, an individual who becomes a resident of Lesotho on 1 July would be entitled to a personal credit of Ml.982 *(274/365* x M2.640) for that year of assessment. This subsection would also apply where a resident individual has died during the year of assessment (see also subsection 84(2) as amended by the Amending Law).

Except where subsection (4) applies, the personal credit is only allowed to a “resident individual”. An individual is a “resident individual” if the individual satisfies one of the tests of residence in section 5 of the Principal Law. While the personal credit is not generally available to non-residents. a non-resident to whom subsection 12(2) applies is entitled to the credit. Subsection 12(2) applies to non-residents who are engaged in a full-time employment or business in Lesotho.

This amendment is deemed to have come into operation on I April 1996, being the start of the current year of assessment.

13. Calculation of Partnership Income or Loss

This section amends section 76 of the Principal Law which provides for the calculation of partnership income or loss.

Current Law

Section 76 provides for the calculation of partnership income or loss. This calculation involves a notional application of the income ‘ax law to the partnership on the

assumption that it is a resident individual taxpayers for the purposes of calculating the chargeable income of the partnership. Where the notional chargeable income is positive, it is referred to as "partnership income'. Each partner is required to include their distributive share of the partnership income in their gross income. Similarly, if the notional chargeable income is a negative amount, then .t is referred to as "partnership loss". Each partner may claim their distributive share of the partnership loss as a tax deduction.

Under subsection 76(l), partnership income or loss is to be calculated without regard to, *inter alia,* the application of section 73 of the Principal Law. As outlined above, the existing section 73 provides resident individuals with an abatement in the form of a personal deduction. It is necessary to exclude the application of section *73* in calculating partnership income or loss under the current law so as to ensure that the abatement is taken into account at the level of the individual partners and not in the calculation of partnership income or loss.

Summary of Amendment

The reference in subsection 76(1) to "section 73" is deleted.

By virtue of subsection 2(3) of the Amendin2 Law, this amendment is deemed to have come into operation on 1 April 1996.

Explanation of Amendment

The amendment t3 subsection 76(1) is of a technical nature being consequent upon the introduction of the personal credit in place of the abatement.

No credits of any type are taken into account in the calculation of partnership income or Loss. The calculation is a notional calculation of the chargeable income of the partnership which then forms the basis of the allocation of the income or loss to individual partners under section 77. The claiming of credits is an event which occurs after the calculation of chargeable income and, therefore, in the partnership context, occurs at the level of the partners after the section 77 of the Principal Law allocation of partnership income or loss. With the move to a persona~ ~edit. it is now no longer necessary to exclude the application of section *73* for the purposes of calculating partnership income or loss. The new section 73 will now simply no longer be relevant to such calculation.

This amendment is deemed to nave come into operation on 1 April 1996. being the date on which the personal credit comes into operation.

14. Principles of Taxation for Trusts

This section amends section S 1 of the Principal Law which provides the basic rules for the taxation a: income derived through a trust.

Current Law

Subsection S 1(3) provides for the calculation of trust income or loss. This calculation involves a notional application of the income tax law to the trust on the assumption that it is a resident individual taxpayer for the purposes of calculating the chargeable income of the trust. \\1~ere the notional chargeable income is positive, it is referred to as “trust income’, and where it is negative, it is referred to as “trust loss~’. This calculation is then used as the basis for ailocatin2 liability for income tax on trust income between the beneficiaries and trustee.

Trust income or loss is to be calculated without regard to, *inter alia,* the application of section 73 of the Principal Law. As outlined above, the existing section 73 provides resident individuals with an abatement in the form of a personal deduction. It is necessary to exclude the application of section 73 in calculating trust income or loss under the current law so as to ensure that the abatement is taken into account at the level of the individual beneficiaries and not in the calculation of trust income or loss.

Summary of Amendment

The reference in subsection 8 1(3) to “section *73”* is deleted.

By virtue of subsection 2(3) of the Amending Law, this amendment is deemed to have come into operation on 1 April 1996.

Explanation of Amendment

The amendment to subsection 8 1(3) is a technical nature being consequent upon the introduction of the personal credit in place of the abatement. This amendment parallels that in section 13 of the Amending Law applicable to partnerships.

.As with the calculation of partnership income or loss, no credits of any type are taken into account in the calculation of trust income or loss. The calculation is a notional calculation of the chargeable income of the trust. The claiming of credits is an event which occurs after the calculation of chargeable income and, therefore, occurs at the level of the beneficiaries. With the move to a personal credit. it is now no longer necessary to exclude the application of section 73 for the purposes of calculating trust income or loss. The new section 73 wil1 now simply no longer be relevant to such calculation.

This amendment is deemed to have come into operation on I April 1996, being the date on which the personal credit comes into operation.

15. Taxation of Estates of Deceased Persons

This section amends section 84 of the Principal Law which provides special rules for the taxation of the estate of a deceased taxpayer in the year of assessment in which the death of the taxpayer occurs.

Current Law

Under subsection 84(1), income derived by a taxpayer before the taxpayer died is taxed to the executor or administrator of the deceased taxpayer's estate as chargeable trust income. In calculating the amount of chargeable trust income, subsection 84 (2) ensures that a deduction is allowed under section 73 of the Principal Law for the abatement which would have been allowed to the taxpayer if he or she was still alive; the amount of abatement being pro-rated under subsection 73(3).

Summary of Amendment

Subsection 84(2) is omitted and replaced by a new subsection allowing the executor or administrator a personal credit under section 73 of the Principal Law in calculating the income tax payable by the executor or administrator in respect of chargeable trust income taxable under subsection 84(1).

By virtue of subsection 2(3) of the Amenain2 Law, this amendment is deemed to have come into operation on 1 April 1996.

Explanation of Amendment

The amendment to subsection 84(2) is of a technical nature being consequent upon the introduction of the personal credit in place of the abatement.

The new subsection 84(2) ensures that the executor or administrator of a deceased estate .s entitled to take into account the personal credit allowed under section 73 in determining the income tax payable on chargeable trust income arising before the Taxpayer died. The amount of the credit is pro rated under the new subsection 73(3).

This amendment is deemed to have come into operation on 1 April 1996, being the date on which the personal credit comes into operation.

16. Interpretation

This section amends section 85 of the Principal Law which provides a definition of "qualified income" for the purposes of Part VIII of Chapter II of the Principal Law.

Current Law

Section 85 defines "qualified income" to mean manufacturing income described in subsection 10(2) of the Principal Law. and the amount of any dividends received from another resident company. The definition is primarily relevant to subsection 87(1) of the Principal Law which provides that no advanced corporation tax ("ACT") is payable on a distribution made out of qualified income.

Summary of Amendment

The definition of “qualified income~ In section 85 is amended in relation to concessionallv taxed manufacturing income. Under the new definition, “qualified income” means the amount of such income less the income tax payable on such income.

By virtue of subsection 2(2), this amendment is deemed to have come into operation on 1 July 1993, being the date the Principal Law came into force.

Explanation of Amendment

The amendment is of a technical nature ensuring that section 85 applies in the manner ori~inai1v intended.

Where the qualified income is concessionallv taxed manufacturing income, the amendment ensures that the amount of the qualified income is the after tax amount of such income.

As this amendment aims to ensure that section 85 operates in the manner originally intended, subsection 2(2) of the Amending Law provides that the amendment applies from 1 April 1993, being the date on which the Principal Law came into force.

17. Incorporation and Liquidation Roll-Overs

This section amends section 91 of the Principal Law which provides roll-over relief for certain transactions in the corporate context.

Current Law

Section 91 identifies two situations where a disposal of an asset is not recognised for tax purposes. The first situation is where a person transfers an asset to a company in exchange for a membership interest in the company and, after the transfer, the transferor has a 50% or greater membership interest in the company. In this situation, the transfer is not treated as the disposal of an asset by the transferor for the purposes of the Principal Law. However, the company takes over the adjusted cost base of the transferor in respect of the asset transferred. This means that, on a subsequent disposal of the asset by the company, the gain or loss that has accrued since the transferor originally acquired the asset is taxed to the company.

The second situation is where a company is liquidated (“liquidated company”) and an asset is transferred to a corporate member of the company (“transferee company”) which held a 50% or more interest in the liquidated company immediately prior to its liquidation. In this situation, the transaction is not treated as a disposal of the asset by the liquidated company and the transfer is ignored in applying section 90 of the Principal Law. However, the transferee company takes over the adjusted cost base of the liquidated company in respect of the asset transferred. This means that on a subsequent disposal of the asset by the transferee company, the gain or loss that has accrued since the liquidated company originally acquired the asset is taxed to the transferee company.

Summary of Amendments

Subsection 91(1) is amended by adding the word “resident” before the word “person” and before the word “company~’ wherever the words “person” and “company” appear in the subsection.

Subsection 9 1(4) is amended by adding the word “resident” before the word “Company” in paragraphs (a), (b), and (c).

By virtue of subsection 2(2) of the Amending Law, these amendments are deemed to have come into operation on 1 April 1993.

Explanation of Amendments

These amendments are of a technical nature ensuring that section 91 applies in the manner originally intended.

The purpose of section 91 is to provide relief to taxpayers by deferring the recognition of any gain or loss arising on the transfer of an asset in certain situations where there is no substantial change in the underlying ownership of the asset. The amendments are intended to ensure that the roll-over relief provided in section 91 cannot be used to take the asset tax-free outside Lesotho’s jurisdiction to tax. This is achieved by confining the availability of the relief to persons arm companies which are residents of Lesotho. Consequently, for the purposes of subsection (1), the relief will only be available where the asset is transferred by a resident person to a resident company; and, for the purposes of subsection (4), the relief will only be available where the asset is transferred between resident companies.

As these amendments aim to ensure that section 91 applies in the manner originally intended and, in particular, that the relief provided to taxpayers in the section is not abused, subsection 2(2) of the Amending Law provides that the amendments apply from 1 April 1993, being the date the Principal Law came into force.

18. Reconstruction Roll-Over

This section amends section 92 of the Principal Law which provides roll-over relief for corporate restructures.

Current Law

While section 91 of the Principal Law identifies two particular cases in the corporate context where roll-over relief is available, there are many situations where an asset may be transferred between members of a corporate group without there being any substantial change in the underlying ownership of the asset. Instead of attempting to legislate for every possible case, section 92 provides general roll-over relief in respect of the transfer of an asset between companies as part of a corporate restructure where there is no significant change in the underlying ownership of the asset transferred.

Summary of Amendment

Section 92 is amended by adding the word "resident" before "company" wherever it appears in the section, and by adding the word "resident" before the word "companies" wherever it appears in the section.

Explanation of Amendment

These amendments are of a technical nature ensuring that section 92 applies in the manner originally intended.

As with section 91, the purpose of section 92 is to provide relief to taxpayers by deferring the recognition of any gain or loss arising on the transfer of an asset in certain situations where there is no substantial change in the underlying ownership of the asset. The amendments made to section 92 are intended to ensure that the roll-over relief provided cannot be used to take the asset tax-free outside Lesotho's jurisdiction to tax. This is achieved by confining the availability of the relief to transfers between resident companies.

As these amendments aim to ensure that section 92 applies in the manner originally intended and, in particular, that the relief provided to taxpayers in the section is not abused, subsection 2(2) of the Amending Law provides that the amendments apply from 1 April 1993, being the date the Principal Law came into force.

19. Lump Sum Payments Made by a Superannuation Fund

This section amends section 99 of the Principal Law which provides for the taxation of lump sum payments made by superannuation funds.

Current Law

Under subsection 99(l), a lump sum payment made by a complying superannuation find is subject to a flat rate of tax of 25% of the gross amount of the payment unless the payment is rolled over pursuant to subsection 99(2) or the recipient of the payment elects for the payment to be included in gross income and taxed at marginal rates.

Summa~ of Amendment

Subsection 99(1) is amended to provide that the recipient of the payment for the purposes of the concessional rate of tax must be a member of the fund or a dependant of a member where the member has died. For this purpose, a definition of "dependant" has been added in the new subsection 99(4). "Dependant" is defined to mean the spouse of the member or a child under the age of 18 years.

By virtue of subsection 2(2) of the Amending Law, this amendment applies from 1 July 1993, being the date the Principal Law came into force.

Explanation of Amendment

The amendment is of a technical nature ensuring that subsection 99(1) applies in the manner originally intended. Subsection 99(1) is intended to apply a concessional rate of tax to lump sum payments from complying superannuation funds. This is an important part of the concessions available to residents of Lesotho to encourage them to provide for their own retirement. The concessional rate was only ever intended to apply to payments made to members of the fund or, in the case of the death of the member, a payment made to a dependant of the member. This is implicit in the reference to "lump sum payment" which, in the context of superannuation funds, ordinarily means a payment of benefits to a member of the fund. The amendment is intended to make it clear that subsection 99(1) does not apply to any other payments made by a complying superannuation fund.

As these amendments aim to ensure that subsection 99(1) operates in the manner originally intended, subsection 2(2) of the Amending Law provides that the amendment applies from 1 April 1993, being the date the Principal Law came into force.

20. Repeal of Section 102 of the Principal Law

This section repeals section 102 of the Principal Law which provides for the taxation of contributions and payments under the Compulsory Savings scheme.

Current Law

Subsection 102(1) provides that an amount deducted pursuant to section 3 of the ***Compulsory Savings Act. 1974*** is exempt from income tax. Subsection 102(2) provides that the total amount paid pursuant to section 5 of the ***Compulsory*** Savings Act. ***1974*** in respect of deductions described in subsection (1) made after 1 April 1994 is included in gross income.

Summary of Amendment

Section 20 of the Amending Law repeals section 102 of the Principal Law.

By virtue of subsection 2(1) of the Amending Law, this amendment has effect from the date the Amending Law is published in the Gazette.

Explanation of Amendment

The amendment removes the tax concession available for compulsory savings. The amendment will allow the Government to move away from a compulsory scheme to a voluntary scheme and is consistent with the general policy of the Principal Law that the tax concessions available for long-term savings are to be provided in relation to superannuation contributions. Further, the change in tax treatment whereby contributions to the scheme are made from after tax income and the lump sum payout is exempt will allow taxpayers to better plan their level of savings. Finally, the change will benefit lower paid workers as such workers often do not have sufficient

chargeable income to be subject to tax but still face a tax liability on their payouts. The proposed change is progressive in that, in future, the lower paid will not be taxed on a lump sum payment for which they have received no tax benefit on contribution to the Compulsory Savings Scheme.

B~' virtue of subsection 2(1) of the Amending Law, this amendment has effect from the date the Amending Law is published in the Gazette.

21. Foreign Tax Credit

This section amends section 105 of the Principal Law which provides for the foreign tax credit as the general means of providing residents with relief from international double taxation in respect of foreign-source income subject to tax in Lesotho.

Current Law

Subsection 105(2) limits the amount of the foreign tax credit to the Lesotho income tax payable on the foreign-source income. The credit limit is calculated by applying the average rate of Lesotho income tax to the foreign-source income of a taxpayer reduced by any deduction properly allocated to the income. The average rate of Lesotho income tax is defined in subsection 105(6) to mean the Lesotho income tax on the taxpayer's chargeable income (before allowance of the foreign tax credit) as a percentage of that income.

Summary of Amendment

The definition of "average rate of Lesotho income tax" in subsection 105(6) is amended so as to take the personal credit into account in calculating the average rate of Lesotho income tax. Consequently, the Lesotho income tax on chargeable income is to be reduced by the personal credit for the purposes of calculating the foreign tax credit limit.

By virtue of subsection 2(3) of the Amending Law, this amendment is deemed to have come into operation on 1 April 1996.

Explanation of Amendment

The amendment to subsection 105(6) is of a technical nature being consequent upon the introduction of the personal credit in place of the abatement

Under the current definition, the abatement is taken into account as a deduction in calculating the amount of chargeable income for the purposes of determining the average rate of Lesotho income tax. The amendment ensures that the new personal credit is taken into account in determining the average rate of Lesotho income tax.

This amendment is deemed to have come into operation on 1 April 1996, being the date on which the personal credit comes into operation.

22. Repeal of Section 112 of the Principal Law

This section repeals section 112 and substitutes a new subsection 112 to deal generally with double tax agreements.

Current Law

Section 112 provides a reconciliation rule to resolve any inconsistencies between the terms of the Principal Law and the terms of any treaty (such as a Double Tax Agreement ("DTA")) or other international agreement to which Lesotho is a party. Under this section. in the event of inconsistency, the terms of the treaty or international agreement are given priority over the terms of the Principal Law, apart from the application of the general anti-avoidance provisions in Part XI of Chapter II of the Act.

Summary of Amendment

Section 112 is repealed and a new section 112 is substituted which deals more generally with double tax agreements.

Subsection (1) empowers the Minister of Finance, on behalf of the Government of Lesotho. to enter into, amend or terminate a double tax agreement with the Government of another country

Subsections (2) and (3) provide a mechanism for the collection of taxes owed by any person in Lesotho to a foreign country where a request for assistance in collection is made by the competent authority in that country under a double tax agreement. Subsection (2) provides that where the Commissioner receives such a request. the Commissioner may. by notice in writing, require the person to pay the amount owing to the foreign country to the Commissioner on the date specified in the notice. Where a person the subject of a subsection (2) notice fails to comply with the notice, subsection (3) provides that the amount of tax owing to the foreign country may be recovered by the Commissioner as if it were Lesotho income tax.

Subsection (4) defines ~double tax agreement" for the purposes of this section. The term "double tax agreement~ is defined inclusively so that it otherwise has its ordinary meaning, namely an agreement with a foreign government providing for the relief of international double taxation and the prevention of fiscal evasion. In addition, the definition expressly includes an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities.

By virtue of subsection 2(1), the new section 112 has effect from the date the Amending Law is published in the Gazette.

Explanation of Amendment

The new section 112 deals generally with double tax agreements. Subsection (1) empowers the Minister to enter into, amend or terminate a double tax agreement with the Government or another country.

Subsections (2) and (3) re-enact the terms of section 11 2A of the Principal Law which is repealed by section 23 of the Amending Law. The purpose of repealing section 11 2A and re-enacting its terms in the new section 112 is to include all provisions relating to double tax agreements into a single section.

The new section 112 comes into operation on the date the Amending Law is published in the Gazette.

23. Repeal of Section 112A of the Principal Law

This section repeals section 1 12A of the Principal Law.

Current Law

Section 1 12A was included in the Principal Law by Act No 2 of 1994. It provides a mechanism for the collection of taxes owed by any person in Lesotho to a foreign country where a request for assistance in collection is made to the Commissioner by that country under an international agreement.

Summary of Amendment

Section 23 of the Amending Law repeals section 1 12A of the Principal Law.

By virtue of subsection 2(1) of the Amending Law, this amendment has effect from the date the Amending Law is published in the Gazette.

Explanation of Amendment

This is a technical amendment consequent upon the enactment of a new section 112 to deal more generally with double tax agreements. The substance of the repealed section 1 12A is included in subsections (2) and (3) of the new section 112.

The repeal of section 11 2A has effect from the date the Amending Law is published in the Gazette.

24. Cases Where Return Not Required

This section amends section 129 of the Principal Law which provides for those classes of case where a taxpayer is not required to file a return.

Current Law

Paragraph 129(a) provides that no return of income is required from a resident individual whose gross income for the year of assessment is less than the amount of the deduction allowed to the individual under section 73 (i.e. the personal abatement).

Summary of Amendment

Paragraph 129(a) is repealed and replaced by a new paragraph 129(a) which provides that no return of income is required from a resident individual where the income tax payable on chargeable income by the individual for the year of assessment is less than the amount of the personal credit allowed to the individual.

By virtue of subsection 2(3) of the Amending Law, this amendment is deemed to have come into operation on 1 April 1996.

Explanation of Amendment

The amendment to paragraph 129(a) is of a technical nature being consequent upon the introduction of the personal credit in place of the abatement.

The new paragraph 129(a) ensures that a taxpayer whose income tax liability on chargeable income does not exceed the amount of the personal credit is not obliged to file a return. As a technical matter, the reference in the new paragraph 129(a) to "income tax payable on chargeable income" is a reference to the income tax liability before allowance of the personal credit. The reference to "income tax payable on chargeable income" also means that final withholding taxes paid by the resident individual are not taken into account for the purposes of determining whether the threshold in the new paragraph 129(a) is reached. See, for example, subsections *158(2)* and 159(2) of the Principal Law. This means, for example. that the new paragraph 129(a) will apply to a resident individual whose only income for the year of assessment is subject to a final withholding tax.

This amendment is deemed to have come into operation on 1 April 1996, being the date on which the personal credit comes into operation.

25. Instalments of Income Tax

This section amends section 150 of the Principal Law which provides for a system of quarterly instalments of income tax on income which is not subject to withholding of tax at source.

Current Law

Under subsection 150(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. Where the instalments credited under subsection 150(5) exceed the income tax liability assessed to the taxpayer for the relevant year of assessment, subsection 150(6) provides that

the excess may be applied by the Commissioner in reduction of any other income tax due from the taxpayer with any further excess being refunded to the taxpayer.

Summary of Amendment

Subsection 150(6) is amended to empower the Commissioner to apply any excess of instalments over the assessed liability for a year of assessment first against any other tax liability of the taxpayer, then against any outstanding liability under the *Sales T~ Act, 1995,* with the balance (if any) to be refunded to the taxpayer.

By virtue of subsection 2(1) of the Amending Law, this amendment applies from the date the Amending Law is published in the Gazette.

Explanation of Amendment

This amendment implements the policy decision to apply refunds payable to a taxpayer under the income tax against any outstanding sales tax liability, and vice versa in respect of sales tax refunds.

The amendment applies to refunds payable under subsection *150(5)* from the date the Amending Law comes into operation.

26. Repayment of Overpaid Tax

This section amends section 151 of the Principal Law which provides for the refund of overpaid income tax.

Current Law

Section 151 provides for the repayment of income tax to a taxpayer where the Commissioner is satisfied that the tax has been overpaid. The section is subject to the operation of the Principal Law. This means, for example, that in relation to an overpayment of instalments of tax, the refund provision in subsection 150(6) applies in priority to section 151. Similarly, section 168(3) will apply in priority to section 151 in relation to the application of withholding tax against the assessed liability.

Summary of Amendment

Subsection 151(1) has been amended to provide for the application of overpaid income tax. A refund is to be first applied against any other tax liability of the taxpayer, then against any outstanding liability under the *Sales Tax Act, 1995,* with the balance (if any) to be refunded to the taxpayer.

By virtue of subsection 2(1) of the Amending Law, this amendment applies from the date the Amending Law is published in the Gazette.

Explanation of Amendment

This amendment implements the policy decision to apply refunds payable to a taxpayer under the income tax against any outstanding sales tax liability, and vice versa in respect of sales tax refunds.

The amendment applies to refunds payable under subsection 151(1) from the date the Amending Law comes into operation.

27. Payments to Resident Contractors

This section amends section 157 of the Principal Law which provides for the withholding of tax at source from payments made to independent contractors resident in Lesotho.

Current Law

Subsection 157(1) imposes an obligation on a person who makes payments to a resident contractor to withhold tax at the rate of *5%* of the gross amount of any payment made to the contractor under a contract. This obligation is subject to the threshold in subsection
157(3).

Summary of Amendment

Section 157 is amended by adding a mechanism for the Commissioner to exempt contractors who comply with their income tax obligations from being subject to withholding tax under subsection 157(1). This amendment is achieved by adding new subsections (4)-(12) to section 157.

Subsection (4) provides that subsection (1) does not apply to payments made to a resident contractor who is a complying contractor. “Complying contractor” is defined in subsection (5) to mean a resident contractor who has been issued with a certificate of exemption from withholding tax by the Commissioner which certificate is still valid at the date of the payment.

A resident contractor seeking a certificate of exemption from withholding tax, must apply in writing to the Commissioner under subsection (6). Where a resident contractor has applied in writing, the Commissioner is required under subsection (7) to issue the contractor with a certificate of exemption if the Commissioner is satisfied of the matters listed in paragraphs (7)(a)-(O. The concern underlying the matters listed is that the resident contractor will meet its income tax obligations as to filing of returns and payment of tax as required. Under subsection (8), a certificate of exemption issued under subsection (7) remains in force for two years from the date of issue. This is subject to the power of the Commissioner to withdraw a certificate of exemption under subsection (10) (see below).

Where the Commissioner decides to refuse to issue a certificate of exemption, subsection (9) obliges the Commissioner to give the resident contractor written notice of the decision.

The Commissioner is empowered under subsection (10) to withdraw a certificate of exemption from withholding tax at any time should the Commissioner no longer be satisfied of the matters listed in paragraphs (7)(a)-(f). The Commissioner is required under subsection (11) to give the resident contractor a notice in writing of the decision to withdraw a certificate of exemption.

Under subsection (12), a resident contractor who is dissatisfied with a decision of the Commissioner not to issue a certificate of exemption or to withdraw a certificate may only challenge that decision through the objection and appeal procedures in Part III of Chapter IV of the Principal Act. For this purpose. the decision of the Commissioner is treated as an assessment.

By virtue of subsection 2(1), this amendment comes into force on the date the Amending Law is published in the Gazette.

Explanation of Amendment

This amendment gives the Commissioner the power to exempt a resident contractor from being subject to withholding tax under subsection 157(1) where the Commissioner is satisfied that the contractor is complying with its income tax obligations. The exemption is achieved through the Commissioner issuing the resident contractor with a certificate of exemption which may be quoted by the contractor to a person making payments to the contractor (the "payer") thereby relieving the payer of the obligation to withhold tax from payments under the contract. The Commissioner may only issue a certificate of exemption where the Commissioner is satisfied that the contractor has complied, and will continue to comply, with its ob1i~ations under the income tax law.

A contractor who is not subject to withholding tax under section 157 will be required to pay income tax on payments made under a contract under the quarterly instalment system in section 150 of the Principal Law.

Where a contractor who has been issued with an certificate of exemption subsequently fails to comply with its income tax obligations (including the payment of an income tax instalment under section 150), the Commissioner has power to withdraw the exemption.

This amendment comes into operation on the date the Amending Law is published in the Gazette.

28. Adjustment on Assessment

This section amends section 168 of the Principal Law which provides for the application of tax withheld at source.

Current Law

Under subsection 168(3), where the tax withheld at source under Part VII of Chapter IV of the Principal Law exceeds the income tax liability of the payee for the relevant year of assessment, the excess is applied against any other tax liability of the payee. with any further excess being refunded to the payee.

Summa~ of Amendment

Subsection 168(3) is amended to empower the Commissioner to apply any excess of tax withheld over the assessed liability for a year of assessment first against any other tax liability of the taxpayer. then against any outstanding liability under the *Sales Tax Act, 1995,* with the balance (if any) to be refunded to the taxpayer.

By virtue of subsection 2(1) of the Amending Law, this amendment applies from the date the Amending Law is published in the Gazette.

Explanation of Amendment

This amendment implements the policy decision to apply refunds payable to a taxpayer under the income tax against any outstanding sales tax liability, and vice versa in respect of sales tax refunds.

The amendment applies to refunds payable under subsection 168(3) from the date the Amending Law comes into operation.

29. Appointment of Commissioner and Deputy Commissioner of Income Tax

This section amends section 200 of the Principal Law which provides for the appointment of the Commissioner and Deputy Commissioner of Income Tax.

The amendment is consequent upon the enactment of the *Public Services Act 1995.*

30. Amendment of Transitional Provisions in Principal Law

This section amends section 214 of the Principal Law which provides for certain transitional arrangements consequent upon the introduction of the Principal Law.

Under section 22(1)(p) of the *Income Tax Act, 1981,* lump sum payments from superannuation funds were exempt from income tax. However, under section 99 of the Principal Law, lump sum payments from superannuation funds are subject to tax. For payments from a complying superannuation fund, the maximum rate of tax is the standard rate (currently 25%); and lump sum payments from non-complying superannuation funds are subject to tax at normal marginal rates. To prevent section

99 of the Principal Law from taxing that part of a lump sum benefit that accrued prior to the Principal Law coming into operation, subsections 214(13) and (14) exempt from tax the capital value of the member's interest in the superannuation fund as at 31 March 1993. This is calculated as the total of contributions to the fund in respect of the member as at that date plus the income that has accrued on those contributions as at that date.

By virtue of subsection 2(2) of the Amending Law. this amendment is deemed to have come into operation on 1 April 1993.

31. Amendment of Schedules to Principal Law

This section amends the Second and Third Schedules to the Principal Law which Schedules provide for the rates of tax on resident individuals and resident companies respectively.

The amendments to the Schedules implement the Government's policy decision to reduce the income tax rates applicable to resident individuals and to resident companies.

By virtue of subsection 2(3) of the Amending Law. this amendment is deemed to have come into operation on 1 April 1996, being the start of the current year of assessment.

32. Transitional Provisions

This section provides for transitional measures applicable to those resident individuals who no longer qualify for the fanning exemption as a result of the amendment in section 7 of the Amending Law.

Subsection (1) ensures that assets held by such persons at the time the amendments come into operation are given a cost base equal to their market value at 31 March 1996. This applies to trading stock and other assets the disposal of which will give rise to business income as defined in section 19 of the Principal Law. Subsection (1) also applies to liabilities owed by the person at the time the amendments come into operation. Subsection (1), however, will not apply for the purposes of calculating a depreciation or amortisation deduction under section 41, 44 or 45 of the Principal Law; such deductions are the subject of subsections (2) and (3). The purpose of subsection (1) is to ensure that when the asset is subsequently disposed of or liability is realised, the individual will only be taxed in respect of the gain or loss accruing after the removal of the exemption.

Subsection (2) provides that the amount of any depreciation deduction allowed under section 41 of the Principal Law in respect of assets held at the time section 7 of the Amending Law comes into operation is to be calculated on the assumption that subsection 4 1(3) (i.e. single asset depreciation) applied to the asset during the period before section 7 came into operation. Consequently subsection (2) deals with depreciable assets acquired by the individual before the removal of the exemption and which are used in the production of farming income subject to tax. The individual will be able to depreciate the cost of the asset for tax purposes, but on the assumption that subsection

4 1(3) of the Principal Law has always applied to the asset. In other words, depreciation for the first year of assessment in which the individual is subject to tax is based on the adjusted cost base of the asset at the start of that year calculated on the assumption that the single asset depreciation method has applied to the asset from the date of its acquisition. This is illustrated by the following example -

Farmer acquired a group 2 asset (see section 41(2) and the Sixth Schedule to the Principal Law) on 1 September 1994 for M15,000.

A group 2 asset has a declining balance depreciation rate of 20%. If depreciation had been allowed for the 1994/95 year of assessment, then the amount of the depreciation would have been -

20% x M15,000 x 212/365 = M1.742.

The adjusted cost base of the asset at the end of the 1994/95 year of assessment would have been M13,258 (M15,000 - M1,742). The depreciation deduction for the 1995/96 year of assessment would have been -

20% x M13,258 x 365/365 = M2,651.

The adjusted cost base of the asset at the end of the 1995/96 year of assessment is M10,607 (M13,258 - M2,651). This is then the adjusted cost base at the start of the 1996/97 year of assessment for the purposes of allowing a depreciation deduction under section 41 for that year.

Subsection (3) provides that the amount of any deduction allowed under section 44 or 45 of the Principal Law in respect of intangible assets held on, or start-up costs incurred before, the amendments come into operation are to be calculated on the assumption that those sections had always applied.

INCOME TAX (AMENDMENT) ACT. 1996.

ACT NO. 10 OF 1996

An Act to amend the Income Tax Act. 1993

Enacted by the Parliament of Lesotho

Short Title

1. This Act may be cited as the Income Tax (Amendment) Act. 1996.

Commencement

2. (1) Subject to subsections (2) and (3) this Act comes into operation on the date it is published in the Gazette.

(2) Sections 10. 16. 17. 18. 19 and *30* are deemed to have come into operation on 1 .April *1993.*

(3) Sections 4,5,6,7,8,9, 11, 12, 13, 14, 15. 21,24,31 and 32 are deemed to have come into operation on 1 April 1996.

Principal Law

3. In this Act. "Principal Law' *means* the Income Tax Act. 1993.

Interpretation

4. Section 3 of the Principal Law is amended in subsection (1) by adding, after the definition of "person the following definition -

"'personal credit' means the credit allowed under section i~,

Rate **of Income Tax for Resident Individuals**

5. Section 9 of the Principal Law is amended by omitting subsections (3), (4) and (5).

Chargeable Property Income of Minors

6. Section 14 of the Principal Law is amended by omitting the words" reduced by a personal deduction ofMl.000".

Farming

7. **Section 29 of the Principal Law is amended** -

(a) by adding the word ~Subsistence" before the word "Farming" in the heading; and

(b) in subsection (1), by adding the word "subsistence" before the word 'farming" and

(c) in subsection (2) -

(i) by adding the word '~subsistence" before the word "farming"; and

(ii) by adding the words ". where the output of the operations is principally used for own consumption"
after the word '~a~ricultura1".

Apportionment of Deductions

8. Section 46 of the Principal Law is amended by repealing subsection (2).

Losses Carried Forward

9. Section 47 of the Principal Law is amended by adding the following subsections after subsection (5) -

"(6) Where fanning income of an individual taxpayer is exceeded by the deductions relating to that income, the loss (being the amount of the excess I -

(a) may not be deducted against other income of the taxpayer but shall be carried forward; and

(b) may be deducted in determining chargeable farming income in subsequent years of assessment.

(7) In this section -

"chargeable farming income" means the chargeable income arising from farming; and

"farming" means primary farming operations. whether pastoral or agricultural".

Long-Term Contracts

10. Section 55 of the Principal Law is amended -

(a) in subsection (2). by adding the words “as determined at the time of commencement of the Contract” after the words “estimated total contract costs’; and

(b) in subsection *(3).* by substituting the words “a final Year loss” for the words “overall loss’; and

(c) in subsection (4), by substituting the words “a final year loss” for the worcis “an overall loss”; and

(d) in subsection (5) -

(i) by adding the following definition before the definition of “long-term contract~’ -

“‘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 (I) exceeds the actual profit (including a Loss made under 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”: and

(ii) by omitting the definition of “overall loss”.

Trading Stock

11. Section 56 of the Principal law is amended by adding the following subsection after subsection(5) -

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

12. Section *73* of the Principal Law is repealed and the followin2 section substituted -

“Personal Credit

73. (1) A resident individual other than a resident minor) is allowed a non-refundable personal credit of M2.640 against the individual’s liability for income tax.

(2) A resident minor is allowed a non-refundable personal credit -

(a) in relation to the minors liability for income tax on chargeable property income, in the amount of such liability, up to M400: and

(b) in relation to the minors liability for income tax on chargeable income other than chargeable property income, of M2.640 less the amount of any credit allowed under paragraph (a).

(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."

Calculation of Partnership Income or Loss

13. Section 76 of the Principal Law is amended in subsection 1) by omitting ",73,".

Principles of Taxation for Trusts

14. Section 81 of the Principal Law is amended in subsection (3) by omitting ', *73.".*

Taxation of Estates of Deceased Persons

15. Section 84 of the Principal Law is amended by omitting subsection (2) and substituting the following subsection -

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

Interpretation

16. Section 85 of the Principal Law is amended by adding the words "less the income tax payable on such income' after the words "section 10(2)".

Incorporation and Liquidation Roll-Overs

17. Section 91 of the Principal Law is amended -

(a) in subsection (1) by -

(i)adding the word "resident" before the word "person" wherever it appears in the subsection; and

(ii) adding the word "resident" before the word "company" wherever it appears in the subsection: and

(b) in subsection (4) by -

(i) adding the word “resident” before the word “company” in paragraph (a): and

(ii) adding the word ‘resident” before the word “company” in paragraph (b); and

(iii) adding the word “resident” before the word “company” in paragraph (c).

Reconstruction Roll-Over

18. Section 92 of the Principal Law is amended by adding the word “resident” before the words “company” and “companies” wherever those words appear in the section.

Lump Sum Payments Made by a Superannuation Fund

19. Section 99 of the Principal Law is amended -

(a) in subsection (1), by adding the words “to a member of the fund or a dependant of a member of the fund where the member has died” after the words “complying superannuation fund”;

(b) by adding the following subsection after subsection (3) -

“(4) In this section. “dependant” 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.”

20. Section 102 of the Principal Law is repealed.

Foreign Tax Credit

21. Section 105 of the Principal Law is amended in subsection (6) in the definition of “average rate of Lesotho income tax” by omitting the comma after the words “the Lesotho income tax” and adding the words “calculated after allowance of the personal credit but” after the words “Lesotho income tax”.

22. Section 112 of the Principal Law is repealed and the following section substituted -

“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 reciprocal assistance in the collection of taxes and the Commissioner 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 may, by notice in writing, require the person to pay to the Commissioner on a date specified in the notice the amount owing for transmission by the Commissioner 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 fortransmission by the Commissioner 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 tax agreement” includes an agreement with a foreign government providing for reciprocal
administrative assistance in the enforcement of tax liabilities.”

23. Section 1 12A of the Principal Law is repealed.

Cases Where Return Not Required

24. Section 129 of the Principal Law is amended by omitting paragraph (a) and substituting the following paragraph -

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

Instalments of Income Tax

25. Section 150 of the Principal Law is amended by omitting subsection (6) and substituting the following subsection -

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

Repayment of Overpaid Tax

26. Section 151 of the Principal Law is amended in subsection (1) by omitting the words “the person is entitled to a repayment of the amount so paid in excess” and substituting the following words -

“the Commissioner 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.

Payments to Resident Contractors

27. Section 157 of the Principal Law is amended by adding the following subsections after subsection (3) -

“(4) Subsection (I) 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 which certificate is still valid at the date of payment.

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

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

(11) The Commissioner 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 to refuse to issue 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.’~

Adjustment on Assessment

28. Section 168 of the Principal Law is amended by omitting subsection (3) and

substituting the following subsection -
13) 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 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."

Appointment of Commissioner and Deputy Commissioner of Income Tax

29. Section 200 of the Principal Law is amended by omitting subsection (I) and substituting the following subsection -

"(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 ~'

Amendment of Transitional Provisions in Principal **Law**

30. Section 214 of the Principal Law is amended by adding the following

subsections after subsection (12) -
"(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 3 1 March 1993.

(14) For the purposes of subsection (13), the capital value of a member's interest in a superannuation fund as at 3 1

March 1993 is calculated according to the following formula

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 3 1 March 1993."

Amendment of Schedules to Principal Law

3 1. The Schedules to the Principal Law are amended -

(a) by omitting the Second Schedule and substituting the following Schedule -

"Second Schedule

(Section 9(1))

Resident Individual Income Tax Rates

Chargeable income	**Rate of Tax**
First M30.000	25%
Over M30,000	35%”

(b) in the Third Schedule, by omitting “40%” in item 3 and substituting “35%,,:

Transitional Provisions

32. (1) Where, as a result of the amendments in section 7, a gain or loss in respect of an asset or liability is subject to tax being a gain or loss which would not otherwise have been subject to tax, the value of such asset or liability on the 3 1 March 1996 shall be used in the calculation of any income or deduction (other than a deduction allowed under section 41. 44, or 45 of the Principal Law) as from that date.

(2) The amount of the deduction allowed under section 41 of the Principal Law in respect of assets acquired before the amendments in section 7 come into operation shall be calculated on the assumption that subsection 41(3) had always applied.

(3) The amount of the deduction allowed under sections 44 and 45 of the Principal Law in respect of intangible assets acquired or start-up costs incurred before the amendments in section 7 come into operation shall be calculated on the assumption that those sections had always applied.

Notes

1 Act No. 9 of 1993 as amended by Act No. 2 of 1994.

2. Act No. 14 of 1995.

3. Act No. 13 of 1995.