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PART A

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THE INCOME TAX (AMENDMENT) BILL, 1999

(Bill No. 8 of 1999)

(To be presented by the Minister of Finance)

MEMORANDUM OF OBJECTS AND REASONS

The object of the Bill is to amend the Income Tax Order 1975 so as to provide for -

- (a) the withholding of tax on payments of interest paid to resident persons, and from royalties and management charge payable to non-resident persons;
- (b) the simplification of tax provisions under section 59;
- (c) the removal of certain exemptions;
- (d) new tax rates for companies and other persons; and
- (e) other matters consequential or incidental thereto.

M. DWAMENA
Attorney-General

A BILL
entitled

An Act to amend the Income Tax Order, 1975.

ENACTED by the King and the Parliament of Swaziland.

Short title and commencement.

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1999 and shall be read as one with the Income Tax Order 1975 (hereinafter referred to as "the Order") and shall come into operation on a date to be announced by the Minister by notice published in the Gazette.

(2) The Minister may in such notice or such other subsequent notice specify different dates for the coming into operation of different provisions of this Act.

Amendment of section 2.

2. Section 2 of the Order is amended -

(a) by -

- (i) deleting the definition of "Assistant Commissioner"; and
- (ii) inserting, in the alphabetical order, a new definition of "Deputy Commissioner" as follows -

"Deputy Commissioner" means a Deputy Commissioner appointed under section 3;";

- (b) by adding, in the alphabetical order, a new definition of "management charge" as follows -

"management charge" means a payment of any kind or nature, other than a payment to which the Second Schedule applies, in consideration for any services of a technical, managerial, administrative or consultancy nature;";

- (c) by replacing the definition of "person" with the following new definition -

"person" includes a company, a body of persons whether incorporated or not, an insolvent estate, the estate of a deceased person and any trust;";

- (d) by adding, in the alphabetical order, a new definition of "royalty" as follows -

"royalty" means any payment, including a premium or like consideration, made for -

- (a) the use of, or right of use, any patent, design, trademark, or copyright, or any model, pattern, plan, formula, or process, or any property or right of a similar nature; or

- (b) the use of, or right to use -

- (i) any motion picture film; or

- (ii) any video or audio material (stored on film, tape, disc, or other medium) for use in connection with television or radio broadcasting; or

- (iii) any sound recording or advertising matter connected with material referred to in sub-paragraph (i) or (ii); or

- (c) the use of, or the right of use, or the receipt of, or right to receive, any video or audio material transmitted by satellite, cable, optic fibre, or similar technology for use in connection with television or radio broadcasting; or

- (d) the imparting of, or the undertaking to impart, any scientific, technical, industrial, or commercial knowledge or information; or

- (e) the rendering of, or the undertaking to render assistance ancillary to a matter referred to in paragraphs (a) to (d); or

- (f) a total or partial forbearance with respect to a matter referred to in paragraphs (a) to (e); "; and

- (e) by adding, in the alphabetical order, a new definition of "steamer" as follows -

"steamer" includes any means of public and fare-charging transport by sea."

Amendment of section 3.

3. Section 3 of the Order is amended in subsection (1) by replacing the word "Assistant Commissioner" therein with the word "Deputy Commissioner".

Amendment of section 7.

4. Section 7 of the Order is amended -

- (a) in paragraph (b), by deleting the proviso;
- (b) in subparagraph (ii) of the proviso to paragraph (f), by deleting the words "and termination" between the word "commencement" and the words "of such employment"; and further
- (c) in paragraph (f), immediately after subparagraph (ii) of the proviso thereto, by adding a new subparagraph (iii) as follows -
 - "(iii) any free passage by rail, steamer or air provided for an employee or the holder of an office or appointment shall, on termination of such employment, office or appointment, not be included if the employee or holder of such an office or appointment permanently returns to his country of origin".

Amendment of section 11.

5. Section 11 of the Order is amended -

- (a) under subsection (1), paragraph (g) -
 - (i) in subparagraph (ii), at the end of the sentence, by replacing the colon with a semi colon; and thereafter
 - (ii) by adding a new subparagraph (iii) as follows -
 - "(iii) any video or audio material transmitted by satellite, cable, optic fibre, or similar technology for use in connection with television or radio broadcasting,
 - wheresoever such thing or matter as is referred to in sub-paragraph (i), (ii) or (iii) has been produced or made, or such right of use or permission has been granted or payment for such use, right of use or grant, of permission has been made or is to be made, and whether such payment has been made or is to be made by a person resident in or out of Swaziland,"
 - (iii) by adding immediately after paragraph (g) a new paragraph (gg) as follows -
 - "(gg) the use of or the right to use, or the grant of permission to use in Swaziland of plant machinery, equipment or vehicles or any other movable property;"
- (b) under subsection (1), paragraph (i) by replacing at the end of the sentence the full stop thereat with a semi colon;
- (c) under subsection (1), by adding a new paragraph (j) immediately after paragraph (i) as follows -
 - "(j) a management charge paid by any person ordinarily resident or carrying on business in Swaziland.";
- (d) under subsection (8), by adding a new subsection (8A) immediately after subsection (8) as follows -
 - "(8A) Any amount which has been paid by an employer during any year of assessment directly or indirectly, by way of contribution or payment to any medical benefit fund for the benefit of any employee or the dependants of any such employee, which exceeds two thirds of the total contribution or payment in relation to such employee or dependants during such period, shall be deemed to be part of the taxable income of such employee for that year.";

- (e) under subsection (9), by adding a new subsection (9A) immediately after subsection (9) as follows -

“(9A) It is further provided -

- (a) any interest received by or accrued to a person who is ordinarily resident or carrying on business in Swaziland from a source outside Swaziland shall be deemed to be from a source within Swaziland notwithstanding that it may have been recovered or recouped outside Swaziland, unless the interest is effectively connected with a business carried on by the person through a branch in the other country;
- (b) where as a result of subparagraph (a) applying, an amount of interests is included in the gross income of a person ordinarily resident or carrying on business in Swaziland, that person shall be allowed a credit for any foreign tax paid by the person in respect of the interest, and this credit shall be applied against the person's liability for Swaziland tax on the interest; and
- (c) the amount of the credit allowed under subparagraph (b) is limited to the Swaziland tax payable in respect of the interest income.”

Amendment of section 12.

6. Section 12 of the Order is amended, under subsection (1) -

- (i) in paragraph (a), by deleting subparagraph (iii);
- (ii) in paragraph (a), by deleting subparagraph (v);
- (iii) in paragraph (ee), by deleting the whole paragraph (ee);
- (iv) in paragraph (g), by inserting at the end of the sentence, that is, between the last word “agreement” and the colon (:) the following words -

“in respect of services rendered or performed prior to 1 July 1999”;
- (v) in paragraph (h), by deleting the whole paragraph (h);
- (vi) in paragraph (o), by deleting the whole paragraph (o);
- (vii) in paragraph (p), by deleting the whole paragraph (p);
- (viii) in paragraph (q), by deleting the whole paragraph (q);
- (ix) in paragraph (qq), by deleting and replacing it with a new paragraph (qq) as follows -

“(qq) so much of annual interest as does not exceed one thousand Emalangeni received by or accrued to an individual in any year of assessment from deposits in a financial institution licensed under the Financial Institutions (Consolidation) Order, 1975 or in a building society registered under the Building Societies Act, 1962 or the Swaziland Development and Savings Bank established under Order No. 49 of 1973 and carrying on business in Swaziland.”;
- (x) in paragraph (s), by deleting the whole paragraph (s);
- (xi) in paragraph (t), by replacing the full stop at the end of the paragraph with a semi colon; and further,

(xii) by adding a new paragraph (u) after paragraph (t) as follows -

“(u) any royalty or management charge received by or accrued to any person not ordinarily resident or carrying on business in Swaziland which is subject tax under section 32B of this Order.”

Amendment of section 14.

7. Section 14 of the Order is amended in subsection (1), by replacing paragraph (x) with a new paragraph (x) as follows -

“(x) expenditure incurred during the year of assessment by any taxpayer for training of any person who is employed by the taxpayer in a business the income from which is subject to tax;”

Amendment of section 14A.

8. Section 14A of the Order is amended by deleting its sub-heading together with the whole section 14A.

Amendment of section 18.

9. Section 18 of the Order is amended by deleting its sub-heading together with the whole section 18.

Amendment of section 22.

10. Section 22 of the Order is amended under subsection (2) in paragraph (a) by inserting the word “Namibia” in the alphabetical order.

Amendment of section 29.

11. Section 29 of the Order is amended -

(a) in paragraph (a), by replacing it with a new paragraph (a) as follows -

“(a) interest received from any society or company registered under any law relating to agricultural co-operative societies in Botswana, Lesotho, Namibia, Swaziland or the Republic of South Africa”;

(b) in paragraph (e), by deleting the whole paragraph (e); and

(c) in paragraph (g), by deleting the whole paragraph (g).

Insertion of a new section 32B under Part III.

12. The Order is amended by inserting a new section 32B under Part III immediately after the end of section 32A as follows -

“DIVISION IV-DIVIDEND, ROYALTY AND MANAGEMENT CHARGE

Levying of Tax Royalties and Management Charge Paid to Non-Resident Persons.

32B. (1) It is provided that -

- (a) there shall, separately and accumulatively or collectively where applicable, be charged, levied and paid a tax in respect of any amount of any royalty and management charge received by or accrued to or in favour of any person not ordinarily resident or carrying on business in Swaziland and;
 - (b) the rate of tax shall be fifteen per cent of the gross amount of any royalty and fifteen per cent of the gross amount of any management charge.
- (2) Every person who makes any payment of royalty or management charge or both to a person not ordinarily resident or carrying on business in Swaziland shall withhold tax from such payment in accordance with the rate specified in subsection (1), (b).
- (3) Where tax has been withheld under subsection (2) the withholding tax shall be a final tax.
- (4) Every person who has withheld any tax under subsection (2) shall -
- (a) furnish, to the person to whom payment is made of any royalty or management charge or both as the case maybe, a certificate showing the amount of the payment made and the tax withheld during the year of assessment; and
 - (b) within fifteen days from the date of payment of such royalty or management charge, as the case maybe, remit to the Commissioner the amount of tax withheld.
- (5) Every person making any payment to which this section applies shall maintain a record showing, in relation to each year of assessment, the payments of royalties or management charge made to each non-resident person and tax withheld from such payments, and such record shall be kept available, for the period specified under section 33 (16), for examination by the Commissioner as and when required.
- (6) It is further provided that -
- (a) any person who fails to withhold tax in accordance with subsection (2), shall, in addition to any penalty for which he may be liable to, be personally liable to pay the Commissioner the tax which he should have withheld as if it were tax due and payable by him under PART VII of this Order;
 - (b) where any person pays to the Commissioner the amount of tax which he failed to withhold, such an amount shall be deemed to have been withheld under this section; and
 - (c) the person making such payment to the Commissioner under subparagraph (a) shall be entitled to recover such amount from the person who received or to whom a royalty or management charge accrued to or from the person in whose favour it was made or accrued to, that is to say, the person from whom the deduction ought to have been effected against under subsections (1) and (2)."

Insertion of a new section 32C under Part III.

13. The Order is amended by inserting a new section 32C under Part III immediately after the end of section 32B as follows -

"DIVISION V - INTEREST PAID TO RESIDENTS.

Withholding tax from payments of interest made to persons ordinarily resident in Swaziland.

32C. (1) Every person, other than an individual, who makes any payment of interest to a person ordinarily resident in Swaziland shall withhold tax at the rate of twelve percent of the gross amount.

(2) The tax withheld under subsection (1) shall be on account of the tax liability to tax of the person ordinarily resident in Swaziland.

(3) Every person who has withheld any tax under subsection (1) shall -

(a) furnish within thirty days after the end of the year of assessment to the person to whom payment of interest is made a certificate, showing the amount of the payment made and the tax withheld during the year of assessment;

(b) within fifteen days from the date of payment of such interest remit to the Commissioner the amount of tax so withheld.

(4) No deduction of tax under this section from any payment of interest shall relieve a resident person from the obligation to furnish a return for the assessment of the tax or any return as provided under section 33 or from any other obligation imposed by this Order.

(5) Every person making any payment (of interest) to which this section applies shall maintain a record showing in relation to each year of assessment -

(a) the payment of interest made to each resident person;

(b) the tax withheld from such payment,

and such record shall be kept for the period specified under section 33 (16) for examination by the Commissioner as and when required.

(6) It is further provided that -

(a) notwithstanding paragraph (d), where any person fails to withhold any tax under subsection (1) or having deducted such tax fails to remit such tax to the Commissioner, as required by subsection (3), shall, in addition to any penalty for which he may be liable under section 66, be personally liable to pay the Commissioner that amount of tax as if it were tax due and payable by him under Part VII of this Order;

(b) where any person pays to the Commissioner the amount of tax which he failed to withhold, such amount shall be deemed to have been withheld under this section;

(c) the person making such payment to the Commissioner under paragraph (a) shall be entitled to recover such amount from the person to whom a payment of interest was made; and

(d) subject to paragraph (a), where any person has failed to withhold tax as required under subsection (1) and the Commissioner is satisfied that the failure was not due to an intent to postpone payment of the tax or to avoid that person's obligations under this section, the Commissioner may, if he is satisfied that there is a reasonable prospect of recovering the tax from the payee (the person who received the interest), absolve the person who should have withheld tax from his liability under paragraph (a)."

Amendment of section 59.

14. Section 59 of the Order is amended by replacing it with a new section 59 as follows -

"Withholding of tax from payments to non-resident contractors.

59. (1) For the purposes of this section -

"agreement" means a single agreement or a series of agreements; and

"non-resident person" means any person whose principal place of business is outside Swaziland.

(2) Every person who makes payment to a non-resident person under an agreement relating to construction operations shall withhold tax from such payments at the rate specified under subsection (3).

(3) The amount of tax to be withheld in respect of subsection (2) shall be fifteen per cent of so much of the payment as is not shown to represent the direct cost (to any other person) for materials used or to be used in carrying out the construction operations to which the agreement relates.

(4) The tax withheld under subsection (3) shall be on account of the tax liability to tax of the non-resident person.

(5) Every person who has withheld any tax under subsection (3) shall -

(a) furnish the non-resident person to whom any payment is made with a certificate showing the amount of the payment due under the agreement and the tax deducted therefrom;

(b) within fifteen days from the date of payment remit to the Commissioner the amount of tax withheld.

(6) No deduction of tax under this section shall relieve the non-resident person from the obligation to furnish any return for the assessment of the tax under section 33 or from any other obligation imposed by this Order.

(7) Every person making any payment to which this section applies shall maintain a record showing, in relation to each year of assessment the amounts of payments made and the amounts of tax withheld, and such record shall be kept available, for the period specified under section 33 (16), for examination by the Commissioner as and when required.

(8) Every person to whom this section applies shall within thirty days after the end of the year of assessment or within such further time as the Commissioner may allow, furnish to the Commissioner a return showing the total -

(a) amount of tax withheld by such person during the year of assessment; and

(b) payments of such tax which has been made to the Commissioner and the total amount, in terms of this section, which ought to have been paid over to the Commissioner respecting the tax.

(9) Any person who fails to withhold tax in terms of this section or who fails to remit the tax in accordance with subsection (5) shall, in addition to any penalty for which he may be liable to under section 66, be personally liable to pay the Commissioner the tax which he should have withheld as if it were tax due and payable by him under Part VII of this Order."

Insertion of a new section 59A.

15. The Order is amended by inserting a new section 59A immediately after section 59 as follows-

"Withholding tax on payments to non-resident persons.

59A (1) For the purposes of this section -

"Swaziland source services contract" means a contract (other than an employment contract)-

- (a) under which the principal purpose of the contract is the performance of services which gives rise to Swaziland-source income; and
- (b) where any goods supplied under the contract are only incidental to that purpose;

"Non-resident person" has the meaning assigned to it under section 59 (1).

(2) A non-resident person shall be liable to withholding tax at the rate of fifteen per cent on the gross amount of any payment derived by the non-resident under a Swaziland source services contract.

(3) Subsection (1) shall not apply to a royalty or management charge subject to withholding tax under section 32B or payments subject to withholding under section 59.

(4) Any person (the payer) who makes any payment to any other person (the payee) referred to in subsection (2) shall withhold tax at the rate of fifteen per cent of the gross amount and shall issue a statement to the payee showing the gross amount of payment due and the rate and amount of tax withheld.

(5) Every person who withholds tax in accordance with subsection (4) shall, within fifteen days from the date of payment, remit to the Commissioner, the amount of tax so withheld or deducted.

(6) Where tax has been withheld under this section from a payment made to a non-resident person the withholding tax is a final tax and -

- (a) no further tax liability shall be imposed upon the taxpayer in respect of the income to which the tax relates; and
- (b) the income shall not be aggregate with other income of the taxpayer for the purposes of ascertaining taxable income; and
- (c) no deduction shall be allowed for any expenditure or losses actually incurred in the deriving the income; and
- (d) no refund of tax shall be made in respect of the income.

(7) Every person making any payment to which this section applies shall maintain, and keep available for the period specified under section 33 (16) for inspection by the Commissioner, records showing, in relation to each year of assessment -

(a) payments made to the non-resident persons; and

(d) tax withheld from such payments.

(8) Every person (the payer) to whom this section applies shall within thirty days after the end of the year of assessment or within such further time as the Commissioner may allow, furnish to the Commissioner a return showing -

(a) the amounts paid or payable to the non-resident person; and

(b) the amounts of tax withheld; and

(c) such other information as the Commissioner may, in writing, by notice or other means, require.

(9) Where any person who is required to withhold tax from any payment made by him, fails to withhold such tax or having withheld such tax fails to remit such tax to the Commissioner, as required, shall, in addition to any penalty for which he may be liable under section 66, be personally liable to pay to the Commissioner the amount of tax, which he failed to withhold or remit, as if it were tax due and payable by him under Part VII of this Order."

Amendment of section 66.

16. Section 66 of the Order is amended under subsection (1) -

(a) in paragraph (h), by deleting the word 'or' after the semi colon;

(b) in paragraph (i), by adding the word 'or' after the semi colon; and

(c) by adding new paragraphs (j), (k) and (l) immediately after paragraph (i) as follows -

"(j) fails to withhold and account for tax under section 32B;

(k) fails to withhold and account for tax under section 32C; or

(l) fails to withhold and account for tax under section 59A."

Addition of a new section 71.

17. The Order is amended by adding a new section 71 immediately after section 70 as follows -

"Transitional.

71. (1) After 30 June 1999, a person who was exempted from tax under the repealed section 12(5) of the Order may elect for the continuation of the benefit or right conferred to him under that section until the benefit of the exemption expires in accordance with the terms of the exemption or such grant.

(2) An election under subsection (1) shall be made in writing to the Commissioner by 31 July 1999."

Amendment and replacement of the Third Schedule.

18. The third schedule to the Order is amended by replacing it with a new Third Schedule as follows -

"THIRD SCHEDULE
Rates of normal tax

PART I

For the purposes of section 6(3), the rates of tax to be levied in the year of assessment shall-

- (a) in the case of all companies, be thirty cents for each Lilangeni of taxable income;
- (b) in the case of persons (other than companies), be as prescribed in part II;
- (c) in the case of person (other than companies) who, during the year of assessment was not ordinarily resident in Swaziland, the rate of tax to be levied shall not reduce the total tax payable below an amount equal -
 - (i) to ten cents of each Lilangeni of his taxable income; and
 - (ii) to three cents of each Lilangeni of such part where any part of his taxable income consist of pension;
- (d) in the case of a trustee, be thirty-three cents for each Lilangeni of taxable income; and
- (e) in the case of dividends received by or accrued to or in favour of an individual from a company listed with the Swaziland Stock Exchange or from a company other than such company shall be taxed at the rate of -
 - (i) 10 per cent where the company is listed on the Swaziland Stock Exchange; and
 - (ii) 20 per cent in the case of any company not listed on the Swaziland Stock Exchange.

PART II

Rates of normal tax in the case of persons other than companies shall be as follows -

Taxable Income		Rate of Tax
Exceeds	Not Exceed	
E	E	E
0	14 000	0%
14 000	20 000	12% of the excess over 14 000
20 000	30 000	720 + 19% of the excess over 20 000
30 000	36 000	2 620 + 26% of the excess over 30 000
36 000		4 180 + 33% of the excess over 36 000"

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