2022

Tax Guide

HLB LESOTHO
ADVISORY | TAX | ACCOUNTING

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INTRODUCTION TO LESOTHO TAX GUIDE

This Guide explains tax registration, tax reporting and filing requirements for the newly established businesses. It discusses who is required to be registered, and when they should file tax returns. This serves as a basic brief guide for newly established businesses.

The objective is to empower newly established businesses with knowledge to kick start their operations and get their tax affairs right the first time. One of the first things that should happen once a business is established is to apply to be registered with Lesotho Revenue Authority (LRA). The next crucial step is to manage records in such a way that one is able to comply with the requirements from LRA. In order to fulfill their tax obligations, it is also important for businesses to observe the filing periods as provided for by Income Tax and VAT Acts.

1. WHO SHOULD REGISTER?

Basically any business or organisation registered in Lesotho either as a company, partnership, professional, sole trader or association (including non-profit making organisation) should apply to be registered with the LRA. Any such business should contact the Advice Centres for assistance.

2. WHAT TYPES OF TAXES DO I REGISTER FOR?

The following are the types of taxes that businesses are required to register for:

2.1 *Individual Income Tax (IIT)* - An individual carrying on a business in own name or under a trade name (sole trader) is required to register for Individual Income Tax (IIT).

2.2 *Company Income Tax (CIT)* - An entity registered as a company should register for Company Income Tax (CIT).

2.3 *Pay As You Earn (PAYE)* - If the business or an organisation has employees

2.4 earning taxable salaries, then it should also register for Pay As You Earn (PAYE).

2.5 *Fringe Benefit Tax (FBT)* - If the business or an organisation provides any taxable fringe benefits such as domestic assistance, meal or refreshment, car, medical aid, electricity, telephone, housing, debt waiver, loan and excessive superannuation contributions then it should also register for Fringe Benefit Tax (FBT).

2.6 *Withholding Tax (WHT)* - If the business or an organisation outsources some services, then it should register for Withholding Tax (WHT).

3.5 Value Added Tax (VAT) - If a business makes a taxable turnover of M850, 000.00 or more per annum, it must be registered for VAT. This is referred to as compulsory registration. A business may however, volunteer to register for VAT where it does not meet the above turnover threshold. This is referred to as voluntary registration.

3. WHAT DOCUMENTS ARE REQUIRED?

4.1A sole trader should bring the following documents:

• Trader’s License

• Certified copy of Passport or National IDs for the owner• A schedule listing all employees and fringe benefits offered, if any

4.2 A company should bring the following documents:

- Company or Business Extract
- Trader's License
- Certified copies of Passports or National IDs of the directors
- Certificate of Incorporation
- A schedule listing all employees, their salaries and fringe benefits offered, if any

4.3 A partnership should bring the following documents:

- Trader's license
- Certified copies of Passports or National IDs of partners
- Partnership deed
- A schedule listing all employees, their salaries and fringe benefits offered, if any

4.4 Other organisations (non-profit making, charitable (etc) should bring the following documents:

- Constitution
- A schedule listing all employees, their salaries and fringe benefits offered, if any • Certified copies of Passports of executive committee members

5. FUTURE OBLIGATIONS

• All registered businesses must notify the LRA in writing of any change in the name, commercial name, address of business, change in business activities etc. • A business must file a return and pay tax as required by the Acts (Income Tax Act 1993 and VAT Act 2001). See the table below regarding due dates.

6. WHEN SHOULD I FILE AND PAY TAXES DUE?

The dates for submission of taxes due and payable to the will be summarized briefly in a Table below:

TAX TYPE	DUE DATE
Income Tax: Company Tax Individual Tax	A Taxpayer company that derives income in a year of assessment is liable to pay three installments of tax due on 30th September, 31st December, and 31st March of that year of Assessment. That is, • File a return annually but pay every quarter. • 30th June being the day by which a return is made and final payment made)
Fringe Benefit Tax	(FBT) The return for FBT must be filed within 14 days of the end of the period to which it relates. Payment is made quarterly: • 30th June is the 1st quarter • 30th September is the 2nd quarter

	• 31st December is the 3rd quarter • 31st March is the last quarter
Pay As You Earn (PAYE)	• 15th of every month
Withholding Tax (WHT)	• 15th of every month

- sufficient information to identify the taxable supply to which the debit note relates;

- the taxable value of the supply shown on the VAT invoice, the correct taxable value, the difference between the two amounts and the VAT relating to the difference (that is, the VAT overcharged).

What happens if the VAT Return has already been submitted at the time a Credit Note or a Debit Note is issued?

When a Credit Note is issued, it means that the vendor making the supply declares in the VAT Return the output VAT which is increased by the amount of the difference between the VAT due on the transaction and the VAT actually paid on the transaction when the invoice was issued. This means that in the tax period in which the Credit Note is issued, the vendor who made the supply should make an input tax adjustment, that is, claim input VAT credit of the VAT difference that resulted from issuing the Credit Note which is equal to the output VAT overpaid on the transaction when the VAT invoice was issued.

The vendor who receives the Credit Note on the other hand has claimed input VAT in a VAT Return which is increased by the amount of the difference between the VAT that was due on the transaction and the VAT actually paid on the transaction when the VAT invoice was issued. This means that in the tax period in which the Credit Note was received, the vendor who was issued with the Credit Note should make an Output Tax adjustment, that is, declare in the VAT Return the VAT difference that resulted from being issued with a Credit Note which is equal to the input VAT over claimed on the transaction when the VAT invoice was issued.

In an instance where the Debit Note is issued, this means that the vendor making the supply declares in the VAT Return the output VAT which is reduced by the amount of the difference between the VAT due on the transaction and the VAT actually paid on the transaction when the invoice was issued. This means that in the tax period in which the Debit Note is issued, the vendor who made the supply should make an output tax adjustment, that is, declare output VAT of the VAT difference that resulted from issuing the Debit Note which is equal to the amount of output VAT under declared on the transaction. The vendor who receives the Debit Note on the other hand has claimed input VAT in a VAT Return which is decreased by the amount of the difference between the VAT that was due on the transaction and the VAT actually paid on the transaction when the VAT invoice was issued. This means that in the tax period in which the Debit Note was received, the vendor who was issued with the Debit Note should make an Input Tax adjustment, that is, claim credit in the VAT Return amounting to the VAT difference that resulted from being issued with a Debit Note Which is equal to the amount of input VAT under claimed on the transaction.

This document aims to provide guidance on the issuance of the Value Added Tax Invoice, Credit note and Debit note as some of the primary records a vendor[1] is expected to keep as per the provisions of the Value Added Tax Act[2].

What is a Value Added Tax Invoice?

It is a document that is issued by the vendor to another vendor following a taxable transaction. The VAT invoice is a document used by the vendor to claim input VAT paid on the purchases and allowed expenses. The total of the received VAT invoices is shown as input VAT in the VAT Returns. The vendor making the supply should issue the recipient of the supply with the original VAT invoice and retain the copy for record keeping. If the vendor to whom the supply is made loses the original VAT invoice, such vendor can approach the vendor who made the supply to be issued with another VAT invoice clearly written "COPY" as more than one VAT invoice cannot be issued for a single transaction. A valid VAT invoice must contain the following information:

- the words 'Value Added Tax Invoice' or 'VAT Invoice', written in a prominent place on the document
- the commercial name, postal address, physical address, Taxpayer Identification Number and VAT registration number of the person making the supply;
- the commercial name, postal address, physical address, Taxpayer Identification Number and VAT registration number of the person to whom the supply is made
- an individualized invoice number, drawn from a consecutively numbered invoice book or other record.
- the date of issue of the VAT invoice;
- a brief description (including quantity or volume) of the goods or services being supplied; and either separately show
- the consideration for the supply (that is, the value of goods or services you supplied before applying the VAT rate);
- the amount of VAT charged
- and the consideration inclusive of VAT or
- in a case where the VAT payment is not shown separately, there should be a statement that consideration includes VAT at a certain rate.

Adjustment of a Value Added Tax Invoice

As it has been mentioned earlier, no more than one VAT invoice can be issued per single transaction. The following scenarios can lead to the

[1] A vendor is a person who is registered or is treated as registered because that person ought to have registered for VAT purposes

[2] Act No 9 of 2001

requirement for a change in a VAT invoice if one or more of them take place after a VAT invoice has already been issued;

- cancellation of a supply
- the nature of the supply has been fundamentally changed i.e the tax charged when the VAT invoice was originally issued has changed. This could be as a result of factors including;

  i. the goods ordered are different from the goods actually delivered and invoiced to the customer
  ii. the incorrect rate of VAT was used on the original invoice that was issued.
  iii. the wrong quantity of goods was invoiced
  iv. the wrong service to the one performed was invoiced.

- the consideration that was previously agreed on has been changed by agreement of the transacting
- vendors as a result of reasons including a discount offer.
- the goods or part of the goods have been returned.

In an instance where one or more of the above scenarios happen after a VAT invoice has been issued, the vendor making the supply should issue the recipient of the supply with either the Credit Note or the Debit Note.

What is a Credit Note?

It is a note issued by the vendor making the supply in the case where the consideration for the supply is **reduced** after an invoice has already been issued. This can be the result of, amongst others, cancellation of the supply, a discount offer etc.

The credit note should contain the following information:

- the words ‘credit note’ in a prominent place;
- the commercial name, postal address, physical address, Taxpayer Identity Number of the vendor making the supply;
- the commercial name, postal address, physical address, Taxpayer Identification Number of the vendor receiving the supply;
- the date of issue of the credit note;
- a brief explanation of the circumstances which gave rise to the issue of the credit note;
- sufficient information to identify the taxable supply to which the credit note relates;
- the taxable value of the supply shown on the VAT invoice, the correct taxable value, the difference between the two amounts and the VAT relating to the difference (that is, the VAT overcharged)

What is a Debit Note?

It is a note issued by the vendor making the supply in the case where the consideration for the supply is **increased** after an invoice has already been issued. This can be the result of, amongst others; the reduced rate of VAT being used instead of a standard rate of tax (14%), a wrongly reduced quantity of goods is invoiced etc.

The debit note should contain the following information:

- the words 'debit note' in a prominent place;
  the commercial name, postal address, physical

address, Taxpayer Identity Number of the vendor making the supply;

- the commercial name, postal address, physical address, Taxpayer Identification Number of the vendor receiving the supply;
- the date of issue of the debit note;
- a brief explanation of the circumstances which gave

rise to the issue of the debit note;

The Act prescribes various circumstances wherein a payer is obligated to withhold tax when making payment. To illustrate the application of the law therein, tables have been drawn which presents the applicable withholding rates as per sections 107, 108, 157, 158

and 160 of the Act. In the column "Filing Requirements", it is shown whether the taxpayer is required to file return(s) after the tax has been withheld or not.

Where no further return is required, the tax received therein is final tax and for the purposes of the illustration hereunder the words "Final tax" are used. Alternatively, the words "Optional" apply where the law allows filing of a return if the taxpayer feels that the income tax paid during the tax year, by way of withholding, is higher than that which is otherwise payable where a return and supporting documents are filed

What records must I keep?

A business that is run properly requires proper record keeping. This helps in determining how well the business is running. Most importantly, record keeping helps a business to fulfill its tax obligations with much ease.

Indeed, the tax law imposes an obligation on Taxpayers to keep all records and proper accounts that relate to their businesses. Such records include accounting records, computer stored information or any other documents, e.g. receipts, invoices, credit notes, debit invoices, withholding tax certificates etc.

7.1.1 Income related records

When running a business, a Taxpayer needs to keep record of the income generated by the business so that it can be a good indicator of what is happening with the business. Is there enough income generated as compared to expenses? Is the business viable or not? Such a list of records includes but is not limited to the following:

- Earnings /revenue collected from the sale of goods and/or services provided;
- Other sources of income such as commission & royalties;
- Discount received, rebates, credit note received, debit note issued.

7.1.2 Expenditure related records

With regard to the expenditure of a business, examples of records that need to be properly kept include payment receipts and invoices of the following: expenditures incurred in starting up a business to produce income, purchases of stock, rent paid, telephone and other communication expenses, cost of assets, salaries and wages paid to employees, bad debts, depreciation of assets such as vehicles and equipment etc.

8. FILING TAX RETURNS AND PAYMENT OF TAX LIABILITY:

The Taxpayers are required to file their tax returns timely as stipulated in part 7 above, the tax returns must be filed and payments be effected at the following Strategic Places:

- Standard Lesotho Bank,
- First National Bank,
- Nedbank Lesotho, and
- LRA Banking Hall (only in Maseru).

If you have questions about how to file your tax return or experience difficulties in filing your tax return, contact office.

VAT 101 – REGISTRATION FOR VAT PURPOSES

Introduction

This document aims to provide guidance on the registration requirements for VAT purposes as provided for in the VAT Act.

Who has to register for VAT?

Registration is compulsory for any business which supplies taxable goods/services and whose annual taxable turnover exceeds the registration threshold. It is also obligatory for the following to register irrespective of whether or not the registration threshold is exceeded; auctioneers and a national, regional or local public authority that carries on an enterprise.

The registration threshold

In order to ensure that the legislation does not impose unnecessary burden on small businesses, there is a turnover limit for registration for VAT - referred to as the VAT registration threshold. If a business' taxable turnover exceeds the minimum threshold (currently M 850,000.00 per annum), such a business ***must*** register for Value Added Tax (VAT).[3] It is worth noting that only taxable supplies are considered when determining the

registration threshold i.e., exempt supplies are left out. When determining the eligibility of the business to register, the aggregate taxable turnover of all businesses under a single legal entity is considered.

For instance, if Company (Pty) Ltd has 5 branches, the total taxable turnover of all 5 branches will be taken into account when calculating the annual taxable turnover. If the sole trader has a number of businesses, for example, a café, clothing shop and a construction business, the annual taxable turnover will be calculated as a total of all businesses. However, it must be noted that a business can also register for VAT even if its taxable

[3] The registration threshold may be revised by the Minister by notice published in the Government Gazette.

turnover is less than the registration threshold (this is mentioned later in this Guide).

It is against the law to deliberately omit other business activities whereby taxable supplies of goods or services are made so that the business falls below the registration threshold.

How do I work out whether I have to register?

The sales of all taxable goods and services for a business entity from the commencement date are added together to come up with the monthly sales.[4] The computation herein will consider both sales of taxable goods and or services made in and outside Lesotho including those that are made for free in the normal course of the business. For example, taxable benefits provided to an employee or a relative etc. including goods taken for own or family's use.

Normally, the business is required to consider the value of the taxable supplies made within the past 12 months. However, if at any point in a 12-month period it is discovered that the business's sales of taxable supplies exceed the registration threshold, or will exceed the threshold by the end of 12 months; such a business must notify the Commissioner immediately and apply for registration.

For example, if the business commences in February 2013 and makes taxable supplies amounting to M867, 050.00 during the period to the 31 July 2013, it becomes eligible to register within 14 days into the month of 14 August 2013.

Can I register if my turnover is below the registration threshold?

Where a business turnover is below the registration threshold, such a business may nonetheless apply for voluntary registration. The application for voluntary registration must be made to the Commissioner Domestic Taxes who has the discretion to accept or reject such a request on the basis of the merits of the case.

The commissioner also has discretionary powers to register a person in a case where there are reasonable grounds to believe that a business is required to register but failed to do so. For instance, a business has won a tender valued at M12 million in which it has a one year contract to construct a hospital.

Can I register before I make taxable supplies?

A business may apply for registration at the beginning of any twelve months before making taxable supplies provided there are reasonable grounds to believe that the business will be making taxable in that twelve-month period and a registration threshold is going to be exceeded. The application for registration in this case must contain proof that the business will be making taxable supplies in the period specified. Proof may include:

[4] It must be noted that exempt supplies are not considered in calculating the turnover of the business for VAT registration purposes.

- Details of the business arrangements made;
- Copies of business contracts;
- Other details, which may include the evidence of procurement of supplies by the business.

What happens if I have taken over someone else's business?

Where a business takes over another or merges with another business, it is important that the person acquiring the business carefully considers the former owner's taxable turnover and then the aggregate taxable turnover of the two businesses as businesses they are now under one entity. If the taxable turnover of the business that was acquired exceeds the registration threshold or the aggregate taxable turnover of the two businesses (the taxable turnover of the new business) exceeds the registration threshold, then the new business as merged or taken over must be registered for VAT.

Where the business taking over or merging is between the VAT registered businesses with the other is already registered for VAT, a VAT 5 form must be filled and submitted to the Authority. [5]

Do I get a registration certificate?

When a vendor is registered for VAT purposes, such a vendor will be issued with a Value Added Tax Registration Certificate. The certificate will indicate among others, the vendor's VAT registration number, the Taxpayers Identification Number (TIN) and the effective date of registration. The Vendor is required to display the certificate at the business premises at a prominent position so that the customers and visiting tax officials are able to see it.

I should have registered but I failed to do so. What is my position?

As soon as the business' taxable turnover exceeds the registration threshold, the business is obliged to register for VAT. Should the vendor fail to register for VAT under the circumstances, the vendor becomes liable to pay the VAT on all the taxable supplies made from the time the vendor became eligible, regardless of whether or not the VAT was charged and collected. In addition, the Commissioner shall impose an additional tax for failure to register as required by law. This additional tax is charged at the rate of 200% of the unaccounted tax liability.

[5] The VAT 5 is the form used for any business expansion or changes to management of a VAT registered business

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Advanced Corporation Tax Guide

Advance Corporation Tax (ACT)?

ACT is the prepayment of corporate taxes by companies that distributed dividend payments to its shareholders during the year of assessment. A resident company which pays a dividend is liable to make advance payments of income tax (hereinafter referred to as advance corporation tax) at the specified rate, except to the extent that the distribution is made out of qualified income. The liability to pay advance corporation tax may be satisfied by an instalment of tax which has been paid and has not been set off against a final liability for income tax under section 150.

Who should pay ACT?

Any company distributing dividends to the shareholders is liable to pay ACT chargeable on the gross amount paid

Why should ACT be paid?

- To reduce direct burden to Taxpayer when filing year end income tax return.
- To curb tax evasion by companies which become insolvent.

How is ACT calculated?

The rate of advance corporation tax is 33.33% or 25/75. The applicable formula is:

A/ (100-A) X 100

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

Example:

Assuming 2015/16 Chargeable Income was M100, 000. Then it follows that the final company tax liability was M16, 667. 00. The quarterly instalment will be calculated by 1/3 x 16,667.00 which is equal to M 5,000.00 per quarter. Therefore, the total instalments paid will M 15,000.00 for the three quarters.

If it is assumed that the company paid dividends amount M60, 000.

What is the due date for filling ACT?

A resident company must, within seven (7) days of paying dividends, file a return of advance corporation tax showing:

- the amount of dividends paid,
- the amount of ACT paid,
- the amount of any advance corporation tax which has been satisfied in accordance with section 87(4); and
- Any other information required by the Commissioner General.

CORPORATE TAX GUIDE:

1.1 Introduction:

This is a brief guide which is intended to inform corporate bodies about their responsibilities and obligations under an income tax law. The guide deals specifically with administration of corporate tax.

The legislation requires that every company, unless specifically exempt, is subject to corporate tax on chargeable income derived by the company in a year of assessment.

1.2 Corporate Tax:

Is a tax that is charged on profits generated by the company in a given year of assessment. It is a direct tax administered under the income tax Act of 1993 (as amended).

1.3 Chargeable Income:

In order to determine the right amount of corporate tax that should be paid by a company, firstly, the chargeable income has to be calculated. Chargeable income is calculated by deducting all allowable deductions incurred wholly and exclusively in the production of income subject to tax and capital allowances from the gross income.

1.3.1 Calculation of Chargeable Income:

The chargeable income of a body of persons subject to corporate tax is calculated as follows:

Chargeable income = Gross income – Allowable deductions.

Gross Income is the income derived by the corporate body in the course of doing its business in a year of assessment.

Allowable deductions are expenses incurred wholly and exclusively by the company in the production of income subject to corporate tax.

1.4 Corporate tax Rates:

A corporate body is subject to corporate tax at the following rates:

Income tax rates for companies

Nature of income	**Rate**
Manufacturing income derived from export of manufactured goods outside the Southern African Customs Union.	10%
Manufacturing income derived from a manufacturing activity or enterprise which promotes industrial, scientific, educational or other development within Lesotho	10%
Income from farming operations (subsistence not commercial)	10%

Other Income	25%

Explanatory Notes:

a) Corporate tax rate of 10% is levied on income from exporting manufactured goods outside the Customs Union.
b) A corporate tax rate of 25% is imposed on profits of a resident nonmanufacturing company or branch profits of a non – resident company.
c) The corporate tax rate is applied to all income of a Lesotho branch of a non - resident company.

1.5 Due Date for Submission of Annual Income Tax Return:

Every company is required to file its annual income tax return on or before 30th June every year, unless the company has been approved by the Commissioner General to use a substituted accounting period. A substituted accounting period may be any period of twelve months which does not commence from 1st April and ends on 31st March.

An approval to use substituted accounting period is granted by the Commissioner General only on request by an application by the concerned company. The commissioner General has the powers to approve or disapprove the request depending on reasons put before the Commissioner General by the taxpayer.

1.3Payment of Corporate Tax:

Corporate tax is paid in advance and in three equal installments and the balance if any, should be paid when the company submits its annual income return. Paying corporate tax in quarterly instalments is legal requirement under section 150 of Income Tax Act and it helps reduce the burden of paying substantial amount of tax at end of the financial year.

A company can make a payment of its tax due or tax liability by means of the following methods of payment:

- Electronic funds transfer (EFT).
- Bank guaranteed cheque.
- Cash Payment.

The Company can remit the tax due for payment at the following places:

- Standard Lesotho Bank First National Bank Nedbank Lesotho.

1.4 Additional Tax:

Additional tax is imposed on a company for non-filing or late submission of a tax return as well as for late or non-payment of tax due. The additional tax is charged at the rate of 22% per twelve months period.

COVID 19 GUIDE

VAT RELIEF AND REBATE OF DUTIES ON THE IMPORTATION OF ESSENTIAL

GOODS IN THE FIGHT AGAINST COVID-19

2.0 Background:

COVID-19 pandemic has wreaked havoc worldwide. The severity and swift impact of this pandemic has resulted into countries making declarations of emergency and national disasters. In Lesotho, COVID-19 was declared a national disaster warranting a state of emergency by the Prime Minister through Section 23 (1) of the Constitution[6]. Where the Government has declared a national disaster, goods that are imported for the relief of distressed persons are rebated from customs duties[7] and are further exempted from value added tax (VAT).

What seemingly poses a challenge from VAT exemption and customs rebates point of view is the scope and type of goods that can be considered as imported for the relief of distressed persons hence eligible for exemption on importation.

3.0 Objective:

This guide seeks to provide clarity in terms of which goods are specifically regarded as being essential for the relief of distressed persons in the face of COVID-19 hence eligible for VAT exemption and rebate of duties on importation. Guidance will also be made around the issue of whether there is any selectivity on importers and circumstances of the essential goods.

4.0 The Law and its Application:

In terms of Section 5 of the Act, value added tax is payable on every taxable supply and every taxable import. However, section 6. (3) exempts import of goods prescribed in schedule II and goods imported for the relief of distressed persons in cases of famine or other national disasters on which no customs duty is payable are prescribed therein. A rebate from import duty is provided for under rebate item 412.11 of schedule 4 to the Customs Act. Exemption is awarded regardless of the status of an importer, that is, irrespective of whether the importer ordinarily has an exemption status or not.

[6] Constitution of Lesotho 1993.

[7] Section 6 (3) (a) read with Schedule II 1(f) (i) of Value Added Tax Act 2001and rebate item 412.11 of Customs and Excise Act no 10 of 1982.

4.1 Exemption on Import VAT:

4.1.1 Specific Type of Goods Eligible to Import VAT Exemption and Rebate of Duties (Essential goods):

To determine the specific type of goods that are eligible for import VAT exemption and rebate of customs duties, there has to be a close connection between the form or nature of the national disaster and the goods that will be critically instrumental in combating the disaster in question. As highlighted at the outset, the government of Lesotho has declared COVID-19 pandemic a national disaster. VAT import exemption and rebate of customs duties is therefore applicable to goods that are critically instrumental in the fight against the COVID-19 pandemic to the relief of destressed persons in the face of this national disaster. Goods that are critically instrumental in fight against COVID-19 are the following:

- COVID-19 Test kits/instruments and apparatus used in Diagnostic Test,
- Thermometers,
- Disinfectants/sterilization products: This includes sanitizers and other disinfectants.
- Personal Protective Equipment (PPE). This includes face and eye protection equipment (e.g. face masks, surgical
- masks, facial shields, etc.), gloves and other protective equipment such protective garments.
- Other medical devices. These include oxygen therapy apparatus, medical ventilators and the likes.

4.1.2 Condition of Relief:

It is important to note that the relief under Section 6 (3) (a) read with Schedule II 1 (f) (i) of the Act and on rebate item 412.11 of Customs Act is available on the conditions that the goods so imported are not

- sold or disposed of to the parties not entitled to the relief, or
- removed from Lesotho without prior consultation or approval by the Commissioner General.

To acquire the relief, clients importing goods from outside SACU need to fill CE/MISC/3 and application for exemptions VAT forms, both available from LRA website on the following link; http://www.lra.org.ls/forms. Where goods are imported from within the SACU region, Client will only need to fill in VAT exemption application form.

Methods of payment at the Ports of Entry

1. Valid tax invoice
2. Deferred payment
3. Cash payment
   3.1. Cash not exceeding M20,000
   3.2. Bank Guaranteed Cheques
   3.3. Electronic funds Transfer – EFT (Must have the Declaration reference number)
   3.4. Point of sale (POS/Speed point)

VALID TAX INVOICE REQUIREMENTS

An original tax invoice should have the following normal/usual requirements:

·Bear Tax Invoice from a VAT registered South African vendor
·Bear the words "Tax/VAT Invoice"
·Be an original
·Bear a South African VAT Registration number with 10 digits starting with 4 only
·Have a unique invoice number
·Bear the tax invoice date
·Standard rate of VAT charged must be shown (e.g.15%/amount equivalent to 14%)
·Tax invoice is valid for 90 days from the date of purchase

Additional requirements for invoice whose values are M5,000.00 or above on commodities imported from South Africa are:

· The name of importer/buyer
· Address of the importer/buyer
· The name/stamp of the exporter/supplier

Note 1: This does not apply to commercial traders alone but to private shoppers as well.

Note 2: Valid Tax Invoice apply as a mode of payment only on indirect supplies from South Africa

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NEW CUSTOMS PROCEDURES FOR COMMERCIAL TRADERS AND CLEARING AGENTS

- Goods ready to import or export
- Send documents to Clearing Agents
- Clearing Agent captures declarations and produce Assessment Notice
- Importer makes payment Customs works on the
- declaration and produce Proceed to Border (P2B)
- Now trader can move goods to the border
- Trader reports arrival of goods at Customs Lesotho
- Customs may conduct inspection of goods
- Customs issues Exit Note
- Goods exit Customs controlled area

NB: In a case where the system is unable to print an Exit Note a Release Order will be issued instead

But the declarant still has to come back for the Exit Note to complete the declaration process

INFORMATION FOR PRIVATE SHOPPERS IMPORTING GOODS INTO LESOTHO

If the amount of goods is less than M20,000.00 and the Tax invoice is correct:

· Complete the South African declaration process & obtain proof of export · Complete the VAT refund form

· Attach a valid Tax Invoice

· Submit the package to the Customs Inspector at the border

If the amount of goods or services is M20,000.00 and above:

· Lodge the declaration through the ASYCUDA World System

· Make payments based on the Assessment Notice

· Submit the Road Manifest to Customs Inspector

Upon arrival on the Lesotho side:

· Importer reports arrival of goods at Customs Lesotho

· Customs may conduct inspection of goods

· Customs issues Exit Note

· Goods exit Customs controlled area

Filing Income Tax Return

Overview:

Filing an Income Tax return can be a challenging task, whether it is a Company's tax return, Personal Income Tax return or any other form of Income Tax return. The secret to this is that you need to prepare yourself for this important task. The question is how do you prepare yourself such that you are able to file an accurate and complete tax return? The answer to this question is very simple, make sure that you have all the required information that will assist you in filing your return and also ensure that you have enough time to prepare and file your tax return.

This guide is intended to assist you towards successful filing of your Income Tax returns so that you can have a peace of mind knowing that you have met your tax obligations.

How to fill in your tax return form:

Steps 1 to 8 below explain the process that the Taxpayers need to follow in order to file their tax returns.

Step 1: Obtain income tax return form:

You should obtain relevant Income Tax return form. Whether you are an employee, a director of a company, a sole trader or sole proprietor, a partner in partnership business, corporate body, cooperative or trustee you have to obtain a relevant form in order to file your income tax return. Income Tax return is a document giving the Lesotho Revenue Authority (LRA) information about the Taxpayer's tax liability based on income earned in a particular year of assessment.

There are two types of return forms namely; individual return form for individuals and corporate return form for corporate bodies, Trustees and Partnerships. These tax return forms are obtainable from the website

Step 2: Bring together all relevant documents and records:

You should bring together all documents and records relating to your income and expenses e.g., tax invoices, receipts, bills, credit notes, debit notes, cash book, Withholding Tax certificates, record of business income, employment income (P16's – tax certificates), property income, allowable expenses and any other income or gain derived during the year of assessment. All these documents and records will help ensure that your account for your income properly and that your declarations are correct and complete.

Step 3: Fill in relevant information from your documents:

Please note that not all of the documents mentioned in step 2 should be submitted together with your tax return, but they will give you detailed information with regard to your income and expenses for the year of assessment. You will not be required to attach supporting documents like receipts, invoices, credit and debit notes etc., when you file your return, however it is important to note that the information extracted from the primary source documents would be useful in helping you to prepare your financial statements and also to be provided as supporting documents during tax audits that maybe conducted on your business.

Step 4: Declare all sources of your income: According to Income Tax Act (as amended), the Taxpayer's income is categorized as follows:

- Business Income
- Employment Income
- Property Income
- Any other income or gain.

Therefore, all income derived or gained by you should be reported accurately and truthfully. In other words, you should declare all your sources of income. The Income Tax Act 1993 as amended makes provision for the taxation of Lesotho residents on their worldwide income. Therefore, in filing the tax return, you should report all the income derived from all over the world and corresponding allowable expenses relating to income.

Step 5: Assess Your Tax Due:

You will be required to assess your tax due for the year. The Act makes provision for you to determine your tax liability through a Self-Assessment System (SAS). Under this system you are personally liable to determine how much tax you ought to pay. Therefore, you are required to make accurate calculations in determining your tax liability.

Step 6: Endorse Your Tax Return:

After completing the return, you will be required to endorse or sign the tax return. Your signature on the tax return is an acknowledgement that the information provided is correct and truthful. You should note that it is an offense to make false declaration.

Step 7: Attach relevant supporting documents: You are required to attach relevant supporting documents to the return. The supporting documents are required to substantiate some of the claims you made. Below is a list of documents that need to be attached to the income tax return:

- Financial statements,
- Schedule of withholding taxes deducted and Withholding Tax certificates if there are any,

- Tax Certificates (P16) for employees, including printouts from insurance companies,

    - A letter of explanation in the case where a Taxpayer has filed a nil return

Fringe Benefits Tax

Introduction

In terms of the Income Tax Act 1993 (as amended), the Act, employees are taxed on their wages, salaries and on any benefits that arise from their employment. Lesotho law requires that employers operate the pay-as-you-earn (PAYE) system for taxing the normal wages and salaries. For all the benefits, listed in sections 119 to 127 of the Act, provided to the employees, employers have to operate a separate fringe benefit tax (FBT) system or calculations. That is, employment benefits are taxed separately from the normal wages and salaries. This publication deals with taxation of fringe benefits from employment, that is, FBT.

The purpose of this Public Ruling is to:

- ➢ Describe the various types of fringe benefits that fall under the FBT regime,
- ➢ Illustrate how the Revenue Services Lesotho () interprets and applies the law, and

- Help employers comply with the requirements of the law, and in particular the FBT regime.

Definition of Fringe Benefits

What are fringe benefits? A fringe benefit is any monetary or non-monetary benefit derived from employment that does not form part of an employee's normal salary or wage. Fringe benefits are also referred to as benefits in kind. In summary, fringe or benefits in kind refer to earnings, other than in cash, that are received or due to an employee by virtue of an employment relationship with the employer. If fringe benefits are received or enjoyed by an associate of an employee then FBT must be applied.

List of Fringe Benefits Covered Under the FBT Regime

i. Section 119 – Car: This arises when an employee is provided with any kind of a motor vehicle for private use. That is, the employee can use the motor vehicle on non-business activities and travel. An employee has private use of a motor vehicle if:

- ➢ The employee is entitled to use the motor vehicle for private purposes, or
- ➢ The vehicle is kept at or near the employee's place of residence, or
- ➢ The employer is not consistently enforcing prohibition of

- ➢ private use policy that might be in place.

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ii. *Section 120 – Housing:* This consists of provision of accommodation or housing to the employee by the employer. Provision of accommodation includes the granting of a lease, licence or permission to the employee to occupy any form of accommodation including; a caravan, mobile home, dormitory, living quarters, hotel or guesthouse room. An employer is regarded to have provided accommodation where the employee is reimbursed any payments the employee would have made for the accommodation.

iii. *Section 121 – Utilities:* Payments or reimbursements by the employer to the employee for the cost of utilities enjoyed or consumed by an employee constitute utilities fringe benefit.
Utilities are;

- Water provision and sewerage/refuse removal,
- Electricity and other fuel supplies, and
- Telephone and other communication provision.

iv. *Section 122 – Domestic assistance:* If an employer pays for any domestic assistance, excluding a security guard, on behalf of the employee, then this gives rise to domestic assistance fringe benefit. Domestic assistance includes provision of; a housekeeper, a maid, a babysitter, a chauffer, and a gardener.

v. *Section 123 - Meal or refreshment:* Under this benefit, an employer pays for an employee's meals and refreshments. But if the meals are provided in an employer's canteen, cafeteria, dining hall or similar facility and the meals are the same for all employees, then such meals or refreshments are exempt from FBT. However, if the meals are provided on an equal basis by a caterer, hotel, restaurant and similar businesses then the exemption does not apply. In the latter arrangement the employer knows precisely the cost of the meals for each employee, which is very difficult to determine where the employer has established a canteen or cafeteria. In short the exemption is only available if the meals are provided in an employer's canteen, cafeteria or similar establishment.

vi. *Section 124 - Medical:* If the employer pays or reimburses an employee for medical bills, hospitalisation, medical scheme premiums, this constitutes a medical fringe benefit. As a social policy consideration, medical fringe benefit is exempt from FBT if all non-casual employees are entitled to equal amounts, in absolute terms. That is, if M500 per month is paid, then this should apply to all employees regardless of their levels in the employer's organisational hierarchy. An entitlement based on a certain percentage for all employees is not on equal terms and therefore, a taxable fringe benefit.

vii. *Section 125 – Loan:* A loan fringe benefit considers the interest rate that an employee is charged by the employer on a loan. If the employer's interest rate is less than two thirds (2/3) of the Central Bank of Lesotho (CBL) or commercial banks' prime/normal lending rate then, loan fringe benefit arises. If, for example, the commercial lending rate is 15% but instead an employee is charged 8%, then this loan arrangement is subject to FBT. 2/3 of 15% is 10%, and so at any rate between 10% and 15% there is no FBT, but below 10% FBT is applicable. The term "loan" is broadly defined to include advance of money, allowing credit or any financial arrangement which has the same economic effect as a normal loan.

viii. *Section 126 – Debt waiver:* This comprises of any payment by an employer on behalf of an employee, or cancellation of a debt due by an employee. Debt waiver fringe benefit is therefore, very broad and can take many forms. It extends to other parties, for example, the employee's, debt with other persons other than the employer.

ix. *Section 127 - Excessive superannuation:* This applies to contributions by Public International Organisations (PIOs), listed in the First Schedule of the Act. If PIOs make pension and provident fund contributions amounting to more than 20% of the employees' salaries, then such excesses over 20% constitute superannuation fringe benefit.

What Fringe Benefits are Exempted or Excluded? As indicated above meals and medical fringe benefits provided on an equal basis are exempt from FBT. The following are some of the benefits that, for practical and policy considerations, are not subject to fringe benefit tax.

- Private use of motor vehicle by an employee provided on special occasional hardship circumstances, for example, to take care of funeral or bereavement and emergency situations.
- Common transportation operated by or on behalf of the employer to transport employees outside the normal 8 am to 5 pm working hours, to remote places where the employer's business is conducted.
- Small common benefits that are difficult to quantify and place value received by each individual employee, for example, use of an employer's recreational and sporting facilities. Staff parties and functions are typical examples.
- Accommodation provided on a remote employer campsite.
- Uniform and similar employer branded attire or clothing.
- Passage granted to an employee at the commencement or termination of employment if such passage is the actual expenditure incurred for transportation by the employer or represents a reimbursement of actual expenditure. A cash allowance in lieu of passage is taxable.

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What are the Thresholds?

For some types of benefits the whole value of the benefit is taxable while for some only a portion is taxed, that is, not the full value of the benefit. The table below illustrates the extent to which the fringe benefits are taxable.

Benefit	***Amount Taxed / Threshold / Tax Base***
Car	= (15% x A X B / C) - D where: A is value of vehicle, B is number of days vehicle is available to employee, C number of days in a year and D is any payment the employee makes for the use of the vehicle.
Housing	= market value of rent but cannot be more than 20% of the employee's salary
Utilities	= total amount of the utility bills
Domestic Assistance	= total employment income paid to the domestic assistant
Medical	= total expense paid
Loan	= difference between CBL rate and employer rate if the latter's rate is less that 2/3 of CBL rate.
Debt	= amount paid or waiver
Excessive Superannuation	= amount in excess of 20% of employee's salary

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GUIDE ON THE TAXATION OF TECHNICAL FEES AS PROVIDED UNDER ARTICLE 13 OF THE LESOTHO-SOUTH AFRICA RENEGOTIATED DTA

Objective

The purpose of this guide is to provide a definition of what constitutes technical fees which will be taxable under Article 13 of Lesotho-South Africa Double Taxation Agreement (DTA).

Lesotho and South Africa have a renegotiated DTA which has changed the previous rate of withholding tax (WHT) from 10% to 7.5%. This means that effective from the 27th June 2016, the WHT rate that applies on all services of a technical nature provided by residents of South Africa to Lesotho is 7.5%.
Definitions

Income Tax Act defines technical services contract as:

"…a contract under which accounting, auditing, economic, financial, legal, management, engineering, architectural, surveying, or other similar professional service is performed."

The Act further goes on to clarify Lesotho source services contract as a contract under which the primary purpose is the performance of services whether or not goods are provided.

These services are taxable under section 107 for non-residents of Lesotho, at the rate of 10% on the gross amount of payment.

Lesotho-SA DTA on the other hand defines technical fees in Article 13, as:

"…payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any service of a technical, managerial or consultancy nature."

Further definition and practical application

Lesotho follows international practice and standards in defining technical services, since these are not clearly defined in the Act. Where taxation of technical fees applies, Lesotho follows the UN Model which provides the following descriptions;

- **Service of a managerial nature**

The ordinary meaning of the term "**management**" involves the application of knowledge, skill or expertise in the control or administration of a commercial enterprise or organization. Thus, if the management of all or a significant part of an enterprise is contracted out to persons other than the directors, officers or employees of the enterprise, payments made by the enterprise for those management services would be fees for technical services.

- **Service of a technical nature**

The ordinary meaning of the term “**technical**” involves the application of specialized knowledge, skill or expertise with respect to a particular art, science, profession or occupation. Therefore, fees received for services provided by regulated professions such as law, accounting, architecture, medicine, engineering and dentistry would be fees for technical services. Services performed by other professionals, such as pharmacists, and other occupations, such as scientists, academics, etc., may also constitute technical services if those services involve the provision of specialized knowledge, skill and expertise.

- **Service of a technical nature**

The ordinary meaning of "**consultancy**" involves the provision of advice or services of a specialized nature. Professionals usually provide advice or services that fit within the general meaning of consultancy services although; they may also constitute management or technical services.
The list of technical services in the Income Tax Act complements the examples provided above. When these services are provided on a contractual basis by a resident of South Africa to a resident of Lesotho, Article 13 of the DTA will apply. This is different from when such a professional sets up a place of business in Lesotho to perform such services on a routine basis. In that instance, the professional will have to be registered and taxable as a resident of Lesotho for tax purposes.
Application of Article 13
For proper application of this article, factors that come into play will be as follows:

- Is the service provider a resident of South Africa?
- Are services being performed under a service contract with a resident of Lesotho?
- Do the contracted services require special knowledge and skills to be performed?

Where these factors are not applicable, the services will be taxable under other articles of the DTA according to their terms. This will depend on whether the nonresident professional has a place of business (permanent establishment) in Lesotho, under which it would otherwise be taxable.
It also advisable that where there is uncertainty in the application of Article 13, a copy of the services contract should be studied to provide further guidance on the approach and kind of services that are going to be performed.

Online Tax Clearance

Registering for Online TCC

1. Visit the website – www.lra.org.ls
2. Go to – E-Services
3. Go to – Tax Clearance Certificate
4. Click on Register
5. Select your type of registration e.g. Company, organization or individual,
6. Enter your TIN
7. Enter the date of birth (a birth of a nominated officer if registering a company)
8. Enter your passport or identity document
9. Enter your Cellphone number (one registered with LRA and In use)
10. Enter your email address, (optional)
11. Click on the Register button at the bottom of the screen and you will receive verification code via sms
12. Enter your verification code and click submit button

Set your security questions/answer the security questions below:

1. What is your hobby
2. Your favorite make of vehicle
3. Your mother's maiden name
4. And then click submit button

Password (password123) is sent via sms as your current password
Create a new password which should be 6 or more digits

How to change your first-time login password:

Once you are registered, you will receive a temporary password for your first login which you are required to change. Follow the simple steps below to change your first-time login

1. Enter your current password
2. Enter the new password,
3. Confirm your new password, and Click change password button at the bottom of the window.

Login screen will appear

Where you will have to fill in your TIN and password

Apply for ETCC

You are in a position to click apply for new certificate and fill in the following fields provided:

1. Select registration type(individual person/individual sole-trader /company, corporates or organisation)
2. Date of Birth,
3. Legal Name
4. Passport/ID number you registered with,
5. Cell numbers registered with LRA
6. Email address
7. Business
8. Your service centre
9. Then click apply for tcc button and the certificate will appear.

ETCC Verification

1. Visit the website – www.lra.org.ls
2. Go to – E-Services
3. Go to – Tax Clearance Certificate
4. On the ETCC home page – click on the text box to enter the Certificate ID
5. Then click Verify TCC
6. The Certificate verified will pop up

PAYE : "Final Deduction System Guidelines"

1. Introduction

Every person who earns income in Lesotho is liable to pay income tax in terms of section 4 of the ITA 1993. The same Act further obliges employers under section 156 to deduct tax from remuneration due to employees and pay the tax so deducted to the LRA. The system under which employers deduct tax from remuneration due to employees is commonly known in Lesotho as PAYE. It is a form of withholding tax.

2. Purpose

The purpose of this Guideline it to explain how PAYE, as a final tax deduction system, is to be operated so that compliance with the law is achieved.

3. What is Taxable? Employment Income

The meaning deduced from section 18 of the ITA 1993 is that every payment or benefit that an employee gets as a result of the employment relationship or contract is taxable, that is, it should be included in the gross employment income. This, therefore, means that employment income does not only include; salary, leave or sick pay, bonus, overtime but also includes other benefits that an employee may directly or indirectly enjoy from the existing or past employment.

Note 1:

If an employer operates the FBT regime, the benefits provided to the employees that are included in FBT calculations should not be included in the employees' remunerations. The tax related to those benefits would have been paid by the employer under the FBT.

4. What is Not Taxable? Deductions

Under section 33 of the ITA 1993 certain amounts may be deducted from employment remuneration before calculation of the tax liability under the PAYE scheme. Examples of deductions that are allowed include;

- Contributions made by employees to either employer or self-provide employee pension or similar schemes. The pension scheme must first be approved by the Commissioner General, otherwise the deduction is not available.

- All employment related expenses like motor vehicle costs incurred in consulting and engaging with clients, telephone calls for business purposes.

Note 2:

No deduction can be made from an employee or employer's income of expenses of a personal nature which include;

- *Transport costs between home and work,*
- *General clothing,*
- *Education leading to a formal qualification.*

In the example on the cover page only the following have been deducted from the total earnings for purposes of calculating PAYE: (i) pension contribution and (ii) overpayment of salary in March (which has the effect of allowing the employee to claim back the tax paid on the overpayment). The others are by law not tax deductible.

4. Calculation of Tax Payable

4.1 Formula for Annual Tax Payable

The tax payable is found by applying the tax structure on the taxable income as follows.

(i) Taxable income = gross income – deductions

(ii) Tax on taxable income = (1st M61 080 of taxable income) x 20% + (Excess over M61 080) x 30%.

(iii) Tax payable = tax on taxable income – non-refundable tax credit.

4.2 Formulae for Periodic PAYE Calculations

The most common practice it to pay salaries on a monthly basis. However, there are instances where different time periods are used. The following is an illustration of how PAYE is to be calculated in the case of different time periods that may be adopted.

(i) **Monthly:** where salaries and benefits are paid on a monthly basis the figures in 6.1 (i) to (iii) must be divided by **12.**

(ii) **Fortnightly:** where salaries and benefits are paid on a fortnightly basis, two weeks basis, the figures in 6.1 (i) to (iii) must be divided by **26.**

(iii) **Weekly:** where salaries and benefits are paid on a weekly basis the figures in 6.1 (i) to (iii) must be divided by **52**.

(iv) **Daily:** where salaries and benefits are paid daily the figures in 6.1 (i) to (iii) must be divided by **365**.

Note 3:

- *The calculations in 6.1 and 6.2 above are applicable in cases where the remuneration in question is the only source of employment income for the employee. Where an employee has more than one source of employment income refer to the section 7 below; Special Cases.*

- *An employer who pays salaries monthly may also refer to the published tax table to know how much tax is payable. It must be noted that the tax table assumes that any allowable deduction has been factored in, that is, it uses taxable income and not gross income.*

5. Calculation of Tax Under Special Cases

There are certain employment remunerations that might not ordinarily be regarded as normal wages or salaries. The following illustrate how the remuneration is to be taxed by the employer.

5.1 Periodic Special Cases

(i) Directors or Board Fees: Tax payable = gross directors or board fees x 30%.

(ii) Honoraria/Allowance: Tax payable = gross honoraria/allowance x 30%.

(iii) Part-time salary: Tax payable = gross part-time salary x 30%.

(iv) Secondary employment; Tax payable = gross secondary employment income x 30%.

Note 4:

The above are applicable where the employer is aware of the existence of primary or other sources of income through employee declaration or other means. In the absence of such other income the employer is apply the marginal rates.

5.2 Lump Sum Special Cases

The following lump sum payments may be applicable. The calculation of the tax payable is shown against category of lump sum.

(i) Gratuity (from fixed term employment contracts)

Tax payable on gratuity = (gross gratuity – exempt gratuity amount) x 30%.

Where exempt gratuity amount = total salary over the contract period x 25%.

(ii) Gratuity (from approved superannuation fund; pension or provident)

Tax payable on gratuity = (gross gratuity – exempt gratuity amount) x 25%.

Where exempt gratuity amount = total salary over the contract period x 25%.

(iii) Severance pay

Tax payable on severance pay = (gross severance pay – exempt severance pay) x 30%.

Where exempt severance pay amount = total salary over employment period x 25%.

6. Underpayments or Overpayments of PAYE

It is the obligation of the employer under the law to ensure that the correct amount of tax is withheld from the employee's remuneration and is ultimately remitted to the LRA on time.

However, there could be under or over payments of PAYE as a result of the following;

- Incorrect calculations on the part of the employer.
- Omissions of items of income, benefits or deductions.
- Use of wrong or outdated tax structure.
- Late publication of changes in the tax structure.

The following steps have to be undertaken to address under or over payments of PAYE.

6.1 Underpayments of PAYE

- The underpaid tax is recoverable, by law, from the employer, but the law also allows the employer to subsequently recover the underpayment from the employee.

6.2 Overpayment of PAYE

- The employee is entitled to recover the overpayment from the employer who in turn can recover from the LRA.
- The overpayment can also be off-set against the tax liability of the subsequent tax period.

Note 5:

- *The employer must clearly account for any adjustments of under or over payments and ensure that they are properly included in the periodic pay slips and P16s.*
- *Underpayments of PAYE lead to imposition of penalties by the LRA.*

6.3 Tax structure changes adjustments

Generally, changes in the tax structures are often made to reduce the tax burden, that is, such changes often lower the tax payable as compared to the previous year or period. Where there has been a delay in the publication of a Government Gazette to introduce tax structure changes the LRA will issue communication indicating how employers are to effect the delayed changes.

7. Obligations and Responsibilities

7.1 The

- Is responsible for ensuring that the necessary tools and communication are in place to aide employers in the calculation of PAYE.
- Is responsible for undertaking field inspections and audits to disseminate information and educate employers and employees on the proper administration of PAYE.
- Is responsible for ensuring that revenues are safeguarded.

7.2 Employers

- Are responsible for withholding from employment remunerations and benefits the correct amount of PAYE.
- Are responsible for liaising with the LRA to get clarity and confirmation of the tax treatment of any items of incomes or expenses/deductions.
- Are responsible for issuing properly reconciled pay slips and P16s.

7.3 Employees

- Are responsible for ensuring that their remunerations are properly taxed by their employers.
- Are responsible for confirming that the tax withheld by their employers is ultimately remitted to the LRA. The income earners, that is the employees, remain liable for any ultimate tax liabilities under the law.
- Are responsible for ensuring that the pay slips and P16s are a true reflection of their remunerations, benefits and deductions entitlements.

8. Conclusion

This Guideline sets out how PAYE must be operated so that correct amount of tax payable under the law is deducted. When this happens both the administration costs and compliance costs are reduced or kept at minimal levels. The Guideline does not cover all possible scenarios or circumstances and so where there is doubt it is the responsibility of both the employers and the employees to seek guidance and clarity from the. The will, from the publication of this Guideline ensure that periodic taxes are deducted and remitted by employers. There will be very rare cases in which the RSL will directly refund overpaid PAYE.

TAXATION OF EMPLOYMENT INCOME

1. Introduction

This guide explains the employment income and its administration. It also explains how it is taxed and the rates that are applicable to it. This is explained in relation to Income Tax Act No. 9 of 1993 as amended from time to time.

2. What is an employment income?

Employment income is the total earnings of an employee that arise from an employment relationship. Total earnings refer to all income received by or credited in favor of an employee arising from an employment relationship.

Employment income, under section 18(1) of Income Tax Act 1993, includes the following: wages, salaries, bonuses, allowances, overtime payments, leave payments, commission, gratuity, supplementary pay, fees, severance pay and other income of similar nature. It may even be gifts by the employer or third parties that would otherwise not be given, but for the employment relationship.

3. How is the employment income taxed?

Under the PAYE system, the amount of tax to be deducted from the employee's remuneration or total earnings depends on the following:

- the employees' total earnings,
- the applicable marginal tax rates,
- Allowable deductions (e.g. Contributions to an approved pension fund, retirement annuity fund.)

- **<u>Tax Rates Applicable</u>**

Taxable income is taxed in accordance with a progressive two-rate structure of 20% and 30%. In determining the PAYE of each employee, the following marginal tax rates apply:

The minimum marginal tax rate:

20% The maximum marginal tax rate:

30%

These rates apply as follows:

- Any chargeable income from M 4,200 up to M5,350 per month is taxable at 20%; and
- Any excess of M 5,350 per month is taxable at 30%.

- **Tax Credit:**

A tax credit is a rebate or relief granted by law to every individual who earns taxable income. A tax credit is directly deductible from the amount of tax to which an individual is liable to pay after applying the applicable tax rates to the individual's chargeable income. Individuals are granted a non-refundable tax credit of M840.00 per month.

- **Threshold for taxable / chargeable income:**

A threshold normally refers to that point in an individual's income below which the income is not taxable. Individuals who earn a gross salary of M4, 200 and below per month, will not pay any tax on their income, but those who earn above M4, 200 will be taxable for every Loti of such amount.

4. The method of collecting tax on employment income (PAYE System):

This is the method of deducting and withholding tax from employees' total earnings in proportion to what they earn.

According to the system, the employer:

- has an obligation to calculate correctly tax payable by every employee,
- has the power to deduct and withhold the tax from the employee's earnings,
- where tax has not been withheld, the employer will be held liable but has the authority to recover such amounts from the employees,
- has the obligation to remit the tax to the Lesotho Revenue Authority by the 15th of every month following the month of deduction.

Provisional Tax Guide

Questions	Answers
What is provisional tax?	It is an instalment of tax paid by the taxpayer during the year of assessment in terms of which taxpayers are obliged to pay their income tax liability in three equal

	instalments based on their actual income tax liability for the preceding year.
Who should pay provisional tax?	Provisional tax is paid by companies and individuals carrying on income generating business in Lesotho.
Why should I pay provisional tax?	It is a mandatory requirement under Section 150 of income Tax Act, of 1993 that, every taxpayer should pay provisional tax. It helps the taxpayer to spread the tax over the year of assessment, thereby preventing the accumulation of large amount of tax liability at the end of the year.
How is provisional tax calculated?	The amount of each instalment of tax is 30% of the taxpayer's income tax liability for the preceding year of assessment.
When do I have to pay provisional tax?	The provisional tax or quarterly instalments are due for payment on the following dates: • 30th September • 31st December • 31st March Where the taxpayer has been granted permission to use a substitute accounting period, the instalments of the tax become due on the last day of the 6th, 9th and 12th month of the substituted year or accounting period.
What documents do I fill when making provisional tax payment?	Use e-services
Where do I pay provisional tax?	The provisional tax is paid at the following points: • Nedbank Lesotho • Standard Lesotho Bank • First National Bank • Post Bank
What are the consequences for failure to pay provisional tax?	A person who fails to pay any instalment of tax due is liable for additional tax compounded monthly and it is calculated monthly and it is calculated from the date on which the payment became due.

TAXATION OF SUPERANNUATION FUNDS

1. Background

Lesotho income tax law encourages long term savings plans by providing a number of tax benefits to employers and employees who make savings into superannuation funds. The main purpose of long term savings is to encourage employees to safe monies while they are still in the workforce. These savings are intended to be used at such time when the employees are unable to provide for themselves and their dependents because of various reasons including retirement, permanent incapacity or death. The tax benefits mentioned above are only enjoyable where the long term savings are made into complying superannuation funds.

However, it has come to the attention of the LRA that some fund managers and employers opt to engage into other dealings involving these funds which otherwise undermine the above stated intended purpose. These include the following;

- Misuse of Superannuation Funds for Short Term Savings

Most employers consider utilizing the superannuation funds to save monies for contract gratuities to be earned by contract employees upon expiry of employment contracts. Since contract gratuity savings are short term in nature, an inclusion of contract employees in a superannuation fund runs contrary to long-term savings nature of superannuation fund.

- Securing Home Loans using Superannuation Funds Credits

It is common practice that most fund administrators have a clause, in their superannuation funds rules, which enables members to pledge their funds credits as securities for home loans with financiers including commercial banks. The security of member's rights condition, as discussed and as will be seen later in the guide, provides that the fund will not be regarded as a complying superannuation fund if it is able to pledge its assets as security for a loan by a financier to a third party such as the employer contributor, an associate of the employer or the member of the fund. The intention of this condition is to ensure that the member's rights to receive benefits are not revoked whatsoever due to debt claims against such member by any creditor.

- Retention of Members' Benefits by Employers

In the absence of superannuation fund governing legislation in Lesotho, most employers include a clause in their rules that enables them to retain members' benefits as compensation for losses or damages suffered as a result of negligence or misconduct by the member. The employers use discretion to determine the amount of benefits to retain. This is in contravention with the vesting condition (as discussed below) unless such retention or recovery has been awarded by a competent court of law.

3.0 Purpose

This guide discusses superannuation funds' rules and conditions as contained in the Act with an objective of demonstrating ideal features of a complying superannuation fund according to the law. It is intended to assist non-complying funds to immediately regularize their operations in order to be compliant. Specific reference will also be made to tax treatment of contributions into, and payments from superannuation funds and administrative requirements.

4.0 The Law and its application

It is in the spirit of the Law that the superannuation funds be created and operated for the main purpose of providing benefits to members, or dependants of the members, upon retirement or death of such members.

To attain this objective, superannuation funds must comply fully with the seven conditions as discussed below together with other taxation requirements.

4.1 Superannuation Conditions

4.1.1 The Security of Member's Rights Condition

A superannuation fund observes this condition if the rights of the members and those of their dependants to receive benefits are set out in and fully secured by the fund rules. To ensure that the benefits of members and their dependents are fully secured, the fund must not be able to pledge its assets as security for a loan by a financier to employer contributor, associates of employer or the member of the fund.

4.1.2 The Vesting Condition

A superannuation fund observes this condition if member financed benefits and benefits arising directly or indirectly from employer's contributions made on behalf of the member vest in the member or member's dependents on the day on which the benefits accrue to the member.

4.1.3 The Portability Condition

A superannuation fund observes this condition if, on withdrawal from the fund, all the benefits vested in the member (including benefits transferred to the current fund from another complying superannuation fund) can either be:

- o retained in the current fund, or
- o transferred directly to another complying superannuation fund.

4.1.4 The Minimum Funding Condition

A superannuation fund observes this condition if,

(i) in the case of Defined Benefit Fund, the assets of the fund are sufficient to meet the minimum requisite benefits[8] for all members, any other equally ranking liabilities and the costs of administering and operating the fund. In order to ensure this, the fund administrator must obtain the certificate of solvency from the actuary for a period not exceeding four years. The certificate must state the minimum rate of contribution by employer for the assets of the fund to be reasonably regarded as sufficient to cover all liabilities stated above if the fund was to be terminated during the period covered by certificate. The certificate must be renewed at least twelve months before its expiry; or

[8] the minimum benefit to be preserved for the member of a superannuation fund;

(ii) in any other case, the benefits vested in one member would not leave the fund with insufficient assets to pay the minimum requisite benefits to all other members of that fund, if the fund was to be terminated immediately after vesting.

4.1.5 The Investment Condition

A superannuation fund observes this condition if:

(i) At all times the cost of Lesotho assets[9] (investment in Lesotho) of the fund is at least 20% of the total cost of all assets of the fund. This requirement however does not apply to non-resident superannuation funds; and

(ii) At all times the cost of in-house assets[10] (loan to or investment in participating employer or employer's associate) of the fund does not exceed 10% of the total cost of all assets of the fund[11]; and

(iii) The fund does not lend monies to the member or dependant of the member.

It is worth noting that, the assets acquired in a non-arm's length transaction are valued at its fair market value at the date of acquisition.

4.1.6 The Reasonable Benefits Condition

A superannuation fund observes this condition if the benefits that the members or dependants of the members are entitled to receive are not excessive with regard to:

o the remuneration paid to the member by the employer; and o the period of service of the member; and o any other particular circumstance of the case.

4.1.7 The Reporting Condition

A superannuation fund observes this condition if on the last day of each reporting period[12] the fund administrator issues a detailed report[13] to the members about the performance of their funds.

4.2 Taxation of Superannuation Funds

[9] This includes an interest in immovable property located in Lesotho, shares in a resident company, interest in a resident Trust and securities issued by a resident or a Lesotho branch of a non-resident

[10] an asset of a superannuation fund that is a loan to, or an investment in, the employer who contributes to the fund or an associate of such employer.

[11] In the case of a public sector fund, in-house assets do not include the investment in securities issued by the Lesotho government

[12] This means the Superannuation Fund accounting period of twelve months.

[13] Refer to Regulation 14 for the report requirements.

4.2.1 Contributions into Superannuation Funds

Contributions made into a complying superannuation fund by both the employers and the employees are allowable deductions. The employees' contributions are deductible from their employment income before charging Pay As You Earn (PAYE). The employers' contributions made for the benefit of employees are tax deductible as expenses in the hands of such employers.

In the case of employer superannuation fund the total contributions (employee's and employer's contributions) made for the benefit of an employee are limited to 20% of employee's employment income. In determining this 20% limit, the employee's contributions are taken into account first.

In the case of a self-provided superannuation fund the total contributions made by the member (who is a resident individual) into the fund are limited to 20% of such member's gross income. The 20% of the member's gross income is reduced by any amount contributed for the benefit of the member into the employer superannuation fund, if any. That is, since employment income forms part of gross income, it will be excluded from the gross income in determining the 20% limit if the member and or the employer are contributing into the employer superannuation fund for the benefit of the employee. If there is no employer superannuation fund operated for the benefit of the employee, employment income will form part of such gross income.

It is worth noting at this point that contributions made into a non-complying superannuation fund are not tax deductible.

4.2.2 Lump Sum Payments

A lump sum payment[14] from a complying superannuation fund made in favour of a member or dependent of the member where the member has died is taxable at standard rate and the tax so charged is a final tax. In an instance where the recipient has elected for the payment to be included in the gross income, such payment will be taxable at marginal rates.

A lump sum payment from a non-complying superannuation fund on the other hand is included in the gross income of the recipient and taxable at marginal rates.

4.2.3 Roll-over and Purchase of Pension/Annuity

Any amount of lump sum payment from a complying superannuation fund which is rolled over into another complying superannuation fund or used to purchase annuity within 90 days of the date of the payment is exempt from income tax.

In the case of expatriate Taxpayer[15], roll over can be made into any superannuation fund and annuity may be purchased from any person. In any other case, in order for exemption to remain valid, roll over must be made into another complying superannuation fund and annuity must be purchased from a resident person.

4.2.4 Income of Superannuation Funds

[14] A lump sum payment from a complying superannuation fund is regarded as a terminal benefit therefore it is taxable as such under Section 32.

[15] resident individual, other than a citizen or permanent resident of Lesotho, who is employed or engaged under a technical services contract (where technical services contract means a contract under which accounting, auditing, economic, financial, legal, management, engineering, architectural, surveying, or other similar professional service is performed).

Income of a resident complying superannuation fund is exempt from income tax. The exemption is however not extended to the following:

- o Lesotho source income of a non-resident superannuation fund, whether or not approved for tax purposes in Lesotho; or o income of the fund administrator/manager whether or not such income is generated from or earned as a consideration for administering and operating the superannuation funds.

It must be noted further that income of a non-complying superannuation fund is not exempt from income tax.

4.3 Administrative Requirements

4.3.1 Pay As You Earn (PAYE)

The fund administrator has an obligation to deduct/withhold tax from:

- o lump sum payments referred to in 4.2.2 above; and
- o periodic payments made by the superannuation funds to the beneficiary (recipient).

For proper administration of PAYE, the fund administrator must issue a signed Tax Certificate (Form P16) to the beneficiary. The certificate must be issued within 28 days after the end of the year of assessment. This therefore implies that the fund administrator must register with LRA for PAYE purposes.

4.3.2 Approval of Fund Rules for Tax Purposes

The following documents must be submitted to LRA in order for Commissioner to approve any superannuation fund for tax purposes:

- an application/covering letter; and o rules of the fund (both general and special rules); and o any amendment to the rules (all amendments must be approved); and In the case of a non-resident superannuation fund, the fund administrator must issue a written statement to the Commissioner confirming that the administrator will:
  - deduct or withhold tax at applicable rate on payments made to the member or member's dependent; and
  - remit tax deducted or withheld to .

4.3.3 Transfers and Terminations

For transfers and terminations of superannuation funds, the LRA will need the listed documents from the following parties:

A. Fund Administrator of Transferring or Terminating Fund:

- o application for tax directives; o fund credits for all the members; o member's salary history from the first month the member started participating in the fund (including from the first month of participation in the previous fund where the member had rolled over into the current fund); and
- o notice of termination of the fund by participating employer.

B. Fund Administrator of Receiving Fund

- o Governing rules of the new superannuation fund

C. Participating Employer

- o A written statement signed by the members of the transferring fund informing the Commissioner that such members have:

(i) agreed to transfer from the current fund;

(ii) nominated the new fund as the receiving fund in which they are going to participate; and

(iii) notification letter from either the employer or Board of Trustees, informing the Commissioner about the transfer or termination.

It is essential to note that the requirements from both the participating employer and the administrator of transferring or terminating fund must be submitted to LRA as a single package by the fund administrator. Tax directives on the other hand will be issued based on the compliance of the transferring and receiving funds or terminating fund.

5.0 Conclusion

The tax benefits provided for under superannuation funds are meant for complying funds. These benefits include tax deductibility of contributions made for the benefit of the member and 25% exemption under terminal benefits regime. A superannuation fund is considered to be complying if it observes the above-mentioned conditions which must be clearly stipulated in the fund rules.